

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ALLEN FLETCHER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3110108, SC-3110109,
AND SC-3110217

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 30, 2012, to consider sworn complaints SC-3110108, SC-3110109, and SC-3110217. 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, section 571.1243 of the Government Code, and section 12.83 of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent: 1) did not properly disclose political contributions, political expenditures, and loans, 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 130.
2. Sworn complaints SC-3110109 and SC-3110217 alleged that the respondent did not properly disclose on five campaign finance reports total political contributions maintained. The respondent denied the allegations.
3. The complaints alleged that, based on disclosures in 11 campaign finance reports, the respondent accepted 41 political contributions from corporations or labor organizations.

The respondent denied the allegations. Thirty of the contributions at issue did not come from a corporation or labor organization. For 11 contributions, the evidence was inconclusive as to the status of the contributor or the respondent's knowledge of that status.

4. Sworn complaints SC-3110109 and SC-3110217 alleged that, based on disclosures in seven campaign finance reports, the respondent did not disclose the full name of the contributors for 30 political contributions and the full name of the payees for three political expenditures. Four individual contributors for which detailed disclosure was required disclosed the contributor's initials and last name. The following acronyms that were used to disclose certain contributors and payees were not easily recognizable: T.O.M.A. PAC, T.E.S.A., and AIA.
5. Sworn complaint SC-3110109 alleged that, based on disclosures in two campaign finance reports, the respondent did not properly disclose the purposes of two political expenditures. The expenditures at issue did not provide complete purpose descriptions. However, the expenditures were below the itemization threshold and thus, were not required to be detailed.
6. Sworn complaint SC-3110109 alleged that the respondent improperly reported six political expenditures as reimbursements on two campaign finance reports. The respondent denied the allegations.
7. Sworn complaint SC-3110109 alleged that the respondent did not disclose the correct addresses of 13 payees on his January and July 2009 semiannual reports. The evidence, based on public records, shows that the respondent did not disclose the correct addresses for the payees of 12 political expenditures totaling approximately \$485.
8. Sworn complaints SC-3110109 and SC-3110217 alleged that the respondent did not disclose the principal occupations or job titles and names of employers for 16 contributors disclosed on four campaign finance reports. On the reports at issue, the respondent did not provide the correct employer information for four contributors.
9. Sworn complaint SC-3110217 alleged that the respondent did not include the out-of-state political committee identification number on a contribution from an out-of-state political committee on his January 2011 semiannual report. The report disclosed a \$2,000 contribution on November 12, 2010, from The Chickasaw Nation PAC. The report did not disclose an out-of-state political committee identification number. Records from the Federal Election Commission (FEC) disclose a committee by the name "Chickasaw Nation," but it is not located at the address of the contributor at issue. There is no other record with the FEC of an out-of-state committee contributing to the respondent.
10. Sworn complaint SC-3110217 alleged that the respondent converted political contributions to personal use based on a political expenditure that the respondent disclosed on his January 2011 semiannual report. The respondent disclosed a \$205

expenditure to Bank of America on December 3, 2010, with a stated description of “Loan repayment for personal withdrawal.” The respondent denied the allegations.

11. Sworn complaints SC-3110109 and SC-3110217 alleged that the respondent did not properly disclose loans made to his campaign and did not properly disclose outstanding loan balances on campaign finance reports.
12. The complaints alleged that the respondent disclosed incorrect amounts of total outstanding loans on his 30-day and 8-day pre-election reports for the November 2010 election. The respondent’s 30-day pre-election report disclosed \$17,830 in outstanding loans. The complaints alleged that the amount should be \$17,849. The respondent’s 8-day pre-election report disclosed \$14,820.31 in outstanding loans. The complaints alleged that the amount should be \$6,589. In response to the complaints, the respondent denied the allegations. The complaints did not provide specific evidence to support the allegations.
13. The complaints also alleged that the respondent did not disclose on campaign finance reports loans that he received. The allegation was based on political expenditures made on the respondent’s January 2011 semiannual report. The respondent disclosed three political expenditures, totaling \$7,400, to First Community Bank with a stated description of “loan repayment” or “loan repayment withdrawal.” The respondent’s campaign finance reports do not disclose a loan from First Community Bank. However, the respondent’s 2008, 2009, and 2010 personal financial statements disclose in the section for reporting personal notes and lease agreements, a financial obligation of \$25,000 or more owed to First Community Bank.

