

TEXAS ETHICS COMMISSION

IN THE MATTER OF

KAREN HUBER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31011380

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 6, 2011, to consider sworn complaint SC-31011380. 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 and section 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 did not properly disclose political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is Travis County Commissioner, Precinct 3.

Total Political Contributions Maintained

2. The complaint alleged that the respondent failed to properly disclose total political contributions maintained on five campaign finance reports. The allegations are as follows:
 - November 2008 8-day pre-election report - disclosed \$6,870; alleged \$7,470.09

- January 2009 semiannual report - disclosed \$22,648.92; alleged \$22,549.01
 - July 2009 semiannual report – disclosed \$29,320.68; alleged \$29,220.77
 - January 2010 semiannual report – disclosed \$14,853.32; alleged \$14,753.61
 - July 2010 semiannual report – disclosed \$11,987.90; alleged \$11,979.79
3. In response to the complaint, the respondent denied the allegations and swore that the amounts of total political contributions maintained were properly disclosed because they reflected the bank balance at the end of each reporting period. The complaint did not provide specific evidence to support the allegations.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

4. The complaint alleged that, based on disclosures in three campaign finance reports, the respondent failed to disclose the contributor's full name for three political contributions and the payee's full name for two political expenditures. The payee names were adequate as disclosed. The following disclosures did not include a full name for the contributor:

January 2009 Semiannual Report

- November 20, 2008, \$250, C. [_____]

July 2009 Semiannual Report

- June 11, 2009, \$1,500, Mr. B.J. [_____]

Disclosure of Political Expenditures

5. The complaint alleged that the respondent failed to disclose a political expenditure and failed to properly disclose total political expenditures on three campaign finance reports. Regarding the failure to disclose a political expenditure, the complaint alleged that the respondent did not disclose a \$10,000 expenditure for a loan repayment on her January 2010 semiannual report. In response to the complaint, the respondent filed a corrected report and disclosed the expenditure.
6. The complaint also alleged that the respondent failed to properly disclose total political expenditures related to her July 2009, January 2010, and July 2010 semiannual reports.

In each case, the respondent disclosed expenditures on Schedule I (used to disclose non-political expenditures) and did not include the amount in the total political expenditures section of the report. The respondent disclosed 16 expenditures totaling approximately \$4,450 as non-political expenditures. Non-political expenditures are not required to be included in the totals section of a campaign finance report. However, it appears that all but two of the expenditures (which described a purpose of “charity”) were made in connection with the respondent’s performance of duties or activities as a candidate or officeholder.

Disclosure of Purposes of Expenditures

7. The complaint alleged that, based on disclosures in five campaign finance reports, the respondent failed to properly disclose the purposes of 45 political and non-political expenditures. The respondent’s July 2010 semiannual report disclosed a political expenditure for “gifts” totaling \$133.96, that did not provide a complete purpose description. The remaining disclosures at issue were adequate.

Disclosure of Political Expenditures as Reimbursements

8. The complaint alleged that the respondent improperly reported 11 political expenditures as reimbursements on four campaign finance reports. The respondent filed corrected reports to disclose the actual vendor payees for two political expenditures totaling approximately \$170. The evidence was inconclusive with respect to one \$18 expenditure. The remaining eight disclosures at issue were adequate.

Contribution from Out-of-State Political Committee

9. The complaint alleged that the respondent failed to include the out-of-state political committee identification number on a contribution from an out-of-state political committee on the January 2010 semiannual report. The report disclosed a \$1,000 contribution on July 24, 2009, from PBSJ Corp. Political Action Committee. The report did not disclose an out-of-state political committee identification number. Commission records show that PBSJ Corp. Political Action Committee is registered as a general-purpose committee in Texas. The committee’s July 2009 semiannual report disclosed a \$1,000 contribution to the respondent on May 22, 2009.

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. A *de minimis* error in calculating or reporting a cash balance under subsection (a)(8) is not a violation. ELEC. CODE §§ 254.031(a)(8) and (a-1).

2. The respondent swore that the total political contributions maintained on her campaign finance reports reflected the bank balance at the end of each reporting period. Additionally, the commission determined that the alleged discrepancies were, on their face, *de minimis* because they did not exceed the lesser of 10% of the difference between the amount disclosed and the amount alleged, or \$2,500. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

3. 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).
4. 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).
5. Of the five disclosures at issue, two contributions did not include the full name of the contributor. Both were corrected. Therefore, with respect to those entries, totaling approximately \$1,750, there is credible evidence of violations of section 254.031(a)(1) of the Election Code. The remaining entries were properly disclosed or in substantial compliance. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Political Expenditures

6. 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).
7. A candidate or officeholder is also required to include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. ELEC. CODE § 254.031(a)(4).

8. Each report must include the total amount of all political contributions and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
9. The respondent failed to disclose a \$10,000 expenditure for a loan repayment on her January 2010 semiannual report. The respondent filed a corrected report to disclose this information. However, the expenditure was not disclosed at the time the original report was filed. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with respect to that expenditure.
10. The respondent disclosed 16 expenditures totaling approximately \$4,450 as non-political expenditures. Non-political expenditures are not required to be included in the totals section of a campaign finance report. However, it appears that all but two of the expenditures (which described a purpose of “charity”) were made in connection with the respondent’s performance of duties or activities as a candidate or officeholder. Thus, those expenditures were political expenditures that should have been disclosed in the totals section of the respondent’s campaign finance report. Therefore, with respect to those 14 expenditures, totaling approximately \$4,250, there is credible evidence of violations of section 254.031(a)(6) of the Election Code. With respect to the remaining two expenditures totaling \$200, there is insufficient evidence of violations of section 254.031(a)(6) of the Election Code.

Disclosure of Purposes of Expenditures

11. 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).
12. The respondent’s July 2010 semiannual report disclosed a political expenditure for “gifts” totaling \$133.96, that did not provide a complete purpose description. With respect to that expenditure, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code. With respect to the remaining expenditures, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Political Expenditures as Reimbursements

13. 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).
14. 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.

15. The respondent filed corrected reports to disclose the actual vendor payees for two political expenditures totaling approximately \$170. 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 with respect to those expenditures. With respect to one expenditure for \$18, there is insufficient evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules. With respect to the remaining eight expenditures, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

Contribution from Out-of-State Political Committee

16. A candidate, officeholder, or political committee that accepts a political contribution from a political committee that files with the Federal Election Commission must include the FEC statement of organization or FEC identification number as a part of the report filed under Chapter 254 for the reporting period in which the contribution was accepted. ELEC. CODE § 253.032.
17. 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 FEC 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 FEC. Ethics Commission Rules § 20.29(a).
18. The contributor at issue was registered as a general-purpose committee in Texas. The contribution was disclosed on the respondent's January 2010 semiannual report. Therefore, there is credible evidence of no violation of section 254.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules.

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 each report must include the total amount of all political contributions and the total amount of all political expenditures made during the reporting period. 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 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-31011380.

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

Karen Huber, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director