

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DON CHUMLEY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2808309

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-2808309. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 254.031, and 254.063 of the Election Code and section 20.63 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to timely file a January 2007 semiannual campaign finance report. The complaint also alleges that the respondent failed to properly disclose political contributions, political expenditures, total political contributions accepted, and outstanding loan balances. The complaint further alleges that the respondent accepted contributions from corporations. The complaint also alleges 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 was an incumbent candidate for constable of Precinct 1 of Montgomery County in the March 2008 primary election.
2. The allegations relate to the respondent's January 2007, July 2007, and January 2008 semiannual reports, and the respondent's 30-day and 8-day pre-election reports filed in February 2008 for the March 2008 primary election.

3. The deadline for filing the January 2007 semiannual report was January 16, 2007. The respondent filed his January 2007 semiannual report, covering a period from July 16, 2006, through January 15, 2007, on January 19, 2007.
4. The complaint alleges that the respondent failed to disclose the total political contributions maintained and the total principal amount of all outstanding loans as of the last day of the reporting period in his January 2007, July 2007, and January 2008 semiannual reports, and in his February 2008 30-day and 8-day pre-election reports.
5. The reports at issue show that the total political contributions maintained and the total principal amount of all outstanding loans were left blank in the totals section of each report. The respondent has corrected the reports at issue to disclose the amount of total political contributions maintained and the total principal amount of all outstanding loans as of the last day of the respective reporting periods. The corrected reports disclose \$0 as the amount of outstanding loans, and the reports indicate that the respondent had no loans to disclose. In addition, the corrected reports disclose total political contributions maintained in amounts ranging from approximately \$23,840 to \$41,650.
6. The complaint alleges that the respondent failed to properly disclose on his July 2007 semiannual report the total amount of political contributions accepted. The allegation is based on calculating the total of all political contributions itemized on Schedule A and adding that amount to the total political contributions of \$50 or less disclosed on page 2 of the coversheet.
7. The respondent's July 2007 semiannual report disclosed \$516 as the amount of total political contributions of \$50 or less. The total of all the political contributions itemized on Schedule A is \$36,654. When the two totals are added ($\$516 + \$36,654$), the total amount of all political contributions accepted is \$37,170. The respondent's report disclosed \$37,154 as the amount of total political contributions accepted, which is a discrepancy of \$16.
8. The respondent has corrected his July 2007 semiannual report but failed to disclose the correct amount of total political contributions. The respondent returned two political contributions of \$120 each and disclosed \$36,414 as the amount of total political contributions accepted, which was determined by subtracting \$240 from \$36,654 (the total of all itemized political contributions). The respondent failed to include the amount of total political contributions of \$50 or less when he calculated the amount of total political contributions accepted.
9. The complaint alleges that the respondent failed to fully disclose in his January 2007 semiannual report the address of the payee of four political expenditures. The respondent's January 2007 semiannual report disclosed four political expenditures with incomplete addresses, totaling approximately \$1,201. The report disclosed the city and state but did not

- include the payee's complete street address. The respondent has corrected the report to disclose the full address of the payee for the four political expenditures at issue.
10. The complaint alleges that the respondent failed to disclose in his January 2008 semiannual report the purpose of the payment in connection with two political expenditures. The respondent's January 2008 semiannual report disclosed a payment of \$300 to Lake Conroe Rotary Club on December 5, 2007, but left the purpose of the payment section blank. The report disclosed the purpose of the payment for all other political expenditures. Several pages of the respondent's report were duplicate pages, which makes it appear as though the report did not disclose the purpose of the payment in connection with two political expenditures. The respondent has corrected the report to disclose the purpose of the payment to Lake Conroe Rotary Club as "fundraiser for Rotary Club #5910."
 11. The complaint alleges that the respondent failed to properly report, and improperly reimbursed, political expenditures made from personal funds. The allegations are based on the respondent's January 2007 and July 2007 semiannual reports.
 12. The respondent's January 2007 semiannual report disclosed a payment of \$303.26 to the respondent on September 1, 2006, for "reimbursement for luncheon." The respondent's July 2007 semiannual report disclosed a payment of \$122.65 to the respondent on April 26, 2007, for "reimbursement for office luncheon." The total amount of expenditures at issue is approximately \$426. The expenditures had not been previously disclosed as having been made from the respondent's personal funds with the intent to seek reimbursement from political contributions. The respondent has corrected the reports at issue to disclose the expenditures made from personal funds on Schedule G, indicating that reimbursement was intended.
 13. The complaint alleges that the respondent accepted six corporate contributions. The allegations are based on the respondent's July 2006 and July 2007 semiannual reports.
 14. In response to the allegations, the respondent swears that when he received checks from entities that appeared to be from corporations, he would ask the contributor whether it was a corporation. The respondent further swears that he relied on the information provided to him by the contributor to determine whether he could accept the contribution, and that he followed that procedure for each of the contributions at issue.
 15. The respondent's July 2006 semiannual report disclosed a political contribution of \$120 from Awesome Aqua Toys on June 23, 2006. The respondent's July 2007 semiannual report disclosed a political contribution of \$120 from Awesome Aqua Toys on April 19, 2007. The reports disclosed the contributor's address as 13245 FM 1097 W, Willis, Texas, 77318. According to the Texas Secretary of State's records, Awesome Aqua-Toys, Inc. forfeited its existence as an incorporated entity on August 25, 2000. The Secretary of State ordered the business' charter or certificate of authority be forfeited and made null and void as of August

