

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JAMES DUNNAM,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2807280 AND SC-2807281

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaints SC-2807280 and SC-2807281. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent failed to properly disclose political expenditures made as reimbursements. Sworn complaint SC-2807280 also alleged that the respondent failed to include required information on campaign finance reports.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is the state representative for District 57 and was a successful opposed candidate in the November 2006 and November 2008 general elections. The respondent is also the campaign treasurer of the House Democratic Campaign Committee (HDCC), a general-purpose political committee.
2. Sworn complaint SC-2807280 alleged that the respondent, in his capacity as campaign treasurer of HDCC, violated section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules because he failed to properly disclose on the committee's July 2006, January 2007, and July 2007 semiannual reports, as well as the committee's 30-day pre-election report for the November 2006 general election and 8-day runoff report for the December 2007 runoff election, political expenditures made as reimbursements. The complaint also alleged that the respondent failed to properly disclose the purpose, or failed to identify the name and office sought or held of each candidate or officeholder who benefitted

from a direct campaign expenditure made by the committee, for four political expenditures disclosed on the committee's 8-day pre-election report for the November 2006 general election, and January 2007 semiannual report, in violation of section 254.031 of the Election Code and section 20.433 of the Ethics Commission Rules.

3. Sworn complaint SC-2807281 alleged that the respondent, in his capacity as a candidate or officeholder, violated section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules because he failed to properly disclose on his July 2006, January 2007, and July 2007 semiannual reports, as well as his 30-day pre-election report for the November 2006 general election, political expenditures made as reimbursements.

SC-2807280 (House Democratic Campaign Committee Reports)

4. HDCC's original July 2006 semiannual report disclosed no unitemized political expenditures and \$142,743.54 in total political expenditures. Schedule F (used for itemizing political expenditures) disclosed approximately \$3,000 in payments to staff members as reimbursement for various expenses. The report also disclosed approximately \$490 in payments to staff members exclusively for mileage reimbursement.
5. HDCC's original 30-day pre-election report for the November 2006 general election disclosed no unitemized political expenditures and \$77,279.17 in total political expenditures. Schedule F disclosed approximately \$1,010 in payments to staff members as reimbursement for various expenses. The report also disclosed approximately \$440 in payments to staff members exclusively for mileage reimbursement.
6. HDCC's 8-day pre-election report for the November 2006 general election disclosed no unitemized political expenditures and \$418,920.53 in total political expenditures. Schedule F disclosed a \$43,353 political expenditure to Jeff Crosby Direct Mail for "direct mail," and two political expenditures totaling approximately \$172,610 to Mammen Pritchard for "direct mail."
7. HDCC's original January 2007 semiannual report disclosed \$131.54 in unitemized political expenditures and \$215,752.37 in total political expenditures. Schedule F disclosed approximately \$4,000 in payments to staff members as reimbursement for various expenses. The report disclosed a \$92,438 political expenditure to Jeff Crosby Direct Mail for "direct mail."
8. HDCC's original July 2007 semiannual report disclosed \$5 in unitemized political expenditures and \$108,184.92 in total political expenditures. Schedule F disclosed approximately \$1,210 in payments to staff members as reimbursement for various expenses. The report also disclosed approximately \$510 in payments to a staff member exclusively for mileage reimbursement.

