

TEXAS ETHICS COMMISSION

IN THE MATTER OF

J.B. SMITH,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3100237

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-3100237. A quorum of the commission was present. The commission determined that there is credible evidence of violations (including technical or *de minimis* violations) of sections 253.035(h), 254.031, 254.036, 254.061, and 254.063 of the Election Code, and sections 20.61 and 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: 1) did not properly disclose political contributions, political expenditures and outstanding loans on multiple campaign finance reports, 2) improperly reported political expenditures as reimbursements, 3) did not timely file a January 2009 semiannual campaign finance report, 4) converted political contributions to personal use, 5) did not include a telephone number on multiple campaign finance reports, and 6) did not indicate the report type 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 currently the Sheriff of Smith County.
2. The allegations are based on the respondent's 30-day and 8-day pre-election reports for the March 2008 election; a report filed on May 7, 2008, not in connection with a statutory reporting deadline; and the respondent's July 2008, January 2009, July 2009, and January 2010 semiannual campaign finance reports.

3. The respondent filed a campaign finance report on May 7, 2008, that was not in connection with a statutory reporting deadline. The report covered a time period (February 25, 2008, through April 1, 2008) that should have been included on the July 2008 semiannual report.
4. On March 23, 2010, the respondent filed corrections to all the reports at issue with the county filing authority. The correction to the July 2008 semiannual report corrected the reporting period and included the activity previously disclosed on the unrequired report.
5. In the correction on the July 2008 semiannual report, the respondent stated that he filed the May 2008 report in error.
6. Because the May 7, 2008, report was not required, allegations related to that report were not considered other than those related to expenditures that were omitted from the original July 2008 semiannual report.
7. The respondent's 30-day pre-election report for the March 2008 election disclosed the following:
 - \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$3,780.79 in total political expenditures (corrected to \$4,405.79)
 - \$82,295.38 in total political contributions maintained as of the last day of the reporting period (corrected to \$80,548.38)
 - \$0 in total outstanding loans
8. The respondent's 8-day pre-election report for the March 2008 election disclosed the following:
 - \$0 in total political contributions of \$50 or less (corrected to \$50)
 - \$2,550 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$8,425.21 in total political expenditures
 - \$76,298.67 in total political contributions maintained as of the last day of the reporting period (corrected to \$74,775.76)
 - \$0 in outstanding loans
9. The respondent's unrequired report filed May 7, 2008, (covering February 25, 2008, through April 1, 2008) disclosed the following:
 - A blank field for total political contributions of \$50 or less
 - \$385 in total political contributions
 - A blank field for total political expenditures of \$50 or less

- \$5,522.51 in total political expenditures
 - A blank field for total political contributions maintained as of the last day of the reporting period
 - A blank field for outstanding loans
10. The respondent's July 2008 semiannual report (covering April 1, 2008, through June 30, 2008; corrected to February 26, 2008, through June 30, 2008) disclosed the following:
- A blank field for total political contributions of \$50 or less (corrected to \$0)
 - \$0 in total political contributions (corrected to \$785)
 - A blank field for total political expenditures of \$50 or less (corrected to \$0)
 - \$18,206.69 in total political expenditures (corrected to \$23,158.49)
 - A blank field for total political contributions maintained as of the last day of the reporting period (corrected to \$52,777.55)
 - A blank field for outstanding loans (corrected to \$0)
11. The respondent's January 2009 semiannual report disclosed the following:
- \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$14,463.71 in total political expenditures (corrected to \$14,469.27)
 - \$50,745.99 in total political contributions maintained as of the last day of the reporting period (corrected to \$38,417.95)
 - \$0 in outstanding loans
12. The respondent's July 2009 semiannual report disclosed the following:
- \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$5,211.47 in total political expenditures (corrected to \$10,211.49)
 - \$28,532.14 in total political contributions maintained as of the last day of the reporting period (corrected to \$28,249.98)
 - \$0 in outstanding loans
13. The respondent's January 2010 semiannual report disclosed the following:
- \$0 in total political contributions of \$50 or less
 - \$0 in total political contributions
 - \$0 in total political expenditures of \$50 or less
 - \$5,615.88 in total political expenditures (corrected to \$13,865.88)

- \$22,916.26 in total political contributions maintained as of the last day of the reporting period (corrected to \$18,210.29)
- \$0 in outstanding loans

Campaign Treasurer's Telephone Number

14. The complaint alleged that the respondent failed to disclose the campaign treasurer's telephone number in all six of the reports at issue. The field on the cover sheet for "campaign treasurer phone" was left blank on each report. During the reporting periods at issue, the respondent had an active campaign treasurer appointment on file with the county filing authority.

