

TEXAS ETHICS COMMISSION

IN THE MATTER OF

TODD SMITH,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3100379

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 23, 2011, to consider sworn complaint SC-3100379. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.0612 of the Election Code, and sections 20.61 and 20.62 of the Ethics Commission Rules, and credible evidence of technical or *de minimis* violations of sections 254.061 and 254.091 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) failed to properly report political contributions and political expenditures, 2) accepted political contributions from corporations or labor organizations, and 3) converted political contributions to personal use.

III. Facts Supported by Credible Evidence

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

1. The respondent is State Representative, District 92.

Total Political Contributions Maintained

2. The complaint alleged that the respondent failed to properly disclose total political contributions maintained on seven campaign finance reports.
3. In response to the complaint, the respondent submitted an affidavit in which he swore that the total political contributions maintained disclosed on each campaign finance report was correct, and he included copies of his campaign account statements that showed his account balance as of the last day of each applicable reporting period. In all instances, the amounts of total political contributions maintained disclosed on the

respondent's campaign finance reports matched the amounts disclosed on the copies of the respondent's campaign account statements.

Political Contributions from Corporations or Labor Organizations

4. The complaint alleged that, based on disclosures in six campaign finance reports, the respondent accepted 23 political contributions from corporations or labor organizations. The respondent denied that he accepted political contributions from any corporations or labor organizations. Nineteen of the contributions at issue did not come from a corporation or labor organization. For four contributions, the evidence was inconclusive as to the status of the contributor or the respondent's knowledge of that status.

Disclosure of Full Names of Persons Making Political Contributions

5. The complaint alleged that, based on disclosures in six campaign finance reports, the respondent failed to disclose the full name for 19 political contributions. The following disclosures did not include a full name for the contributor:

Corrected 8-day Pre-election Report, November 2008 General Election

- September 26, 2008, \$250, T.O.M.A. PAC – incomplete (not corrected)

January 2010 Semiannual Report

- September 4, 2009, \$500, TSCPA PAC – incomplete (not corrected)
- The remaining contributions included an acronym that is a commonly used name or an acronym that was used in commission records or was actually a part of the committee's name.

Disclosure of Purposes of Political Expenditures

6. The complaint alleged that, based on disclosures in five campaign finance reports, the respondent failed to properly disclose the purposes of 29 political expenditures. The respondent filed corrected reports to clarify the purposes of three political expenditures. However, the original description adequately described the purposes of the expenditures.

Disclosure of Political Expenditures as Reimbursements

7. The complaint alleged that the respondent improperly reported 22 political expenditures as reimbursements on seven campaign finance reports. Five of the expenditures at issue disclosed the actual vendor as the payee, two of the expenditures were Schedule K credits, and two of the expenditures were for mileage reimbursements. The respondent filed corrected reports to disclose the actual vendor payee of 13 political expenditures, totaling approximately \$1,700.

Disclosure of Political Expenditures for Travel Outside of Texas

8. The complaint alleged that the respondent failed to disclose political expenditures made for travel outside of Texas on Schedule T on two campaign finance reports. The dates, amounts of the expenditures, and information as to whether or not they were corrected are as follows:

Corrected 30-day Pre-election Report, November 2008 General Election

- July 4, 2008, \$188.45, Marriott Hotel New Orleans – travel outside of Texas undisclosed on Schedule T; purpose: Hotel for NCSL; corrected
- August 6, 2008, \$570.35, Todd Smith – travel outside of Texas undisclosed on Schedule T; purpose: Reimbursement for personal credit card used on NCSL hotel; corrected

July 2009 Semiannual Report

- April 24, 2009, \$353.20, American Airlines – travel outside of Texas undisclosed on Schedule T; purpose: Travel expenses incurred for spouse to attend substantive portion of NCSL; corrected
- June 22, 2009, \$155, American Airlines – travel outside of Texas undisclosed on Schedule T; purpose: Change fee for correcting spouse flight to NCSL from Pittsburgh to Philadelphia; corrected
- May 22, 2009, \$270.25, American Legislative Exchange Council – travel outside of Texas undisclosed on Schedule T; purpose: Housing deposit for ALEC conference; corrected
- May 22, 2009, \$350, American Legislative Exchange Council – travel outside of Texas undisclosed on Schedule T; purpose: Conference registration fee for spouse to attend substantive portion of conference; corrected

Occupation or Job Title and Name of Employer

9. The complaint alleged that the respondent failed to disclose the principal occupations or job titles and names of employers for seven contributors on four campaign finance reports. On the reports at issue, the respondent did not fully provide the principal occupation or job title and full name of employer for three contributors who made contributions that totaled \$500 or more during the reporting periods at issue. The information was complete for four contributors. The respondent filed corrected reports to fully disclose the occupation and employer information for the three contributors.

Personal Use of Political Contributions

10. The complaint alleged that the respondent converted political contributions to personal use based on political expenditures that the respondent disclosed on the July 2009 semiannual report. In response to the complaint, the respondent swore that no expenditures were made for personal use. There was no additional evidence related to the expenditures.