9. HDCC's original 8-day runoff report for the December 18, 2007, runoff election disclosed no unitemized political expenditures and \$47,833.94 in total political expenditures. Schedule F disclosed approximately \$450 in payments to a staff member as reimbursement for various expenses. The report also disclosed approximately \$360 in payments to a staff member exclusively for mileage reimbursement. The report was due on December 10, 2007, and filed the same date.
10. On January 30, 2008, HDCC filed a corrected 8-day runoff report for the December 18, 2007, runoff election. The report disclosed no unitemized political expenditures and \$132,628.59 in total political expenditures. Schedule F disclosed approximately \$5,950 in payments to staff members as reimbursement for various expenses. The report also disclosed approximately \$3,150 in payments to staff members exclusively for mileage reimbursement. The correction affidavit that accompanied the report stated, "Due to the confusion regarding reporting for participation in special elections certain expenditures and contributions were omitted from required reports. The errors were recently discovered and corrected in good faith and except for the special election would have been reported in the January report." The respondent swore that the corrected report was filed not later than the 14th business day after the date he learned that the report as originally filed was inaccurate or incomplete, and that any error or omission in the report as originally filed was made in good faith.
11. HDCC reports at issue disclosed a total of approximately \$15,170 in political expenditures for staff reimbursement (other than expenditures disclosed for mileage reimbursement alone), and approximately \$4,590 in political expenditures exclusively for mileage reimbursement.¹
12. In response to sworn complaint SC-2807280, the respondent submitted an affidavit in which he swore that neither he nor the committee knowingly or intentionally violated any laws relating to the reimbursement of staff members for political expenditures made from personal funds. The respondent swore that all the reports at issue were corrected promptly after receiving notice of the complaint. The respondent swore that the corrected reports disclosed the names and addresses of the payees, and that reimbursements to any single staff member during a reporting period did not exceed \$5,000 in the aggregate. The respondent also swore that, "[HDCC's] expenditures to Jeff Crosby Direct Mail and Mammen Pritchard were correctly reported on the original reports because the payments were for generic 'Vote Democratic' mail, were not made on behalf of any candidate identifiable by name or likeness, nor made with the cooperation, coordination, prior knowledge, or consent of any identifiable candidate. Thus, there were no candidates to identify."
13. HDCC's corrected July 2006 semiannual report disclosed no unitemized political expenditures and \$142,743.54 in total political expenditures. Schedule F disclosed the

¹ These amounts are based on HDCC's original reports at issue, except for the 8-day runoff report, in which case the amounts are based on the corrected report filed January 30, 2008.

- vendor of the goods or services that were purchased for approximately \$2,190 in political expenditures that originally listed a staff member as the payee. The report also disclosed approximately \$1,300 in payments to staff members for mileage.
14. HDCC's corrected 30-day pre-election report for the November 2006 general election disclosed no unitemized political expenditures and \$77,279.17 in total political expenditures. Schedule F disclosed the vendor of the goods or services that were purchased for approximately \$830 in political expenditures that originally listed a staff member as the payee. The report also disclosed approximately \$620 in payments to staff members for mileage.
 15. HDCC's corrected January 2007 semiannual report disclosed no unitemized political expenditures and \$215,752.37 in total political expenditures. Schedule F disclosed the vendor of the goods or services that were purchased for approximately \$2,500 in political expenditures that originally listed a staff member as the payee. The report also disclosed approximately \$1,490 in payments to staff members for mileage.
 16. HDCC's corrected July 2007 semiannual report disclosed no unitemized political expenditures and \$108,184.92 in total political expenditures. Schedule F disclosed the vendor of the goods or services that were purchased for approximately \$1,040 in political expenditures that originally listed a staff member as the payee. The report disclosed that no staff member was reimbursed more than \$5,000 during the reporting period. The report also disclosed approximately \$690 in payments to a staff member for mileage.
 17. On July 30, 2008, HDCC filed a second corrected 8-day runoff report for the December 18, 2007, runoff election. The report disclosed no unitemized political expenditures and \$132,628.59 in total political expenditures. Schedule F disclosed the vendor of the goods or services that were purchased for approximately \$5,730 in political expenditures that originally listed a staff member as the payee. The report disclosed that HDCC reimbursed one staff member more than \$5,000 during the reporting period (approximately \$5,008). Schedule E (used for reporting loans) did not disclose any loans. The report also disclosed approximately \$3,370 in payments to staff members for mileage.
 18. In summary, HDCC's corrected reports disclosed the vendor of the goods or services that were purchased for approximately \$12,290 in political expenditures that originally listed a staff member as the payee, and approximately \$7,460 in political expenditures to staff members for mileage.² The corrected reports disclosed that, of the \$12,290 at issue, approximately \$380 in political expenditures totaled less than \$50 to a single payee during the relevant reporting period.