Report Type and Officeholder's Telephone Number

Report Type

15. The complaint alleged that the respondent failed to disclose the "report type" in the campaign finance report filed on July 15, 2008, (covering April 1, 2008, through June 30, 2008). The field on the cover sheet for "report type" was left blank.
16. On March 23, 2010, the respondent filed a correction to the report filed July 15, 2008, to cover the entire July 2008 semiannual reporting period (from February 26, 2008, through June 30, 2008) and include the activity previously disclosed in the unrequired May 7, 2008, report. The respondent also corrected the report to designate the report as a "July 15" semiannual report by checking the box on the cover sheet.

Officeholder's Telephone Number

17. The complaint alleged that the respondent failed to disclose the officeholder's telephone number in the reports at issue. The field on the cover sheet for "candidate/officeholder phone" was left blank on each report at issue.
18. In response to the allegations, the respondent swore that he unintentionally omitted his telephone number from the reports at issue. On March 23, 2010, the respondent filed corrections to the reports at issue to include his telephone number.

Total Outstanding Loans

19. The complaint alleged that the respondent failed to disclose the total principal amount of all outstanding loans as of the last day of the reporting period in the July 2008 semiannual report. The field in the totals section on the cover sheet for total outstanding loans was left blank.

Total Political Contributions Maintained

20. The complaint alleged that the respondent disclosed an incorrect amount for the total political contributions maintained as of the last day of the reporting period in all six of the campaign finance reports at issue.

30-day Pre-election Report for the November 2008 Election

21. In the 30-day pre-election report, the respondent disclosed \$82,295.38 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be \$80,538.91.
22. On March 23, 2010, the respondent corrected the report at issue to disclose the total political contributions maintained amount to be \$80,548.38.

8-day Pre-election Report for the November 2008 Election

23. In the 8-day pre-election report, the respondent disclosed \$76,298.67 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be \$75,561.61.
24. On March 23, 2010, the respondent corrected the report at issue to disclose the total political contributions maintained amount to be \$74,775.76.

July 2008 Semiannual Report

25. In the July 2008 semiannual report, the respondent disclosed a blank field for total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should have been disclosed as \$55,866.73 in the July 2008 semiannual report.
26. On March 23, 2010, the respondent filed a correction to the July 2008 semiannual report to cover the entire reporting period and include the activity previously disclosed in the unrequired May 7, 2008, report. The corrected report disclosed the total political contributions maintained amount of \$52,777.55.

January 2009 Semiannual Report

27. In the January 2009 semiannual report, the respondent disclosed \$50,745.99 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be \$41,403.02.

28. On March 23, 2010, the respondent corrected the report at issue to disclose the total political contributions maintained amount to be \$38,417.95.

July 2009 Semiannual Report

29. In the July 2009 semiannual report, the respondent disclosed \$28,532.14 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be \$36,191.55.
30. On March 23, 2010, the respondent corrected the report at issue to disclose the total political contributions maintained amount to be \$28,249.98.

January 2010 Semiannual Report

31. In the January 2010 semiannual report, the respondent disclosed \$22,916.26 in total political contributions maintained as of the last day of the reporting period. The complaint alleged that the total amount of political contributions maintained should be \$30,575.67.
32. On March 23, 2010, the respondent corrected the report at issue to disclose the total political contributions maintained amount to be \$18,210.29.

