

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARY BERLANGA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290458

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 12, 2010, to consider sworn complaint SC-290458. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035(h), 254.031, and 254.061 of the Election Code, as well as credible evidence of technical or *de minimis* violations of section 254.031 of the Election Code, 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 reimbursed herself for political expenditures made from personal funds, failed to properly disclose political contributions and political expenditures, failed to disclose the office sought and office held on a campaign finance report, accepted political contributions from corporations or labor organizations, and failed to include on campaign finance reports the principal occupation or job title and the full name of the employer of individuals that contributed in the aggregate \$500 or more to her during a reporting period.

III. Facts Supported by Credible Evidence

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

1. The respondent is a member of the State Board of Education.
2. The reports at issue are the respondent's 30-day and 8-day pre-election reports for the March 2008 primary election, 30-day and 8-day pre-election reports for the November 2008 general election, and July 2008 and January 2009 semiannual reports.

Disclosure of Political Expenditure Made from Personal Funds and Reimbursement

3. The complaint alleged that on the 30-day pre-election report for the March 2008 primary election the respondent failed to fully disclose political expenditures by not identifying the names and addresses of the payees, and the dates and purposes of the expenditures. The complaint also alleged that a \$350 reimbursement to the respondent that was disclosed on her 8-day pre-election report for the November 2008 general election was improper.
4. The respondent's 30-day pre-election report for the March 2008 primary election disclosed \$0.00 for total political expenditures of \$50 or less, and -\$350.00 for total political expenditures. The respondent did not itemize any political expenditures on Schedule F (used for political expenditures) or on Schedule G (used for political expenditures from personal funds). The respondent's 8-day pre-election report for the November 2008 general election disclosed on Schedule F a political expenditure of \$350 to the respondent for "Reimbursement of Filing Fee."
5. The respondent did not properly disclose a \$300 political expenditure made from personal funds for her filing fee (the reimbursement at issue was \$350). The respondent reimbursed her campaign the amount that she was reimbursed for the expenditure, \$350, and filed a corrected report properly disclosing the expenditure.

Disclosure of Political ContributionsDisclosure of Total Political Contributions

6. The complaint alleged that the respondent failed to properly disclose total political contributions on the 30-day pre-election report for the November 2008 general election and January 2009 semiannual report. The 30-day report at issue disclosed total political contributions of \$50 or less of \$25, itemized one political contribution of \$1,000, and disclosed total political contributions of \$1,000. The total political contributions amount should have been \$1,025. The respondent filed a corrected report for the report at issue disclosing total political contributions of \$1,025.
7. The January 2009 semiannual report disclosed that it covered the period from July 16, 2008, through January 15, 2009. The information for the period from July 16, 2008, through October 25, 2008, had already been reported on prior reports. The proper period for the January 2009 semiannual report was from October 26, 2008, through December 31, 2008. The report disclosed \$0.00 for total political contributions of \$50 or less, itemized three political contributions totaling \$1,325 that were disclosed on the 30-day and 8-day pre-election reports for the November 2008 general election, and disclosed total political contributions of \$1,325. The total political contributions amount should have been \$0.00. The respondent filed a corrected report for the report at issue which corrected the period covered, deleted the itemized political contributions that were reported on prior reports, and disclosed total political contributions of \$0.00.

8. The respondent filed a corrected report for the July 2008 semiannual report, which changed total political contributions of \$50 or less, from \$3,000 to \$0, and total political contributions from \$6,000 to \$3,000.

Disclosure of Contributions Maintained

9. The complaint alleged that the respondent failed to properly disclose total political contributions maintained as of the last day of the reporting period (contributions maintained) on the July 2008 and January 2009 semiannual reports, and 30-day and 8-day pre-election reports for the November 2008 general election.
10. The respondent filed a corrected July 2008 semiannual report that changed contributions maintained from \$1,325 to \$1,067.
11. The respondent filed a corrected 30-day pre-election report for the November 2008 general election that changed contributions maintained from \$1,914.70 to \$2,051.70.
12. The respondent filed a corrected 8-day pre-election report for the November 2008 general election that changed contributions maintained from \$1,550 to \$1,956.70.
13. The January 2009 semiannual report disclosed the correct amount for contributions maintained.