²For the 8-day runoff report, the amounts are based on the corrected report filed July 30, 2008.

SC-2807281 (Representative Dunnam Candidate/Officeholder Reports)

19. The respondent's July 2006 semiannual report disclosed no unitemized political expenditures and \$54,818.81 in total political expenditures. Schedule F disclosed approximately \$870 in payments to staff members as reimbursement for various expenses.
20. The respondent's 30-day pre-election report for the November 2006 general election disclosed no unitemized political expenditures and \$9,640.01 in total political expenditures. Schedule F disclosed one payment of \$102.40 to a staff member as reimbursement for various expenses.
21. The respondent's January 2007 semiannual report disclosed no unitemized political expenditures and \$38,841.44 in total political expenditures. Schedule F disclosed approximately \$510 in payments to staff members as reimbursement for various expenses.
22. The respondent's original July 2007 semiannual report disclosed no unitemized political expenditures and \$48,496.45 in total political expenditures. Schedule F disclosed approximately \$1,590 in payments to staff members as reimbursement for various expenses. The report disclosed that approximately \$1,460 was paid to the same staff member for reimbursements, and Schedule E discloses a loan of that same amount to the staff member.
23. On July 26, 2007, the respondent filed a corrected July 2007 semiannual report to add a political expenditure that was previously omitted from the report. That political expenditure is not at issue in sworn complaint SC-2807281. The report disclosed no unitemized political expenditures and \$51,496.45 in total political expenditures. Schedule F disclosed approximately \$1,590 in payments to staff members as reimbursement for various expenses. The report disclosed that approximately \$1,460 was paid to the same staff member for reimbursements, and Schedule E disclosed a loan of that same amount to the staff member. The respondent swore that the corrected report was filed not later than the 14th business day after the date he learned that the report as originally filed was inaccurate or incomplete, and that any error or omission in the report as originally filed was made in good faith.
24. The respondent's candidate/officeholder reports at issue disclosed a total of approximately \$3,070 in political expenditures as reimbursements to staff members.
25. In response to sworn complaint SC-2807281, the respondent submitted an affidavit in which he swore that he did not knowingly or intentionally violate any laws relating to the reimbursement of staff members for political expenditures made from personal funds. The respondent swore that all the reports at issue were being corrected and would be submitted as soon as practicable. The respondent swore that reimbursements to any single staff member during a reporting period did not exceed \$5,000 in the aggregate.

26. As of June 9, 2009, the respondent did not file corrected reports in response to sworn complaint SC-2807281.
27. On June 8, 2009, the respondent's attorney advised the commission that the respondent would be submitting corrected reports in response to sworn complaint SC-2807281 within approximately one week.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

1. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
2. For reports due before February 25, 2007, Ethics Advisory Opinion No. 450 (EAO 450), describes the proper way to report staff reimbursement. The commission determined that a political expenditure made to reimburse a staff member may be reported in one of two ways: (1) reporting it as a loan to the candidate, officeholder, or political committee from the staff member and then as an expenditure by the candidate, officeholder, or political committee to repay the staff member; or (2) if the expenditure and reimbursement occur during the same reporting period, report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the staff member made the expenditure, and explaining in the "purpose" section that a staff member made the expenditure from personal funds and that the candidate, officeholder, or political committee subsequently reimbursed the staff member. Ethics Advisory Opinion No. 450 (2003). The commission has since adopted section 20.62 of the Ethics Commission Rules, which sets forth the current method for reporting staff reimbursement.³
3. Ethics Commission Rule § 20.62 currently states that political expenditures made out of personal funds by a staff member of a candidate, officeholder, or political committee with the intent to seek reimbursement from the candidate, officeholder, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:
 - (1) The amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the

³ Ethics Commission Rule § 20.62 originally became effective on February 25, 2007. On October 26, 2007, the rule was amended to raise the threshold for reporting staff reimbursements as a loan from \$500 to \$5,000. The change became effective on November 18, 2007.