Political Contributions and Political Expenditures of \$50 or Less

33. The complaint alleged that the respondent failed to disclose the total amount of political contributions of \$50 or less and failed to disclose the total amount of political expenditures of \$50 or less in the July 2008 semiannual report.
34. The fields in the totals section on the cover sheet for total political contributions of \$50 or less and total political expenditures of \$50 or less were left blank on the report. The political contributions and expenditures that were itemized on the report included political contributions and expenditures of over \$50, as well as those of \$50 or less.
35. On March 23, 2010, the respondent filed a correction to the July 2008 semiannual report to cover the entire reporting period and include the activity previously disclosed in the unrequired May 7, 2008, report in the semiannual report. The respondent also corrected the July 2008 semiannual report to enter a zero in the fields in the totals section on the cover sheet for total political contributions of \$50 or less and total political expenditures of \$50 or less.

Payee Address and Purpose Descriptions of Political Expenditures

36. The complaint alleged that the respondent failed to fully disclose the payee address or purposes related to certain political expenditures disclosed in the July 2008, January 2009, July 2009, and January 2010 semiannual reports.
37. In the unrequired May 7, 2008, report, the respondent disclosed a blank field for the address of the payee of a \$500 political expenditure. The respondent added the expenditure to the July 2008 semiannual report and corrected the expenditure properly to disclose the full address of the payee. The report disclosed a \$103.14 political expenditure to Ricks on the Square for "Staff." The respondent's corrected July 2008 semiannual report changed the purpose of that expenditure to "staff/lunch." The report also disclosed a \$183.10 political expenditure from personal funds to BB Taylor for "Salvation Army/Supplies." The respondent's corrected July 2008 semiannual report changed the payee name to Charlie Barker and purpose of that expenditure to "Reimbursement/Staff Member." The expenditure was also changed to a political expenditure made from political contributions.
38. The respondent's July 2008 semiannual report disclosed a blank field for the purpose description for a \$1,000 political expenditure to Kevin Elife Campaign.
39. In the July 2009 semiannual report, the respondent disclosed a \$140 political expenditure to Baskin Western Wear for "Uniforms." The respondent did not disclose this expenditure on his corrected report, however, the respondent swore in his response to this complaint that the purpose of this payment was incorrect. He swore that the proper purpose was for "political gifts, Western Hats." The respondent also disclosed the purpose description as "Reimbursement" for a \$1,690.44 political expenditure to himself. The respondent corrected the report to disclose that the expenditure at issue was an incorrectly reported political expenditure made from personal funds for which he intended to seek reimbursement and was divided into seven expenditures to various payees with different purposes. The respondent also disclosed the purpose description as "Supplies" for a \$97.43 political expenditure to Independent Glass. The respondent corrected the report to disclose that the expenditure at issue was for custom glass for his desktop.
40. The purpose descriptions for the remaining political expenditures at issue were adequate.

Reporting of Political Expenditures as Reimbursements

41. The complaint alleged that the respondent improperly reported reimbursement for 18 political expenditures totaling approximately \$29,000 in the 30-day pre-election report for the March 2008 election; the two reports covering the reporting period for the July 2008 semiannual report; and the January 2009, July 2009, and January 2010 semiannual reports.

42. The respondent's 30-day pre-election report for the November 2008 election disclosed one \$53 political expenditure to Charlie Baker with a purpose of "Reimbursement/Plaque." The respondent swore that the plaque was purchased as a political gift.
43. The respondent's January 2009 semiannual report disclosed an \$832.92 political expenditure to himself for "Reimburse Computer." On his corrected report the respondent corrected the payee to Best Buy, changed the purpose description to "computer," and moved the expenditure to Schedule G (to indicate the political expenditure was from personal funds).
44. The respondent's July 2009 semiannual report disclosed a \$1,690.44 political expenditure to himself for "Reimbursement." On his corrected report the respondent divided this expenditure into seven expenditures to various vendor payees, moved the expenditure from Schedule F to Schedule G (to indicate the political expenditure was from personal funds), and checked the box to indicate reimbursement intended.
45. The remaining amount of approximately \$26,170 in expenditures at issue were made for services performed by the payees.

