

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAMES GILBERT RODRIGUEZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2905126

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-2905126. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules, and credible evidence of a technical or *de minimis* violation of section 254.031(a)(1) 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: 1) accepted political contributions from corporations or labor organizations, 2) failed to properly disclose political contributions, political expenditures, and loans, 3) converted political contributions to personal use, 4) failed to timely file a campaign finance report, and 5) failed to provide information related to a political contribution from an out-of-state political committee.

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 Houston city council.
2. The reports at issue are the respondent's 30-day and 8-day pre-election reports for the November 2007 city council election, and July 2007, January 2008, July 2008, and January 2009 semiannual reports.

3. The respondent filed an affidavit in response to the sworn complaint.

Acceptance of Corporate or Labor Organization Contributions

4. The complaint alleged that the respondent accepted political contributions from corporations or labor organizations. At issue were six contributions totaling \$5,875. A contributor that made a \$100 contribution was incorporated at the time that it made the contribution. However, before accepting the contribution, the respondent was advised that the entity was not incorporated and the contribution check did not show that the entity was incorporated. The respondent reported the contribution. The remaining contributors were not incorporated or deemed to be incorporated.

Disclosure of the Full Name of Contributor

5. The complaint alleged that the respondent failed to disclose the full name of the following contributors disclosed on the following reports: Industrial Drafting of Houston and JYC Partners disclosed on the July 2007 semiannual report; Houston Professional Fire Fighters Association and Texas Affiliated Appraisers disclosed on the 30-day pre-election report for the November 2007 election; and L.T. Enterprises disclosed on the July 2008 semiannual report.
6. Industrial Drafting of Houston, JYC Partners, Texas Affiliated Appraisers, and L.T. Enterprises are the full names of the contributors.
7. Regarding the contribution from the Houston Professional Fire Fighters Association, the respondent admitted that a clerical error was made on the campaign's part and the name provided on the report lacked the words Political Action Fund.

Reporting Political Expenditures as Reimbursements

8. The complaint alleged that the respondent improperly reported political expenditures as reimbursements on the July 2007, July 2008, and January 2009 semiannual reports. The expenditures at issue were not reimbursements but were made to the payee for goods or services.

Personal Use of Political Contributions

9. The complaint alleged that the respondent converted political contributions to his personal use in violation of section 253.035(a) of the Election Code. The expenditures at issue were made for candidate or officeholder activities, and not to primarily further individual or family purposes.

Timely Filing of Report

10. The complaint alleged that the respondent failed to timely file the 30-day pre-election report for the November 2007 election.
11. The respondent filed the 30-day pre-election report for the November 2007 election on October 9, 2007.

Disclosure of Total Political Contributions Maintained

12. The complaint alleged that the respondent failed to properly disclose total political contributions maintained as of the last day of the reporting period on the 30-day and 8-day pre-election reports for the November 2007 election, and the January 2008, July 2008, and January 2009 semiannual reports.
13. It appears that for each report, the allegation is based on a calculation of total political contributions maintained that is made by adding total contributions (less in-kind contributions) to the previous report's total political contributions maintained and subtracting the total political expenditures for that reporting period.
14. For each of the reports at issue, the respondent swore that, "The balance that was provided was the total amount of political contributions maintained in the campaign's checking account on the 'Total Political Contributions [Maintained]' box"

Contribution from an Out-Of-State Political Committee

15. The complaint alleged that the respondent failed to include required information regarding an out-of-state political committee. At issue is a \$1,000 political contribution on October 29, 2007, from "SEIU C.O.P.E." in Washington, DC, that was disclosed on the respondent's January 2008 semiannual report. No additional information regarding the contributor was included with the report.
16. Service Employees International Union Committee on Political Education (SEIU COPE) is a political committee registered with the Federal Election Commission (FEC). SEIU COPE's November 2007 monthly report of receipts and disbursements disclosed a \$1,000 disbursement to the respondent on October 4, 2007.
17. The respondent's affidavit stated: "The out-of state PAC ID number was not included in the report and it was a clerical omission on the campaign's part."

IV. Findings and Conclusions of Law

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

Acceptance of Corporate or Labor Organization Contributions

1. 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).
2. 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.
3. Five of the contributions at issue were not from a corporation or labor organization. Although one contribution was from an incorporated entity, the respondent was advised that it was not incorporated before he accepted the contribution. The respondent repaid the contributor. There is credible evidence that the respondent did not violate sections 253.003(b) and 253.094 of the Election Code.

Disclosure of the Full Name of Contributor

4. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
5. As to the political contribution from the Houston Professional Fire Fighters Association, the evidence shows that the respondent failed to include "Political Action Fund" in the name of the contributor. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.031(a)(1) of the Election Code as to the contribution.
6. As to the other contributions at issue, there is credible evidence that the respondent disclosed the full names of the contributors. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(1) of the Election Code as to these contributions.

Reporting Political Expenditures as Reimbursements

7. 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).

8. Ethics Commission Rule § 20.62. Reporting Staff Reimbursement states:
- (a) Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, 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 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.
 - (b) Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, 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 officeholder, candidate, or political committee;
 - (2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and
 - (3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee.
9. The evidence shows that the respondent disclosed the required information regarding the actual vendor. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.62 of the Ethics Commission Rules.

Personal Use of Political Contributions

10. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a).
11. Personal use means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder. ELEC. CODE § 253.035(d).
12. There is no evidence to show that the expenditures were for the personal use of the respondent. The evidence showed that the expenditures were made in connection with the performance of duties or activities as a candidate for or holder of a public office. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code.

Timely Filing of Report

13. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. ELEC. CODE § 254.064(b).
14. 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(a).
15. Due to a weekend and holiday, the due date for the 30-day pre-election report for the November 6, 2007, election was October 9, 2007. The respondent filed the report on October 9, 2007. Therefore, there is credible evidence of no violation of section 254.064(b) of the Election Code.

Disclosure of Total Political Contributions Maintained

16. A report must include, 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 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).

17. Due to the statutory reporting requirements the amount of total political contributions maintained cannot necessarily be calculated by looking at the face of a report. For example, political expenditures must be disclosed when the amount is readily determinable. ELEC. CODE § 254.035. Therefore, a political expenditure may be disclosed in one reporting period but the expense actually paid in a later period. Merely subtracting the political expenditures from political contributions will not necessarily provide an accurate amount for total political contributions maintained. Each of the reports at issue included the affidavit that states that the information contained in the report is true, and the sworn response by the respondent states that the amounts are correct. There is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code.

Contribution from an Out-Of-State Political Committee

18. In a reporting period, a candidate or officeholder may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate receives from the out-of-state committee a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. ELEC. CODE § 253.032(a).
19. A candidate or officeholder must include the statement or copy required by Subsection (a) as a part of the report filed under Chapter 254 that covers the reporting period to which Subsection (a) applies. ELEC. CODE § 253.032(d).
20. A person who files a report *with the commission* by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report; or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission [Emphasis added]. Ethics Commission Rules § 20.29.
21. The respondent accepted a \$1,000 political contribution from SEIU COPE, an out-of-state political committee. For those who file their campaign finance reports with a local filing authority, certain documentation concerning the out-of-state committee must be included with the report covering the period in which the contribution from the out-of-state committee was accepted. The respondent did not include the required information with his January 2008 semiannual report. The respondent corrected the error. Therefore, there is credible

evidence that the respondent violated section 253.032 of the Election Code with regard to the contribution.

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 contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions and that the proper way to report political contributions from out-of-state political committees is in accordance with section 253.032 of the Election Code. 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 \$100 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-2905126.

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

James Gilbert Rodriguez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director