- persons to whom the expenditures are made and the dates and purposes of the expenditures; and
- (2) Included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.
4. Ethics Commission Rule § 20.62 also states that if the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of a candidate, officeholder, or political committee with the intent to seek reimbursement from the candidate, officeholder, or political committee must be reported as follows:
- (1) The aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the candidate, officeholder, or political committee;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the candidate, officeholder, or political committee; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the candidate, officeholder, or political committee.

SC-2807280 (House Democratic Campaign Committee Reports)

5. As to the July 2006 and January 2007 semiannual reports, as well as the 30-day pre-election report for the November 2006 election, Ethics Advisory Opinion No. 450 (EAO 450), describes the proper way to report staff reimbursement. The \$500 threshold in the former version of Ethics Commission Rule § 20.62 applies to the July 2007 semiannual report, and the \$5,000 threshold in the current version of Ethics Commission Rule § 20.62 applies to the 8-day runoff report for the December 18, 2007 runoff election.
6. HDCC's July 2006, January 2007, and July 2007 semiannual reports, as well as HDCC's 30-day pre-election report for the November 2006 general election and 8-day runoff report for the December 2007 runoff election, improperly disclosed approximately \$12,290 in political expenditures as reimbursements to staff members. The respondent failed to disclose the vendor who actually received payment for the goods or services that were purchased. Of the \$12,290 at issue, approximately \$380 in political expenditures that were originally disclosed as staff reimbursements were not required to be itemized because they fell under the \$50 threshold for itemization. Although the respondent corrected the reports at issue to disclose the vendor who actually received payment for the goods or services purchased⁴, the political

⁴ Although the respondent swore that reimbursement by HDCC to any single staff member during a reporting period did not exceed \$5,000, the corrected 8-day runoff report filed on July 30, 2008, disclosed that the committee reimbursed a staff member more than \$5,000 (approximately \$5,008) during the reporting period. If a staff member is reimbursed more than \$5,000 during a reporting period, Ethics Commission Rule § 20.62 requires that the political committee report: (1) the aggregate amount of expenditures made by the staff member as of the last day of the reporting period as a loan; (2) the expenditure made by the staff member as a political expenditure by the political committee; and (3) the reimbursement to the staff member to repay the loan as a political expenditure by the political committee. Although

expenditures were not properly reported when the reports were originally due. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

7. As to the allegation that the respondent failed to properly disclose the purpose, or failed to identify the name and office sought or held of each candidate or officeholder who benefitted from a direct campaign expenditure made by the committee, for four political expenditures for "direct mail," the payments were for generic "Vote Democratic" direct mail, and were not direct expenditures made on behalf of any identifiable candidate. Therefore, as to that allegation, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.433 of the Ethics Commission Rules.

SC-2807281 (Representative Dunnam Candidate/Officeholder Reports)

8. The respondent's July 2006, January 2007, and July 2007 semiannual reports, as well as the respondent's 30-day pre-election report for the November 2006 general election, improperly disclosed approximately \$3,070 in political expenditures as reimbursements to staff members. The respondent failed to disclose the vendor who actually received payment for the political expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving these sworn complaints.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent agrees to comply with these requirements of the law.

HDCC's corrected 8-day runoff report did not follow the proper reporting method, Schedule F of the report did disclose the vendor who was ultimately paid for the goods or services, as well as the name of the staff member who was reimbursed for the political expenditures.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,200 civil penalty in connection with sworn complaint SC-2807280, and, if corrected reports are filed as provided under this section, a \$300 civil penalty in connection with sworn complaint SC-2807281. If the respondent does not correct the reports at issue in sworn complaint SC-2807281 to properly disclose political expenditures made as reimbursements by July 7, 2009, then the commission imposes a \$1,500 civil penalty in connection with sworn complaint SC-2807281.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of sworn complaints SC-2807280 and SC-2807281.

AGREED to by the respondent on this _____ day of _____, 20__.

James Dunnam, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director