Personal Use of Political Contributions

46. The complaint alleged that the respondent converted political contributions to personal use, based on a political expenditure disclosed in the respondent's January 2010 semiannual report. The political expenditure at issue disclosed \$3,920.36 paid to the respondent on September 1, 2009, with the purpose description field left blank on Schedule F.¹
47. On March 23, 2010, the respondent filed a correction to the report to disclose the political expenditure at issue as three expenditures to different payees and to disclose the expenditures on Schedule G as political expenditures made from personal funds. The respondent disclosed the purpose description and checked the box to indicate that reimbursement was intended for each expenditure. The corrected political expenditures at issue were disclosed as follows:
 - \$2,140.67 to Group M7 in Tyler, Texas, for "Web site design and maintenance" on July 17, 2009.

¹The reports at issue, as well as earlier reports, disclose numerous political expenditures related to the development and writing of two books, one of which has been published. In response to questions by the commission, the respondent made a detailed argument as to why the use of political contributions for the books were not conversions of contributions to personal use, but were instead valid candidate and officeholder related expenditures. The respondent also states that he used personal funds, over \$58,000 for the first book, to develop the books. He stated that he intends to reimburse himself for those expenditures, and for personal expenditures related to second book, from the proceeds of the sale of the books. If, as the respondent argues, the expenditures for the books were political expenditures, then the use of personal funds to make any political expenditures should have been disclosed during the period those expenditures were made. It does not appear that the respondent has done so; therefore the respondent is not legally able to reimburse himself from political contributions for the use of those personal funds.

- \$1,427.79 to Omni Hotel/Republic of Texas Restaurant in Corpus Christi, Texas, for “Sheriff’s Office Staff Dinner” on August 18, 2009.
- \$351.90 to Graphic Communication in Tyler, Texas, for “Printing” on August 18, 2009.

Timely Filing of Campaign Finance Report

48. The complaint alleged that the respondent failed to file the January 2009 semiannual report by the reporting deadline.
49. The respondent filed an amended campaign treasurer appointment with the county filing authority on December 19, 2003, which has not been terminated. The reporting deadline for the January 2009 semiannual report was January 15, 2009. The respondent filed his January 2009 semiannual report with the county filing authority on January 21, 2009.

IV. Findings and Conclusions of Law

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

Campaign Treasurer’s Telephone Number

1. The respondent had an active campaign treasurer appointment on file during the periods at issue. Thus, the respondent was a candidate for title 15 filing purposes. Each campaign finance report by a candidate must include the campaign treasurer’s name, residence or business street address, and telephone number. ELEC. CODE § 254.061(2).
2. The respondent corrected all the reports at issue to disclose the campaign treasurer’s telephone number, but he did not disclose that information at the time the reports at issue were due. Therefore, there is credible evidence of violations of section 254.061(2) of the Election Code.

Report Type and Officeholder’s Telephone Number

3. Each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a). The executive director shall prescribe forms for campaign finance reports. Ethics Commission Rules §§ 18.1, 20.19.
4. The complaint alleged that the respondent failed to disclose the “report type” on the July 2008 semiannual report. The complaint also alleged that the respondent failed to disclose the officeholder’s telephone number in all of the reports at issue. There is no statute or rule that specifically requires that information. However, the reports at issue were required to be filed in a format prescribed by the commission.

5. The respondent did not check the box to disclose the “report type” on the cover sheet of the July 2008 semiannual report. The respondent corrected the report to disclose the “report type.” The respondent corrected the reports at issue to disclose the officeholder’s telephone number. There is credible evidence of technical or *de minimis* violations of section 254.036(a) of the Election Code.

Total Outstanding Loans

6. 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).
7. The complaint alleged that the respondent failed to disclose the total principal amount of all outstanding loans as of the last day of the reporting period in the July 2008 semiannual report. The respondent swore that there were no outstanding loans for the reporting period and there is no evidence to refute this statement. The respondent left blank the field in the totals section on the cover sheet used to disclose total outstanding loans in the report at issue and corrected the report to disclose an outstanding loan total of zero. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(2) of the Election Code.

