

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ABEL HERRERO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2807287

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2807287. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031(a)(1) of the Election Code and section 20.62 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent improperly reported political expenditures as reimbursements on campaign finance reports. The complaint also alleged that the respondent failed to properly report, and improperly reimbursed, political expenditures made from personal funds.

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 34.

Payee Information for Reimbursement of Political Expenditures

2. The complaint alleged that the respondent improperly reported political expenditures as reimbursements in violation of section 254.031 of the Election Code. The following reports are at issue:
 - July 2006 semiannual report that disclosed \$23,722.50 in total political contributions and \$18,199.97 in total political expenditures.
 - Disclosed eight expenditures to Zulema Zapata totaling approximately \$440 for “office supplies,” “parade supplies” and “golf tournament expenses.”

- 30-day pre-election report for the November 2006 election that disclosed \$21,510.47 in total political contributions and \$10,600.44 in total political expenditures.
- Disclosed three expenditures to Matilda Herrero totaling approximately \$260 for “flag purchase,” “fundraiser refreshments,” and “food expense for skeet shoot.”
- Disclosed four expenditures to Zulema Zapata totaling approximately \$160 for “office supplies” and “travel expenses.”
- 8-day pre-election report for the November 2006 election that disclosed \$20,750 in total political contributions and \$25,960.37 in total political expenditures.
 - Disclosed five expenditures to Zulema Zapata totaling approximately \$560 as “reimbursement for breakfast meeting and supplies,” “reimbursement for ad,” “travel expense,” and “reimbursement for supplies.”
- January 2007 semiannual report that disclosed \$48,457.88 in total political contributions and \$18,630.29 in total political expenditures.
 - Disclosed seven expenditures to Zulema Zapata totaling approximately \$1,590 as reimbursements for “parade supplies,” “election day expenses,” “event supplies,” and “office supplies.”
 - Disclosed a \$2,600 expenditure to Elias Vasquez for “reimbursement for election day expenses.”
 - Disclosed a \$105.86 expenditure to Matilda Herrero for “reimbursement for parade supplies.”
- July 2007 semiannual report that disclosed no political contributions and \$33,876.62 in total political expenditures.
 - Disclosed eight expenditures to Zulema Zapata totaling approximately \$660 as reimbursements for “office supplies,” “postage,” “office expense,” and “travel expenses.”
 - Disclosed two expenditures to Jackie Uresti totaling approximately \$200 for “office supplies,” and “reimbursement for travel expenses”.
 - Disclosed two expenditures to Stephanie Leavitt totaling approximately \$380 for “clerks office luncheon,” and “reimbursement for travel expense.”
 - Disclosed a \$75 expenditure to Matilda Herrero for “reimbursement for Stars Donation.”
- January 2008 semiannual report that disclosed \$85,891.76 in total political contributions and \$39,407.36 in total political expenditures.
 - Disclosed 10 expenditures to Zulema Zapata totaling approximately \$920 as reimbursements for “office supplies,” “postage,” “office expense,” “office expenses,” “event expenses and supplies,” and “fundraiser supplies.”
 - Disclosed two expenditures to Matilda Herrero totaling \$240 as “reimbursement for parade supplies.”

3. The total amount of staff reimbursement was approximately \$8,200. The reimbursements were made to staff for expenditures they made for the respondent.
4. The respondent swore that he did not properly report these reimbursements to staff members.
5. The respondent has filed corrected reports to show the actual payees.