Disclosure of Total Political Expenditures

14. The complaint alleged that the respondent failed to properly disclose total political expenditures on the 30-day pre-election report for the November 2008 general election and January 2009 semiannual report.
15. The complaint stated that on the 30-day pre-election report at issue the total political expenditure amount should be \$435.30, and not \$420. The 30-day pre-election report at issue disclosed total political expenditures of \$50 or less of \$15.30, itemized one political expenditure of \$420, and disclosed total political expenditures of \$420. The total political expenditures amount should have been \$435.30. The respondent filed a corrected report disclosing total political expenditures of \$435.30.
16. The January 2009 semiannual report incorrectly covered the period from July 16, 2008, through January 15, 2009, instead of October 26, 2008, through December 31, 2008. The report disclosed total political expenditures of \$50 or less of \$0.00. The report itemized three political expenditures totaling \$785.30 that were reported on the 30-day and 8-day pre-election reports for the November 2008 general election, itemized a political expenditure of \$1,000 from the current reporting period, and disclosed total political expenditures of

\$1,785.30. The total political expenditures amount should have been \$1,000. The respondent filed a corrected report disclosing total political expenditures of \$1,000.

17. The respondent filed a corrected July 2008 semiannual report which changed total political expenditures of \$50 or less, from \$3,283 to \$0, and total political expenditures from \$6,580 to \$3,297.

Disclosure of Office Held and Office Sought

18. The complaint alleged that the respondent failed to disclose the office held and the office sought on the 30-day pre-election report for the March 2008 primary election. The spaces for office held and office sought are blank on the report at issue. In response to the complaint, the respondent filed a corrected report, which disclosed the office held and the office sought.

Acceptance of Corporate Contributions

19. The complaint alleged that the respondent accepted two \$1,000 political contributions from the Texas State Teachers Association, a corporation.
20. The respondent's 30-day pre-election report for the March 2008 primary election, disclosed the acceptance of a \$1,000 political contribution on February 1, 2008, from Texas State Teachers Association. The respondent's 30-day pre-election report for the November 2008 general election, disclosed the acceptance of a \$1,000 political contribution on September 13, 2008, from the same entity.
21. The Texas State Teachers Association-PAC disclosed on its reports that it made contributions of \$1,000 to the respondent on January 17, 2008, and September 11, 2008.
22. The respondent filed corrected reports clarifying that the contributor of the contributions at issue was the Texas State Teachers Association-PAC.

Disclosure of Contributor's Principal Occupation or Job Title and Employer

23. The complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer of individuals that contributed in the aggregate \$500 or more during a reporting period, in violation of sections 254.0612 and 254.0912 of the Election Code. The respondent was not required to disclose that information.

IV. Findings and Conclusions of Law

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

Disclosure of Political Expenditure Made from Personal Funds and Reimbursement

1. Each 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).
2. 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 required to be filed under this title that covers the period in 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).
3. The respondent failed to disclose on Schedule G of the 30-day pre-election report for the March 2008 primary election the name and address of the payee, and the date and amount of a political expenditure of \$300 made from personal funds for which she subsequently reimbursed herself. The respondent's only disclosure of this expenditure on that report was -\$350 that was entered in the space for total political expenditures. The respondent reimbursed herself \$350 from political funds for this political expenditure. The respondent returned the \$350 to her campaign account. There is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code.