Total Political Contributions Maintained

8. A campaign finance 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 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).
9. A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section. ELEC. CODE § 254.031(a-1).
10. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
11. The complaint alleged that the respondent did not correctly disclose the total political contributions maintained as of the last day of the reporting period in the campaign finance reports at issue.
12. The respondent acknowledged that the amount of total political contributions maintained was incorrect in each of the reports at issue and corrected the reports to: 1) decrease the total by approximately \$1,750 in the 30-day pre-election report for the November 2008 election; 2)

decrease the total by approximately \$1,520 in the 8-day pre-election report for the November 2008 election; 3) add the previously omitted total of approximately \$52,780 in the July 2008 semiannual report; 4) decrease the total by approximately \$12,330 in the January 2009 semiannual report; 5) decrease the total by approximately \$280 in the July 2009 semiannual report; and 6) decrease the total by approximately \$4,710 in the January 2010 semiannual report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code, with respect to all except the July 2009 semiannual report. In context, the approximately \$280 error in the July 2009 semiannual report was *de minimis*. Therefore, there is credible evidence of no violation with respect to that report.

Political Contributions and Political Expenditures of \$50 or Less

13. Each campaign finance 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. ELEC. CODE § 254.031(a)(5).
14. The respondent disclosed all political contributions and expenditures in the reports at issue, including those that in the aggregate did not exceed \$50 during a reporting period. Although the respondent left blank the fields for disclosing total political contributions of \$50 or less and total political expenditures of \$50 or less, it is apparent when viewing each of the reports at issue that the respondent detailed all of his political contributions and expenditures. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(5) of the Election Code.

Payee Address and Purpose Descriptions of Political Expenditures

15. 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).
16. A campaign finance report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
17. 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.
18. In the unrequired May 7, 2008, report, the respondent disclosed a blank field for the address of the payee of a \$500 political expenditure. The respondent added the expenditure to the July 2008 semiannual report and corrected the expenditure properly to disclose the full address of the payee. The report disclosed a \$103.14 political expenditure to Ricks on the

Square for “Staff.” The respondent’s corrected July 2008 semiannual report changed the purpose of that expenditure to “staff/lunch.” The report also disclosed a \$183.10 political expenditure from personal funds to BB Taylor for “Salvation Army/Supplies.” The respondent’s corrected July 2008 semiannual report changed the payee name to Charlie Barker and purpose of that expenditure to “Reimbursement/Staff Member.” The expenditure was also changed to a political expenditure made from political contributions. Each of those expenditures were originally disclosed on an unrequired report, however, one did not disclose an address for a payee and the remaining expenditures did not disclose a sufficient purpose. The respondent should have properly disclosed those expenditures on the respondent’s originally filed July 2008 semiannual report. The respondent failed to do so. Therefore, with regard to the expenditures totaling \$790 that should have been disclosed on the respondent’s July 2008 semiannual report, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.

19. The respondent’s July 2008 semiannual report disclosed a blank field for the purpose description for a \$1,000 political expenditure to Kevin Eltife Campaign. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.
20. In the July 2009 semiannual report, the respondent disclosed a \$140 political expenditure to Baskin Western Wear for “Uniforms.” The respondent did not disclose this expenditure on his corrected report, however, the respondent swore in his response to this complaint that the purpose of this payment was incorrect. He swore that the proper purpose was for “political gifts, Western Hats.” The respondent also disclosed the purpose description as “Reimbursement” for a \$1,690.44 political expenditure to himself. The respondent corrected the report to disclose that the expenditure at issue was an incorrectly reported political expenditure made from personal funds for which he intended to seek reimbursement and was divided into seven expenditures to various payees with different purposes. The respondent also disclosed the purpose description as “Supplies” for a \$97.43 political expenditure to Independent Glass. The respondent corrected the report to disclose that the expenditure at issue was for custom glass for his desktop. The respondent failed to adequately disclose the purpose description for three political expenditures totaling approximately \$1,930 on his July 2009 semiannual report and there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.
21. The purpose description for the remaining political expenditures at issue were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with regard to those expenditures.