Reimbursement of Expenditures from Personal Funds

6. The complaint also alleged that the respondent failed to properly report, and improperly reimbursed, political expenditures made from personal funds in violation of section 253.035 of the Election Code. The following reports are at issue:
 - July 2006 semiannual report that disclosed \$23,722.50 in total political contributions and \$18,199.97 in total political expenditures.
 - Disclosed 29 expenditures to the respondent totaling approximately \$3,200 for “travel expense,” “dinner with constituents,” and “staff lunch meeting.”
 - 30-day pre-election report for the November 2006 election that disclosed \$21,510.47 in total political contributions and \$10,600.44 in total political expenditures.
 - Disclosed 15 expenditures to the respondent totaling approximately \$1,280 for “travel expense,” “meeting expense,” “video equipment,” and “staff meeting expense.”
 - 8-day pre-election report for the November 2006 election that disclosed \$20,750 in total political contributions and \$25,960.37 in total political expenditures.
 - Disclosed 15 expenditures to the respondent totaling approximately \$7,530 for “travel expense,” “meeting expense,” “event expenses,” and “staff meeting expense.”
 - January 2007 semiannual report that disclosed \$48,457.88 in total political contributions and \$18,630.29 in total political expenditures.
 - Disclosed 23 expenditures to the respondent totaling approximately \$5,600 for “travel expense,” “meeting expense,” and “election day expense.”
 - July 2007 semiannual report that disclosed no political contributions and \$33,876.62 in total political expenditures.
 - Disclosed 79 expenditures to the respondent totaling approximately \$2,170 for “meal expense,” “travel expense,” “meeting expense,” “lunch meeting expense,” “dinner meeting expense,” “breakfast meeting expense,” and “parking expense.”
7. The total amount of expenditures to the respondent was approximately \$19,800.

8. The respondent made the expenditures at issue with a debit card linked to his campaign's bank account and those expenditures were not made from his personal funds.
9. The respondent has filed corrected reports.

IV. Findings and Conclusions of Law

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

Payee Information for Reimbursement of Political Expenditures

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.
2. For the July 2006 and January 2007 semiannual reports and 30-day and 8-day pre-election reports for the November 2006 election, Ethics Advisory Opinion No. 450 (2003), describes the proper way to report reimbursements. 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 from the staff member and then as an expenditure by the candidate 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 subsequently reimbursed the staff member. The commission has since adopted section 20.62 of the Ethics Commission Rules, which sets forth the current proper method for reporting reimbursements to staff.
3. Ethics Commission Rule § 20.62 (effective February 2007; amended October 2007) states that political expenditures made out of personal funds by a staff member of an officeholder or candidate, with the intent to seek reimbursement from the officeholder or candidate, that in the aggregate do not exceed \$5,000 (\$500 until October 2007) during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:
 - a. 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; and

- b. 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, in relevant part, 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 an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate must be reported as follows:
 - a. 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 officeholder, or candidate;
 - b. The expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate; and
 - c. The reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate.
5. In the reports at issue the respondent reported approximately \$8,200 in payments to his staff. The payments were reimbursements for political expenditures that the staff members made for the respondent. The respondent did not use either of the two proper methods set out in Ethics Advisory Opinion No. 450 or Ethics Commission Rule § 20.62 to report the staff reimbursements on multiple reports. Therefore, for those reports filed before February 25, 2007, there is credible evidence of violations of section 254.031 of the Election Code, and for reports filed after that date, credible evidence of violations of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules.

Reimbursement of Expenditures from Personal Funds

6. 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. Each campaign finance report must also include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031.
7. A candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures; and (2) the report clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h).

8. In the alternative, a candidate who makes political expenditures from the candidate's personal funds may report the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. ELEC. CODE § 253.0351(a).
9. Ethics Commission Rule § 20.63(d) states that a candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions only if:
 1. The expenditures were fully reported as political expenditures on the report covering the period during which the expenditures were made; and
 2. The report disclosing the expenditures indicates that the expenditures were made from the candidate's or officeholder's personal funds and are subject to reimbursement.
10. The respondent's July 2006, January 2007, and July 2007 semiannual reports and 30-day and 8-day pre-election reports for the November 2006 election disclosed multiple reimbursements to himself. The respondent made the expenditures at issue with a debit card linked to his campaign's bank account and that those expenditures were not made from his personal funds. Thus, the respondent did not actually reimburse himself for the expenditures at issue. Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code and section 20.63(d) of the Ethics Commission Rules with respect to those expenditures.
11. The proper way to disclose the expenditures would have been to show the actual payee who received payment for those goods or services. If any of the expenditures were under \$50 to an individual payee during a reporting period, then those expenditures could have been included in the amount of total political expenditures of \$50 or less on the reports at issue. The respondent failed to properly disclose the expenditures. Therefore, there is credible evidence of violations of section 254.031 of the Election Code with regard to the expenditures.

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 this sworn complaint.
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. Each campaign finance report must also include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. The respondent also acknowledges that Ethics Commission Rule § 20.62 sets out the proper way to report reimbursements to staff. The respondent agrees to comply with these requirements of the law.

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 \$2,800 civil penalty.

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 SC-2807287.

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

Abel Herrero, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director