

Texas Ethics Commission

IN THE MATTER OF

LEE P. BROWN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-220214

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220214 filed against Lee P. Brown. The commission met again on April 11, 2003, to consider Sworn Complaint SC-220214. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 253.032, 253.035(h) and 254.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent:

1. Improperly reimbursed himself for political expenditures made from personal funds;
2. Reported certain expenditures more than once;
3. Failed to provide a proper description of the purpose of certain political expenditures;
4. Failed to include with his campaign finance reports certain documentation from out-of-state political committees from which he accepted political contributions;
5. Reported incomplete contributor names;
6. Failed to report a charitable donation and a political expenditure; and
7. Failed to report a political expenditure.

III. Facts Supported by Credible Evidence

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

1. During the relevant time in question, the respondent was the mayor of Houston, Texas.
2. The respondent was a successful candidate for that position in the November 1997, November 1999, and December 2001 city elections.
3. The allegations in this complaint relate to activity that occurred from 1998 through 2001.

4. In response to this complaint, the respondent submitted corrected reports and good-faith affidavits and a sworn statement in which he addressed each of the allegations.

Allegation No. 1: Reimbursements from political funds

5. This allegation relates to reimbursements made from 1998 through 2001 from the respondent's political funds to himself for various expenses.
6. The following chart lists the 13 reimbursements that the respondent made to himself and that were raised by the complainant, the date the reimbursements were made, the amount of the reimbursements, and the purpose of the reimbursements as disclosed by the respondent on his campaign finance reports.

	Date	Report Type	Amount	Purpose
*1.	3-5-98	July semiannual	\$1,704.06	Reimbursement for travel expenses.
*2.	5-22-98	July semiannual	\$1,942.49	Reimbursement for travel expenses.
*3.	8-6-98	Jan. semiannual	\$1,600.44	Reimbursement for travel expenses.
4.	12-7-99	Jan. semiannual	\$100.00	Reimbursement for miscellaneous expenses.
5.	3-26-00	July semiannual	\$145.73	Reimbursement for expenses.
6.	7-11-00	Jan. semiannual	\$188.00	Reimbursement for travel expenses.
7.	10-6-00	Jan. semiannual	\$1,038.37	Reimbursement for travel expenses.
8.	1-17-00	July semiannual	\$2,008.79	Reimbursement for airfare and meal expenses from Washington, D.C. trip.
9.	2-26-01	July semiannual	\$200.00	Reimbursement for office expense.
10.	3-12-01	July semiannual	\$386.10	Reimbursement for constituent gifts.
11.	10-14-01	8 day before	\$100.00	Reimbursement for campaign expenses.
12.	10-14-01	8 day before	\$2,248.24	Reimbursement for travel expenses.
13.	11-1-01	Runoff	\$350.00	Reimbursement for campaign expenses and donation to community and schools.
* Not within the applicable three-year statute of limitations.				
Total Amount of Reimbursements:			<u>\$12,012.22</u>	
Total Amount of Reimbursements within the applicable statute of limitations (#4 through #13):			<u>\$6,765.23</u>	

7. In response to this allegation, in May and July 2002 the respondent filed corrected reports and good-faith affidavits for the following eight reports. The corrected reports itemized political expenditures made from personal funds as follows:
- January and July 1998 semiannual reports (\$5,277.86)
 - 8-day before election report for the November 1999 election (\$100.00)
 - July 2000 semiannual report (\$333.73)
 - January 2001 semiannual report (\$1,038.37)
 - July 2001 semiannual report (\$2,594.89)
 - 8-day before election report for the November 2001 election (\$2,248.24)
 - 8-day before election report for the December 2001 runoff election (\$350.00)
8. The corrected reports disclosed a total of \$11,943 of political expenditures made from personal funds.¹ The political expenditures were reported on Schedule G, Political Expenditures Made From Personal Funds, and the purpose of the expenditures appears to be campaign or officeholder related. The respondent checked the box “reimbursement from political contributions intended.” The political expenditures were not originally disclosed as political expenditures made from personal funds. Rather, they were reported as reimbursements to the respondent as shown on the chart above.
9. The respondent swears to the following:

[T]he reimbursements listed were all made to cover Officeholder expenditures and Campaign expenditures that I originally paid for . . . All of these expenses were for matters relating to my duties as Mayor of Houston or campaigning for office. None of the reimbursements made to me were for any personal use or for matters unrelated to my office or campaign. I relied on Walden & Associates to handle all reports surrounding these expenses and reimbursements. The Officeholder/Campaign Finance Reports have been amended to clearly show on Schedule G and Schedule F that personal funds were used to pay political expenses.

Allegation No. 2: Reported certain expenditures more than once

10. The complainant alleges that the respondent reported three expenditures in the amounts of \$81.00, \$300.63, and \$1,000.00, in both the July 2001 semiannual report and the 30-day pre-election report for the November 2001 election.