- 25, 2000, for failure to file a franchise tax report. The respondent swears that Awesome Aqua Toys is an assumed name for an individual named James Preather, and, therefore, it was not a corporate contribution. According to the Montgomery County clerk's office, an assumed name certificate was filed on November 30, 2005, for an individual named Jim Preather to do business as Awesome Aqua Toys with a business address of 13245 FM 1097 W, Willis, Texas, 77318.
16. The respondent's July 2006 semiannual report disclosed a political contribution of \$120 from Quest Consulting on July 12, 2006, with the following address: PO Box 1286, Montgomery, Texas, 77356. The respondent swears that the contributor, Quest Consulting Group LLC, is a Texas limited liability company, and therefore it was not a corporate contribution. The Texas Secretary of State has a record of a business named Quest Consulting Group LLC that is registered as a domestic limited liability company with an address in Houston, Texas. In addition, the Texas Secretary of State has a record of a business named Quest Consulting, Inc., with an address in Abilene, Texas, that forfeited its existence as an incorporated entity on February 15, 1994. Another Texas Secretary of State record shows a Quest Consulting, Inc. with an address in Houston, Texas, that is different from that of Quest Consulting LLC.
 17. The respondent's July 2007 semiannual report disclosed a political contribution of \$120 from High Timbers Executive Plaza on July 3, 2007, with the following address: 2441 High Timbers, Suite 120, The Woodlands, Texas, 77380. According to the Texas Secretary of State's records, High Timbers Executive Plaza Inc. is a domestic for-profit corporation with a listed business address of 2441 High Timbers Dr. Suite 120, Spring, Texas, 77380. The respondent's attorney submitted a written response in which he states that after substantial research, they have confirmed that the contributor's general partner is a corporation. The respondent swears that the contributor was a limited partnership but acknowledges that the contributor's general partner was a corporation. Therefore, the respondent has returned the contribution.
 18. The respondent's July 2006 semiannual report disclosed a political contribution of \$400 from Schurr Insurance on July 12, 2006. The respondent's July 2007 semiannual report disclosed a political contribution of \$120 from Schurr Insurance on July 10, 2007. The reports disclosed the contributor's address as 14729 Hwy 105, Montgomery, Texas, 77356. The respondent swears that he did not believe it was a corporation at the time he accepted the contributions and that he was not aware that he could not accept contributions from an insurer. The respondent has returned the two contributions.
 19. The commission has previously found that an insurance agency is not necessarily an insurance company. An insurance company is required to be chartered by the Texas Department of Insurance and only an insurance company may issue policies. On the other hand, insurance agents may only write policies for an insurance company but they are not considered the issuer. The licensing provisions for agents are in Article 21.07 of the Insurance Code, which provides a definition of insurance company and agent. Under that

law, agents are agents of the insurance company but are not considered the insurance company.

20. Schurr Insurance is not included in the list of insurance companies that is found on the Texas Department of Insurance's website. However, the Texas Department of Insurance has a listing of Frederick Jacob Schurr at 14729 Hwy 105 W, Suite 100, Montgomery, Texas, 77356, as a licensed insurance agent. The Better Business Bureau's website provides information on a business named Schurr Insurance Agency with Frederick J. Schurr listed as the owner. Further, no records were found that a business named Schurr Insurance was ever registered as a corporation with the Texas Secretary of State.