Campaign Treasurer's Telephone Number and Office Held

11. The complaint alleged the respondent failed to include his campaign treasurer's telephone number on five campaign finance reports. In response to the complaint, the respondent filed corrected reports to include this information.
12. The complaint also alleged that the respondent failed to include the "office held" on his 30-day pre-election report for the November 2008 general election. In response to the complaint, the respondent filed a corrected report to include this information.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. Each report must include as of the last day of the 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 as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. The respondent correctly disclosed the balance of political contributions maintained in a bank account as of the end of each reporting period at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Political Contributions from Corporations or Labor Unions

3. 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.
4. 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.
5. 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.

6. For 19 of the political contributions at issue, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code. For the remaining contributions at issue, there is insufficient evidence of violations of sections 253.003 and 253.094 of the Election Code.

Disclosure of Full Names of Persons Making Political Contributions

7. Each campaign finance 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 by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
8. In reviewing the disclosures at issue, staff used the commission and FEC databases to determine if the contributor name was readily available or apparent to someone who may view the report. In those instances, where an acronym was used, and where that acronym is used in commission records or on the commission website, or is the commonly recognized name of the entity, the disclosure substantially complies with the reporting requirements. Regarding TSCPA PAC and T.O.M.A. PAC, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

Disclosure of Purposes of Political Expenditures

9. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
10. 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.
11. Although the respondent filed corrected reports to provide additional information for three of the political expenditures at issue, the original purpose descriptions were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Political Expenditures as Reimbursements

12. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
13. 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: 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 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 above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: 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; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and 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.

14. The respondent filed corrected reports to disclose the actual vendor payees for 13 political expenditures totaling approximately \$1,700. However, at the time the original reports were filed, the respondent failed to properly disclose this information. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Disclosure of Political Expenditures for Travel Outside of Texas

15. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
16. The description of a political expenditure for travel outside of the state of Texas must provide the name of the person or persons traveling on whose behalf the expenditure was made, the means of transportation, the name of the departure city or the name of each departure location, the name of the destination city or the name of each destination location, the dates on which the travel occurred, and the campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event. Ethics Commission Rules § 20.61(b).
17. The respondent was required to disclose information about travel outside of the state of Texas on Schedule T. The respondent filed a corrected report to disclose the information on Schedule T. The respondent was not required to disclose the rental car information, hotel information, and conference attendance fee on Schedule T. Therefore, there is credible evidence of no violation regarding these expenditures. The respondent was required to include the information regarding the means of out-of-state travel totaling approximately \$510 on Schedule T. At the time the report was originally filed, the respondent included this information only on Schedule F. Therefore, there is credible

evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61(b) of the Ethics Commission Rules.

Occupation or Job Title and Name of Employer

18. Each report by a candidate for statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title, and the full name of the individual's employer. ELEC. CODE § 254.0612.
19. As state representative, the respondent was required to disclose the occupations and employers of contributors whose contributions equaled or exceeded \$500. The respondent failed to provide complete information for three contributors who contributed \$500 or more. The respondent filed corrections to the reports at issue to disclose the occupations and employers of the contributors. However, he failed to provide this information when the original reports were filed. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code.

Personal Use of Political Contributions

20. 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). Personal use 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, including payment of reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County. *Id.* § 253.035(d)(1).
21. With respect to seven of the expenditures at issue, the campaign finance reports indicate that the political expenditures at issue were incurred in connection with the respondent's activities as a state representative and were not made for personal use. Therefore, with respect to those expenditures, there is credible evidence of no violation of section 253.035(a) of the Election Code. With respect to the remaining four expenditures related to conference and travel expenses for the respondent's spouse, there is insufficient evidence of violations of section 253.035(a) of the Election Code.

Campaign Treasurer's Telephone Number and Office Held

22. Each report by a candidate must include the candidate's campaign treasurer's name, residence or business street address, and telephone number. ELEC. CODE § 254.061.
23. Each report by an officeholder must include the officeholder's full name and address and the office held. ELEC. CODE § 254.091.

24. The respondent failed to include his campaign treasurer's telephone number on five campaign finance reports and failed to include the office held on one campaign finance report. The omissions did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.061 and 254.091 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 campaign finance 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 by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that a campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent also acknowledges that the description of a political expenditure for travel outside of the state of Texas must provide the name of the person or persons traveling on whose behalf the expenditure was made, the means of transportation, the name of the departure city or the name of each departure location, the name of the destination city or the name of each destination location, the dates on which the travel occurred, and the campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event. The respondent also acknowledges that each report by a candidate for statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title, and the full name of the individual's employer. The respondent also acknowledges that each report by a candidate must include the candidate's campaign treasurer's name, residence or business street address, and telephone number. The respondent also acknowledges that each report by an officeholder must include the officeholder's full name and address and the office held. 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 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 \$500 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-3100379.

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

Todd Smith, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director