¹ This is somewhat less than the \$12,012 in reimbursement that the respondent had reported. Apparently, this discrepancy is attributable to the fact that the respondent reimbursed himself twice for one expenditure. The respondent states in his affidavit, “My next report will show on Schedule F my reimbursement back to the campaign for this duplicate payment.”

11. In support of this allegation, the complainant submitted a copy of three pages of the reports in question, which show that the expenditures were made on July 5, 2001, and that they were reported on both reports.
12. In response to this allegation, the respondent filed a corrected report and good-faith affidavit for the July 2001 semiannual report. In the good-faith affidavit, the respondent swears that his "campaign office inadvertently listed three expenditures on Schedule F [used for reporting political expenditures] that were not part of this reporting period. These three expenditures added to the amount of the Total Expenditures listed on the page 2 of the cover sheet which inflated the total. This was a clerical error and completely accidental." The corrected report included page 2 of the cover sheet that disclosed the revised total political expenditures.
13. The corrected report included page 2 of the cover sheet, which discloses that the revised total political expenditures is \$269,330.85. The total on the original report was inflated less than one percent because of over reporting the expenditures at issue.

Allegation No. 3: Description of purpose of expenditure:

14. The complainant alleges that the respondent's explanation for the purpose of nine political expenditures is "not very descriptive." The purpose provided for the expenditures in question included the following: Taxes, Installation of carpet, Floor covering, and storage.
15. Regarding Allegation No. 3, the respondent swears:

Lee Brown for Mayor Campaign has historically maintained interest bearing accounts. The Campaign paid taxes on the interest earned from these accounts. The campaign also paid the expense of carpeting portions of my City Hall office. Finally, the campaign paid for storage facilities to maintain campaign records, literature, campaign materials, etc. I believe all of these expenses to be appropriate political expenditures.

Allegation No. 4: Documentation from out-of-state political committees:

16. In support of this allegation, the complainant submitted two pages from the respondent's 8-day pre-election report for the December 2001 runoff election disclosing that the respondent had accepted a \$1,000 political contribution from an out-of-state political committee. Allegedly the report did not include documentation from that out-of-state political committee.
17. In response to this complaint, the respondent filed a corrected 8-day pre-election report and good-faith affidavit for the December 2001 runoff election. The corrected report included: (1) documentation regarding the out-of-state political committee cited by the complainant;

and (2) two previously undisclosed contributions from out-of-state political committees in amounts of \$2,000 and \$500, and documentation regarding the committees.

18. In the good-faith affidavit filed with the corrected report, the respondent swears that the omissions were inadvertent.

Allegation No. 5: Incomplete contributor names:

19. In support of this allegation, the complainant submitted two pages from the respondent's 8-day pre-election report for the December 2001 runoff election that disclosed first names only for two contributors, who made a \$2,500 and a \$1,000 political contribution, respectively.
20. In response to this allegation, the respondent filed a corrected 8-day pre-election report and good-faith affidavit for the December 2001 runoff election. The corrected report disclosed the complete names of the two contributors cited by the complainant.
21. In the good-faith affidavit filed with the corrected report, the respondent swears, "My campaign office accidentally listed two contributors on Schedule A [used to disclose contribution] by only their first names. We have always had their full name but accidentally left their last name off of my report. This was a clerical error."

Allegations Nos. 6 and 7: Reporting charitable donation and political expenditure:

22. The complainant alleges that the respondent did not disclose on his campaign finance reports a \$100 payment to the Ethics Commission as either a political expenditure or as an in-kind contribution.
23. The complainant also alleges that the respondent's July 2000 semiannual report does not disclose charitable donations that he made with political contributions.
24. In response to this allegation, the respondent submitted a copy of his July 2001 semiannual report in which he disclosed that he made three contributions to charity totaling \$2,000.
25. Additionally, the respondent's attorney states that the \$100 cited by the respondent was neither a political expenditure nor a political contribution. He states that the \$100 was paid by the firm that prepares the respondent's campaign finance reports as part of the contractual services provided to the respondent.
26. Respondent's Response: In addition to the sworn statements mentioned above that specifically address each of the allegations, the respondent swears to the following:

I was first elected to serve as Mayor of the City of Houston in December 1997. I was reelected to serve a second two year term as mayor on November 2, 1999. I was elected to my final two year term on December 1, 2001. All

three of my campaigns required extensive political fundraising and political expenditures. To handle my political fundraising and campaign finance reporting, I hired Walden & Associates, an experienced political fundraising and campaign financing company, as my campaign director in May 1997. Walden & Associates has continued to serve in that capacity and has been responsible for all of my campaign reporting. As such, Walden & Associates has been responsible for receiving, organizing and documenting all of my campaign fundraising activities. In addition, Walden & Associates has been responsible for preparing on my behalf all of the documents required by state and local law to be publicly filed by candidates for public office, including campaign finance reports and appointment of campaign treasurer reports. . . . I have no direct personal involvement in preparing these reports. I rely on Walden & Associates to prepare and file correct and complete reports. If error or omissions occur, Walden & Associates are retained to make corrections to ensure correct reports.