Disclosure of Political Contributions

Disclosure of Total Political Contributions

4. Each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted during the reporting period. ELEC. CODE § 254.031(a)(5).
5. Each report must include the total amount of all political contributions accepted during the reporting period. ELEC. CODE § 254.031(a)(6).
6. The respondent under-reported total political contributions on the 30-day pre-election report for the November 2008 general election by \$25, and over-reported this amount on the January 2009 semiannual report by \$1,325 because the report included three political contributions that had been disclosed on prior reports. The respondent over-reported total

political contributions on the July 2008 semiannual report by \$3,000. The evidence indicated that the respondent mistakenly entered the \$3,000 of itemized political contributions in the space for total political contributions of \$50 or less, instead of \$0, and then added that amount to the \$3,000 of itemized political contributions to get total political contributions of \$6,000. There is credible evidence of technical or *de minimis* violations of sections 254.031(a)(5) and 254.031(a)(6) of the Election Code as to the disclosure of total political contributions of \$50 or less, and total political contributions.

Disclosure of Contributions Maintained

7. Each report must include as of the last day of a reporting period, 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. ELEC. CODE § 254.031(a)(8).
8. The evidence shows that the respondent over-reported political contributions maintained on the July 2008 semiannual report by \$258, under-reported this amount on the 30-day pre-election report for the November 2008 general election by \$137, under-reported this amount on the 8-day pre-election report for the November 2008 general election by \$406.70, and properly disclosed this amount on the January 2009 semiannual report. There is credible evidence that the respondent did not violate section 254.031(a)(8) of the Election Code as to the January 2009 semiannual report. There is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code as to the rest of the reports at issue.

Disclosure of Total Political Expenditures

9. Each report must 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(a)(5).
10. Each report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
11. The respondent under-reported total political expenditures on the 30-day pre-election report for the November 2008 general election by \$15.30, and over-reported this amount on the January 2009 semiannual report by \$785.30 because the report included three expenditures that had been disclosed on prior reports. On the July 2008 semiannual report, the respondent over-reported total political expenditures of \$50 or less by \$3,283, and over-reported total political expenditures by the same amount. The evidence indicated that the respondent disclosed \$3,283, in the space for total political expenditures of \$50 or less, and then added that amount to the actual amount of political expenditures itemized to get total political expenditures of \$6,580. There is credible evidence of technical or *de minimis* violations of sections 254.031(a)(5) and 254.031(a)(6) of the Election Code as to the disclosure of total political expenditures of \$50 or less, and total political expenditures.

Disclosure of Office Held and Office Sought

12. Each report by an officeholder must include the office held. ELEC. CODE § 254.091(1).
13. Each report by a candidate must include the office sought. ELEC. CODE § 254.061(1).
14. At the time the respondent filed the reports at issue, she was a candidate and, thus, required to include the information required by section 254.061 of the Election Code, not section 254.091 of the Election Code. Section 254.061 of the Election Code required the respondent to disclose the office she sought but not the office held.
15. The respondent failed to disclose the office sought on the 30-day pre-election report for the March 2008 primary election. There is credible evidence that the respondent violated section 254.061(1) of the Election Code.

Acceptance of Corporate Contributions

16. 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(b).
17. 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.
18. The evidence indicates that the contributions at issue were from the political committee of the corporation named as the contributor. Therefore, there is credible evidence that the respondent did not violate sections 253.003(b) and 253.094 of the Election Code.

Disclosure of Contributor's Principal Occupation or Job Title and Employer

19. The requirement to disclose the principal occupation or job title and the full name of the employer of individuals that contributed in the aggregate \$500 or more during a reporting period only applies to a candidate for or holder of a statewide executive office or a legislative office. The respondent is not a candidate for or a holder of a statewide executive office or a legislative office. Therefore, there is credible evidence that the respondent did not violate sections 254.0612 and 254.0912 of the Election Code.

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 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 each report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and 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 each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent also acknowledges that each report must include as of the last day of a reporting period, 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. The respondent also acknowledges that each report by a candidate must include the office sought. The respondent also acknowledges that 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 required to be filed under this title that covers the period in 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. 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 \$150 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-290458.

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

Mary Berlanga, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director