Reporting of Political Expenditures as Reimbursements

22. 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).
23. 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 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. 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. Ethics Commission Rules § 20.62.
24. 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 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. *Id.* § 253.035(h).
25. The complaint alleged that the respondent improperly reported reimbursement for 18 political expenditures totaling approximately \$29,000 in the 30-day pre-election report for the March 2008 election; the two reports covering the reporting period for the July 2008 semiannual report; and the January 2009, July 2009, and January 2010 semiannual reports.
26. The respondent's 30-day pre-election report for the November 2008 election disclosed one \$53 political expenditure to Charlie Baker with a purpose of "Reimbursement/Plaque." The respondent swore that the plaque was purchased as a political gift. It appears that the

expenditure was to reimburse Mr. Baker for the purchase of the plaque, therefore the respondent failed to disclose the person who actually received payment for the goods or services that were purchased. Therefore, with regard to the payee of that expenditure, there is credible evidence of a violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

27. The respondent's January 2009 semiannual report disclosed an \$832.92 political expenditure to himself for "Reimburse Computer." On his corrected report the respondent corrected the payee to Best Buy, changed the purpose description to "computer," and moved the expenditure to Schedule G (to indicate the political expenditure was from personal funds). Although this expenditure was not for staff reimbursement, the respondent failed to disclose the person who actually received payment for the goods or services that were purchased, and reimbursed himself without providing proper disclosure on the original report. Therefore, there is credible evidence of a violation of sections 253.035(h) and 254.031(a)(3) of the Election Code.
28. The respondent's July 2009 semiannual report disclosed a \$1,690.44 political expenditure to himself for "Reimbursement." On his corrected report the respondent divided this expenditure into seven expenditures to various vendor payees, moved the expenditure from Schedule F to Schedule G (to indicate the political expenditure was from personal funds), and checked the box to indicate reimbursement intended. The respondent failed to disclose the persons who actually received payment for the goods or services that were purchased, and reimbursed himself without providing proper disclosure on the original report. Therefore, there is credible evidence of violations of sections 253.035(h) and 254.031(a)(3) of the Election Code.
29. For the remaining amount of approximately \$26,170 in expenditures at issue, the expenditures were made for services performed by the payees, and were not reimbursements. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code in connection with the expenditures.

Personal Use of Political Contributions

30. 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). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *Id.* § 253.035(d).
31. 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 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. *Id.* § 253.035(h).

32. 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. *Id.* § 254.031(a)(3).
33. The complaint alleged that one political expenditure totaling approximately \$3,920 that was disclosed in the January 2010 semiannual report was for personal use. The respondent swore that he unintentionally disclosed the expenditure incorrectly. The respondent corrected the political expenditure at issue to disclose that there were actually three political expenditures and that the expenditures at issue were made from personal funds, not from political contributions as originally disclosed. The respondent corrected the expenditures at issue to disclose the vendor names and addresses of the actual payees and to clarify the purpose descriptions of the expenditures. Although the evidence is insufficient to show that the respondent violated section 254.035(a) of the Election Code, regarding the conversion of political contributions to personal use, based on the original report and the corrections, it appears that the respondent reimbursed himself for political expenditures made from personal funds without making proper disclosure on the original report. Therefore, there is credible evidence of a violation of sections 253.035(h) and 254.031(a)(3) of the Election Code.

Timely Filing of a Campaign Finance Report

34. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include the filing of a campaign treasurer appointment. ELEC. CODE § 251.001(1)(a).
35. A candidate shall file two reports for each year. The first report shall 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, as applicable, and continuing through June 30. The second report shall 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.

36. The respondent was a candidate with an active campaign treasurer on file at the time the report was due and was required to file the semiannual report due January 15, 2009. The respondent did not file the January 2009 semiannual report until January 21, 2009. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code in connection with the January 2009 semiannual report.

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 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 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 also acknowledges that each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The report must also 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 report must also 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 report must also 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 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 also acknowledges that each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission.

The respondent also acknowledges that each campaign finance report by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number.

The respondent also acknowledges that a candidate shall file two reports for each year. The first report shall 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, as applicable, and continuing through June 30. The second report shall 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.

The respondent also acknowledges the proper way to report the purpose of a political expenditure is in accordance with section 20.61 of the Ethics Commission Rules.

The respondent also acknowledges 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.

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 \$1,600 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-3100237.

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

J.B. Smith, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director