27. The respondent's response also included an affidavit from an employee of the firm that prepares the respondent's campaign finance reports in which she swears that since May 1997, the firm has been employed as the respondent's campaign director. She swears to the following:

The firm's job is to organize and document all of Mayor's Brown's campaign fundraising activities and to prepare on Mayor Browns' behalf all of the documents required by state and local law to be publicly filed by candidates for political office, including campaign finance reports . . . I have the direct responsibility for all campaign finance reporting for the Lee Brown campaign. Mayor Brown has no personal involvement in the preparation of these documents and reports.

IV. Findings and Conclusions of Law

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

Allegation No. 1: Reimbursements from political funds:

1. A candidate or officeholder who makes political expenditures from personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts. Elec. Code § 253.035(h). Additionally, the report must indicate that the expenditures were made from personal funds and that reimbursement from political contributions is intended. *Id.*

2. Ethics Commission Rules specifically provide that the failure of a candidate or officeholder to comply with the procedures for reporting political expenditures made from personal funds may not be cured by filing a corrected report after the original report deadline has passed. Ethics Commission Rules § 22.19(e).

Statute of limitations:

3. Commission rules provide that for an allegation that does not constitute a criminal offense, the commission will not consider an alleged violation based on facts that occurred more than three years before the date the complaint is filed. Ethics Commission Rules § 12.5(4).
4. For an alleged violation that is a criminal offense, the commission will not consider the alleged violation if the allegation is barred from criminal prosecution by operation of the applicable statute of limitations. *Id.* § 12.5(3).
5. The restriction in section 253.035(h) of the Election Code, on reimbursing political expenditures made from personal funds does not include a criminal penalty. Therefore, the commission's three-year limitations rule applies. *Id.* § 12.5(4).
6. The alleged violations at issue in this complaint are the respondent's reimbursements to himself from political funds, not the original requirement to report political expenditures made from personal funds. The alleged violation is the improper reimbursement, not the failure to properly report the political expenditures when they were originally incurred.
7. This complaint was filed on February 28, 2002. Pursuant to Ethics Commission Rules, any alleged improper reimbursement that occurred before February 28, 1999, may not be considered. In other words, the commission may not consider reimbursements number 1, 2, and 3 listed on the chart on page 2. The commission may consider reimbursements 4 through 13 on that chart.
8. In response to this complaint, the respondent filed corrected reports and good-faith affidavits disclosing political expenditures made from personal funds totaling \$11,943.09 for campaign and officeholder related expenses. Of that amount, \$6,665.23 was for reimbursements made within the commission's three-year statute of limitation.
9. Commission rules provide that a person who files an affidavit swearing that a corrected report, other than one correcting a report due eight days before an election, was filed in good faith may not be subject to a fine for a late report. *Id.* § 18.4.
10. The law, however, requires proper reporting before reimbursement from political contributions may be made. Elec. Code § 253.035(h). For purposes of reimbursement, improper reporting may not be cured by filing a corrected report after the report deadline has passed. Ethics Commission Rules § 22.19(e).

11. Because the respondent reimbursed himself for political expenditures made from personal funds that were not properly reported in reports filed during the period in which the expenditures were made, there is credible evidence that the respondent violated section 253.035(h) of the Election Code.

Allegation No. 2: Reported certain expenditures more than once:

12. A campaign finance report is required to include political expenditures made during the reporting period. Elec. Code § 254.031. A candidate or officeholder is required to file a semiannual report in January and July of each year. *Id.* § 254.093. The last day to be covered by the July 2001 semiannual report was June 30, 2001. *Id.* § 254.063.
13. The evidence shows that the respondent reported three expenditures made on July 5, 2001, in the amounts of \$81.00, \$300.63, and \$1,000.00, in both the July 2001 semiannual report and the 30-day pre-election report for the November 2001 election. The expenditures were made on July 5, 2001.
14. Accordingly, the expenditures were required to be disclosed only on the 30-day pre-election report. Because of the double reporting, the respondent reported an inflated expenditure total on the July 2001 semiannual report.
15. In response to this allegation, the respondent filed a corrected report and good-faith affidavit for the July 2001 semiannual report. In the good-faith affidavit, the respondent swears, “My campaign office inadvertently listed three expenditures on Schedule F [used for reporting political expenditures] that were not part of this reporting period. These three expenditures added to the amount of the Total Expenditures listed on the page 2 of the cover sheet which inflated the total. This was a clerical error and completely accidental.” The corrected report included page 2 of the cover sheet, which discloses that the revised total political expenditures is \$269,330.85. The total on the original report was inflated less than one percent due to over reporting the expenditures at issue.
16. A filer may correct a reporting error at any time by filing a corrected report. Ethics Commission Rules § 18.27. Under Ethics Commission Rule 18.27, the Ethics Commission is not required to waive the fine for a respondent in a sworn complaint who files a corrected report, but may consider the correction to be a mitigating factor in determining the amount of any fine.
17. Because the respondent did not report the correct expenditure total, there is credible evidence that the respondent violated section 254.031 (a)(5) of the Election Code.

