

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
LINDA HARPER-BROWN,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-31008259

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2013, to consider sworn complaint SC-31008259. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code, a law 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 did not properly disclose on campaign finance reports: 1) the total amount of outstanding loans, 2) political contributions, and 3) political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative.
2. The complaint contends that the respondent disclosed in her campaign finance reports accepting \$518,736.12 in loans since January 1, 2002, and disclosed \$7,400 in loan repayments since that time. The respondent disclosed a principal outstanding loan balance of \$65,540.90 in her July 2010 semiannual report. Based on the information in the respondent's reports, the complaint alleged the outstanding loan balance in the July 2010 semiannual report was incorrect or that the respondent accepted forgiven loans or made loan repayments that were not disclosed in any report.
3. The respondent's July 2010 semiannual report disclosed the following:
 - \$915 in total political contributions of \$50 or less
 - \$146,978.56 in total political contributions
 - \$3,214.27 in total political expenditures of \$50 or less

- \$120,286.53 in total political expenditures
 - \$92,195.18 in total political contributions maintained
 - \$65,540.90 in total principal amount of outstanding loans
4. The respondent's first campaign finance report filed with the commission was a January 2002 semiannual report that began on December 3, 2001. The respondent's reports from December 3, 2001, to June 30, 2010, disclosed approximately \$542,650 in loans, all of which were itemized and from individuals. Each loan was disclosed with a zero-percent interest rate. Specifically, the loans included:
- Approximately \$362,270 in loans from the respondent's spouse
 - One loan of \$16,197.31 from the respondent's son on December 31, 2003
 - Five loans from one individual, totaling approximately \$153,130
 - One loan of \$3,000 from a couple
 - One loan of \$8,057.97 from another individual, identified as "campaign worker"
5. The reports also disclosed four political expenditures from political contributions in January 2003 to the respondent's spouse totaling approximately \$7,400 to repay loans. The respondent's reports disclosed no other loan repayments by June 30, 2010.
6. The respondent's July 2008 semiannual report disclosed a March 4, 2008, \$3,000 political contribution from the couple who made the \$3,000 loan, and did not provide a description for the contribution or otherwise indicate that it was an in-kind contribution.
7. Based on a figure of \$518,736.12 in loans and \$7,400 in loan repayments, the complaint alleged that the total principal amount of outstanding loans disclosed in the July 2010 semiannual report should have been \$511,336.12. In the alternative, the complaint alleged that the respondent either did not disclose that the total amount of loans decreased due to forgiven loans as contributions or loan repayments.
8. In response to the allegations, the respondent swore:

Regarding the allegations that I failed to report the total principal amount of outstanding loans, I believe my campaign finance reports accurately reported the total principal amount of outstanding loans appropriate for each report that is the subject of this complaint.

Regarding the allegations that I failed to properly report political contributions, I believe I accurately reported all political contributions in a timely manner.

Regarding the allegations that I failed to properly report political expenditures in violation of Texas Election Code section 254.031, please be aware that my

spouse is a CPA and that he has participated in the preparation of all the reports at issue in this complaint. ...

9. The respondent swore:

Only three loans have an outstanding balance:

Loan dated 6/30/2010 in the amount of \$14,723.83 (entire amount is outstanding); loan dated 12/31/2009 original amount of \$30,049.48, \$10,816.87 outstanding balance; loan dated 6/30/2009 in the amount of \$50,000, \$40,000 outstanding balance.

10. The respondent swore that none of the loans were made from community property and that loans from her spouse were from his separate property.

11. The respondent swore that a \$3,000 loan from the couple, dated December 7, 2006, was forgiven on March 4, 2008, and reported as a contribution.

12. The respondent swore that, with the exception of the outstanding balance and the \$3,000 loan that was forgiven, "the remaining loans were paid in full."

13. The respondent submitted documents that indicated that the respondent made the following expenditures from political contributions between February 2, 2002, to February 18, 2010:

- 3 payments to one individual, totaling approximately \$61,040
- Payments totaling approximately \$348,520 to the respondent's spouse, the respondent, or a bank and that were designated as "applied to loan from" the respondent's spouse
- 4 payments to the campaign worker totaling approximately \$8,060

14. The documents also indicated that one loan of \$16,197.31 that was originally disclosed from the respondent's son was actually from the respondent's spouse. The documents also indicated that \$699.42 in loan repayments to the respondent's spouse were unidentified.