IV. Findings and Conclusions of Law

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

1. A candidate is required to file two reports for each year. The first report must be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30. The second report must be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
2. If the deadline for a report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. Ethics Commission Rules § 20.21.
3. The evidence indicates that the respondent filed his January 2007 semiannual report on January 19, 2007. However, the deadline for filing the report was January 16, 2007. Thus, the evidence shows that the respondent failed to timely file the report at issue. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.
4. Each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
5. The evidence indicates that the respondent filed corrections to the reports at issue to disclose \$0 as the total principal amount of all outstanding loans as of the last day of the reporting periods at issue. At the time the original reports were filed, the respondent did not include this information and had left this field blank in the totals section of each report at issue. However, there is no evidence that the respondent had accepted any loans that required disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code.

6. Each campaign finance report must include, as of the last day of the reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
7. The evidence indicates that the respondent filed corrections to the reports at issue to disclose the amount of total political contributions maintained as of the last day of the reporting periods. However, at the time the original reports were filed, the respondent did not include this information and left this field blank in the totals section of each report at issue. The corrected amounts disclosed political contributions maintained ranging from approximately \$28,840 to \$41,650. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code.
8. Each campaign finance report must include the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
9. The evidence indicates that although the respondent disclosed political contributions on the proper schedule, the respondent failed to properly disclose the amount of total political contributions in the totals section of his original July 2007 semiannual report. The discrepancy between the correct total and the disclosed total was \$16. Thus, the evidence indicates that the respondent made a minor error in calculating the amount of total political contributions. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.
10. 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(a)(3).
11. The evidence shows that the respondent failed to disclose the full address of four payees to whom political expenditures were made and the purpose of the payment for one political expenditure. This information was required because the expenditures at issue exceeded \$50 during the reporting period. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with regard to those political expenditures.
12. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).
13. A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and

amounts of the expenditures, in the report covering the period during which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed 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); Ethics Commission Rules § 20.63(d).

14. The evidence indicates that the respondent made approximately \$426 in political expenditures to himself as reimbursements for political expenditures made from personal funds. However, the respondent did not previously disclose the political expenditures as having been made from his personal funds with the intent to seek reimbursement from political contributions. Therefore, there is credible evidence of violations of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.
15. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
16. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
17. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
18. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
19. The evidence indicates that Awesome Aqua Toys has not been an incorporated entity since its charter or certificate of authority was forfeited on August 25, 2000. Thus, the contributions from Awesome Aqua Toys were not corporate contributions at the time the respondent accepted them. Therefore, there is credible evidence of no violations of sections 253.003 and 253.094 of the Election Code with regard to the two political contributions from Awesome Aqua Toys.
20. An insurance company, whether incorporated or not, is considered a corporation for the purpose of the prohibition on corporate contributions. ELEC. CODE § 253.093.
21. The evidence indicates that Schurr Insurance is an insurance agency and not an insurance company. Thus, the contributor was not prohibited from making a political contribution to a candidate or officeholder. Therefore, there is credible evidence that the respondent did not

violate sections 253.003 and 253.094 of the Election Code with respect to the two political contributions from Schurr Insurance.

22. The evidence indicates that an entity named Quest Consulting Group LLC with a Houston address is registered with the Texas Secretary of State as a limited liability company. An entity named Quest Consulting, Inc. located in Abilene, Texas, was registered with the Texas Secretary of State as a corporation but forfeited its existence in February 1994. Another Quest Consulting, Inc. is currently in existence but has an address that is different from Quest Consulting LLC. The respondent swears that the contributor at issue was a limited liability company. The evidence is insufficient to refute his assertion and to determine whether the contributor was an entity prohibited from making political contributions to candidates and officeholders. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code with regard to the political contribution from Quest Consulting.
23. The evidence indicates that High Timbers Executive Plaza is registered with the Texas Secretary of State as a corporation. After substantial research, the respondent discovered that the contributor's general partner was a corporation and therefore he has returned the contribution. The evidence is insufficient to show that the respondent knew that the contribution was from a corporation at the time that he accepted it. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code with regard to the political contribution from High Timbers Executive Plaza.

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 a candidate is required to file two reports for each year, the first of which shall be filed not later than July 15, covering the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, and continuing through June 30. The second report shall be filed not later than January 15, covering the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, and continuing through December 31.

The respondent also acknowledges that each campaign finance report must include:

- (a) the aggregate principal amount of all outstanding loans as of the last day of the reporting period;
- (b) 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;
- (c) the total amount of all political contributions accepted during the reporting period; and
- (d) as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

The respondent further acknowledges that a candidate who makes political expenditures from the candidate's personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, and the report clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. 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 those personal funds from political contributions in the amount of the reported loan.

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 \$3,300 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-2808309.

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

Don Chumley, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director