Response to Written Questions

14. On April 30, 2012, the commission submitted written questions to the respondent requesting additional information and clarification. Postal records show that the document was delivered to the respondent on May 1, 2012. To date, the respondent has not submitted a response to the questions.

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. 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).
3. Regarding the respondent's January 2010 and January 2011 semiannual reports, the difference between the amount originally disclosed and the amount alleged does not exceed the lesser of 10% of the amount originally disclosed or \$2,500 and, thus, the discrepancies are on their face *de minimis*. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code with respect to those reports. Regarding the respondent's July 2010 semiannual report, and 30-day and 8-day pre-election reports for the November 2010 election, there is insufficient evidence of violations of section 254.031(a)(8) of the Election Code.

Political Contributions from Corporations or Labor Organizations

4. 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.
5. 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.
6. 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.
7. For 30 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 and Receiving Political Expenditures

8. 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).
9. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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. Six contributions did not include the full name of the contributor. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code. One political expenditure did not include the full name of the payee. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code. The remaining entries were properly disclosed. Therefore, there is credible evidence of no violation of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code with respect to those disclosures.

Disclosure of Purposes of Political Expenditures

11. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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 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.
13. The respondent's reports disclosed two political expenditures totaling approximately \$80 that did not provide a complete purpose description. Neither of the expenditures were required to be detailed. 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.

Disclosure of Political Expenditures as Reimbursements

14. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
15. 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.

16. Regarding each expenditure, 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.

Disclosure of Addresses of Payees

17. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
18. The evidence, based on public records, shows that the respondent did not disclose the correct addresses for the payees of 12 political expenditures totaling approximately \$485. The original entries did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(3) of the Election Code.

Occupation or Job Title and Name of Employer

19. 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.
20. As state representative, the respondent was required to disclose the occupations and employers of contributors whose contributions equaled or exceeded \$500. All of the contributions disclosed that the contributors were self-employed. For 12 contributions at issue, the contributors were officers or principals of entities that bore their name, or were otherwise self-employed. The entries did not substantially affect disclosure. Therefore, there is credible evidence of no violation of section 254.0612 of the Election Code with respect to those contributions. The respondent did not provide correct employer information for four contributions totaling \$4,500. There is credible evidence of violations of section 254.0612 of the Election Code with respect to those contributions.

Contribution from Out-of-State Committee

21. 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.

22. 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).
23. There is insufficient evidence of a violation of section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules.

Personal Use of Political Contributions

24. 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).
25. It is unclear whether the political expenditure at issue was incurred in connection with the respondent's activities as a state representative. Therefore, there is insufficient evidence to show that the respondent violated section 253.035(a) of the Election Code.

Disclosure of Loans

26. 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).
27. Regarding the allegations that the respondent disclosed an incorrect amount of outstanding loans on his 30-day and 8-day pre-election reports for the November 2010 elections, the complaints did not provide specific evidence to support the allegations. It is unclear whether the respondent reported the correct amount of outstanding loans on the reports at issue. Therefore, there is insufficient evidence of violations of section 254.031(a)(2) of the Election Code. With respect to the allegation that the respondent did not disclose on campaign finance reports loans he received, it appears that the respondent reported a financial obligation owed to First Community Bank on his personal financial statements. However, it remains unclear what the expenditures to First Community Bank disclosed on the respondent's campaign finance reports were for. Therefore, there is insufficient evidence of violations of section 254.031(a)(2) of the Election Code.

Response to Written Questions

28. During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. GOV'T CODE § 571.1243.
29. A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. The executive director may grant an extension of the time period for good cause shown. Ethics Commission Rules § 12.83(a).
30. On April 30, 2012, staff submitted written questions to the respondent. Postal records show that the document questions were delivered to the respondent on May 1, 2012. To date, the respondent has not submitted a response to the questions. Therefore, there is credible evidence that the respondent violated section 571.1243 of the Government Code and section 12.83(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 these sworn complaints.
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; a campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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; 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; and that a respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. 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 \$6,500 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 sworn complaints SC-3110108, SC-3110109, and SC-3110217.

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

Allen Fletcher, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director