15. The respondent submitted an affidavit from her spouse that explained that, for some of the reports at issue, the report incorrectly disclosed loans from the respondent's spouse because the respondent reduced the amount of loans by the amount of loan repayments that were made during the reporting period. In summary, the affidavit described the following reporting errors:

- The respondent omitted \$2,354.13 in loans from her spouse and \$2,354.13 in loan repayments to her spouse in the July 2002 semiannual report.

- The respondent over-reported \$23,665.53 in loans from her spouse in the 30-day pre-election report for the November 2002 general election.
 - The respondent over-reported \$26,042.33 in loans from an individual in the 30-day pre-election report for the November 2002 general election.
 - The respondent over-reported \$26,108.38 in loans from her spouse in the 8-day pre-election report for the November 2002 general election.
 - The respondent over-reported \$26,042.33 in loans from an individual in the 8-day pre-election report for the November 2002 general election.
 - The respondent omitted \$4,360.79 in loans from her spouse and \$4,360.79 in loan repayments to her spouse in the July 2006 semiannual report.
 - The respondent omitted \$6,646.23 in loans from her spouse and \$6,646.23 in loan repayments to her spouse in the 30-day pre-election report for the November 2006 general election.
 - The respondent omitted \$12,492.83 in loans from her spouse and \$11,755.25 in loan repayments to her spouse in the July 2009 semiannual report.
 - The respondent omitted \$12,462.83 in loans from her spouse and \$12,462.83 in loan repayments to her spouse in the January 2010 semiannual report.
 - The respondent omitted \$8,494.11 in loans from her spouse and \$8,494.11 in loan repayments to her spouse in the July 2010 semiannual report.
16. The respondent submitted additional documents that indicated that some of the loans at issue from the respondent's spouse were made by check, cash, transfers into the respondent's campaign account, and expenditures made with credit cards on which the respondent's spouse was personally liable. The documents did not clearly indicate the precise manner by which the various loans were made and repaid.

IV. Findings and Conclusions of Law

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

1. A campaign finance report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal

occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).

2. A report must also 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1).
3. A 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. *Id.* §254.031(a)(3).
4. In Ethics Advisory Opinion No. 349 (EAO 349), the commission stated:

Title 15 of the Election Code requires that a candidate or officeholder report all political expenditures, including political expenditures made from personal funds. . . . On the reporting form, a candidate or officeholder may report a political expenditure from personal funds either on Schedule G of Form C/OH or on Schedule E, which is the schedule for reporting loans.

Ethics Advisory Opinion No. 349 (1996).

5. In Ethics Advisory Opinion No. 429 (EAO 429), the commission considered whether a payment against the outstanding principal of a campaign loan counts as an expenditure for purposes of the expenditure limits in the Judicial Campaign Fairness Act. Ethics Advisory Opinion No. 429 (2000). The commission stated that, “[f]or reporting purposes, any payment made for campaign purposes, including a loan repayment, is a reportable political expenditure.” The opinion also noted that the total amount of expenditures “may be misleading in regard to the amount of money actually devoted to the campaign,” but that any uncertainty about the expenditure total can be resolved by an examination of the itemized schedules of expenditures.
6. “Political contribution” means a campaign contribution or an officeholder contribution. ELEC. CODE § 251.001(5).
7. “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).
8. “Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by

- the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4).
9. “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2). The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit. *Id.*
 10. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. *Id.* § 251.001(7).
 11. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
 12. All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse. TEX. CONST. art. XVI, § 15. A spouse’s separate property consists of, in pertinent part: (1) the property owned or claimed by the spouse before marriage; and (2) the property acquired by the spouse during marriage by gift, devise, or descent. FAM. CODE § 3.001. Community property consists of the property, other than separate property, acquired by either spouse during marriage. *Id.* § 3.002.
 13. Property possessed by either spouse during marriage is presumed to be community property. *Id.* § 3.003(a). The degree of proof necessary to establish that property is separate property is clear and convincing evidence. *Id.* § (b).
 14. Spouses also may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be the separate property of that spouse. TEX. CONST. art. XVI, § 15. At any time, spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired, as the spouses may desire. FAM. CODE § 4.102. Property or a property interest transferred to a spouse by a partition or exchange agreement becomes that spouse’s separate property. *Id.*
 15. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse. *Id.*
 16. Under Texas law, whether property is separate or community is determined by its character at inception, or when a party first has a right of claim to a property, i.e., when title is finally vested. *McClary v. Thompson*, 65 S.W.3d 829, 834 (Tex.App.—Fort Worth 2002).

17. The total amount of loans accepted from December 3, 2001, to June 30, 2010, was approximately \$487,600. Of the total amount accepted, approximately \$375,500 was from the respondent's spouse, approximately \$112,100 was from other individuals. The statements and spreadsheets also indicated that, during the same period, the respondent made loan repayments from her political contributions of approximately \$348,520 to her spouse and approximately \$69,100 to the other individuals, and that a \$3,000 loan was forgiven. In addition, one spreadsheet indicated that the amount of \$699.42 consisted of "unlocated payments – no loans forgiven." Based on the documents provided by the respondent, the outstanding loan balance as of June 30, 2010, was approximately \$66,280.
18. Regarding whether the outstanding loan balance in the July 2010 semiannual report was correct, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(2) of the Election Code.
19. Regarding the payments made on the loans, the respondent was required to disclose any repayments as political expenditures. Approximately \$252,420 in expenditures were made on or before June 30, 2008. In addition, the amount of \$699.42 appeared to have been repaid on an unknown date because the respondent's spouse described it as "unlocated payments" and provided no dates for the payments. One loan of \$3,000 was also forgiven on March 4, 2008. There is no evidence that any other loans were forgiven.
20. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(a). The criminal offense for a violation of section 254.031 of the Election Code is a Class C misdemeanor. ELEC. CODE § 254.041(b). The statute of limitations for a Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Of the loan payments at issue, the respondent made approximately \$252,420 in expenditures by or before June 30, 2008. Expenditures made on or before June 30, 2008, were required to be disclosed in a report due on or before July 15, 2008, which is a date more than two years before the complaint was received (August 23, 2010). The \$3,000 forgiven loan that was forgiven on March 4, 2008, and would have been required to be disclosed in a July 15, 2008, semiannual report if it constituted a political contribution. Therefore, the allegations that the respondent violated section 254.031 of the Election Code by not properly disclosing expenditures made or contributions accepted on or before June 30, 2008, are not within the commission's sworn complaint jurisdiction. It is also not clear when the amount of \$699.42 was paid. Thus, it cannot clearly be determined whether the amount is within the commission's sworn complaint jurisdiction.
21. Approximately \$165,200 in loan payments were made on or after July 1, 2008, and were required to be disclosed in a report due after August 23, 2008. Therefore, the allegations regarding the improper disclosure of political contributions and political expenditures made on or after July 1, 2008, are within the commission's sworn complaint jurisdiction.

22. EAO 429 states that a repayment of a campaign loan must be reported as a campaign expenditure. Thus, the respondent was required to disclose approximately \$165,200 in loan repayments as political expenditures. None of the expenditures were disclosed in a report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code by not properly disclosing political expenditures.
23. Regarding the allegation that the respondent did not disclose political contributions in the form of forgiven loans, there is no evidence that any of the loans were forgiven as a political contribution to the respondent on or after July 1, 2008. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(1) of the Election Code with respect to the campaign finance reports under the commission's consideration.
24. During the period covered by the campaign finance reports under the commission's consideration, the respondent's reports incorrectly disclosed approximately \$33,450 in loans that had already been disclosed in an earlier reporting period, resulting in over-reporting. Therefore, there is credible evidence that the respondent violated section 254.031(a)(2) of the Election Code by not properly disclosing loans.

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 campaign finance report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The respondent also acknowledges that a 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 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the commission imposes a \$5,000 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-31008259.

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

Linda Harper-Brown, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Executive Director