Allegation No. 3: Description of purpose of expenditure:

18. Each report filed under title 15 of the Election Code, must contain the amount and purpose of political expenditures made during the reporting period that in the aggregate exceed \$50 to

any person. Elec. Code § 254.031. A political expenditure for goods and services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.

19. The respondent reported the expenditures at issue as political expenditures and provided one of the following explanations as the purpose of the expenditures: Taxes, Installation of carpet, Floor covering, and storage.
20. The purposes of the expenditures provided by the respondent are sufficient. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code.

Allegation No. 4: Documentation from out-of-state political committees:

21. Before accepting a contribution received from an out-of-state political committee, a candidate or officeholder must have received certain documentation from the out-of-state committee. Elec. Code § 253.032. Regardless of the amount of the contribution, if the out-of-state political committee is registered with the Federal Election Commission (FEC), this documentation requirement may be satisfied by receiving a copy of the committee's statement of organization filed with the Federal Election Commission (FEC) and certified by an officer of the committee. *Id.*
22. The candidate, officeholder, or political committee must include the documentation with the appropriate campaign finance report. *Id.* § 253.032. Additionally, a candidate, officeholder, or political committee must disclose in each campaign finance report the contributions accepted during the reporting period. *Id.* § 254.031.
23. The respondent's 8-day pre-election report for the December 2001 runoff election failed to include the required documentation from an out-of-state political committee that was listed as a contributor on the report. In response to this allegation, the respondent submitted a corrected report and good-faith affidavit. The corrected report includes a copy of the statement of organization filed with the FEC for that committee.
24. Additionally, the respondent's 8-day pre-election report for the December 2001 runoff election failed to disclose two contributions from out-of-state political committees totaling \$2,500.
25. Because the respondent failed to include the information required by sections 253.032 and 254.031 of the Election Code, with his 8-day pre-election report, there is credible evidence that the respondent violated sections 253.032 and 254.031 of Election Code.
26. A person filing with the Ethics Commission would be subject to a fine of \$10,000 for filing an incomplete 8-day pre-election report in similar circumstances. Ethics Commission Rules §§ 18.7 and 18.13(b).

Allegation No. 5: Incomplete contributor names:

27. Each report filed under title 15 of the Election Code, must contain an itemization of contributions accepted during the reporting period that in the aggregate exceed \$50, including the full name and address of the contributor. Elec. Code § 254.031.
28. The respondent's 8-day pre-election report for the December 2001 runoff election included the first name only of two contributors who made a \$2,500 and a \$1,000 political contribution, respectively.
29. In response to this allegation, the respondent filed a corrected 8-day report and good-faith affidavit for the December 2001 runoff election disclosing the full names of the two contributors in question. In the good-faith affidavit filed with the corrected report, the respondent swears, "My campaign office accidentally listed two contributors on Schedule A [used to disclose contribution] by only their first names. We have always had their full name but accidentally left their last name off of my report. This was a clerical error.
30. Because the respondent failed to include the full name of two contributors, there is credible evidence that he violated section 254.031 of the Election Code.

Allegations Nos. 6 and 7: Reporting of \$100 and charitable donations:

31. A campaign finance report is required to include political expenditures made during the reporting period. Elec. Code § 254.031. Additionally, a campaign finance report is required to include political contributions accepted during the reporting period.
32. The respondent did not disclose a payment to the Ethics Commission of \$100 as either a political expenditure or as an in-kind contribution.
33. The respondent swears that the \$100 was paid by the firm that prepares the respondent's campaign finance reports as part of the contractual services provided to his campaign.
34. The respondent's attorney contends that the payment was neither a political expenditure nor a political contribution.
35. A political expenditure is defined as a campaign expenditure or an officeholder expenditure. A campaign expenditure is defined in relevant part as a contribution to a candidate that is offered or given with the intent that it be used in connection with a campaign for an elective office.
36. Although the \$100 was the personal obligation of the respondent, it was an obligation that was connected with the performance of duties or activities as a candidate or officeholder. Accordingly, the payment of the \$100 was a political expenditure.

37. Although the firm that prepares the respondent's reports may have paid the \$100 because the firm failed to provide contractual services to the respondent's campaign, the firm also paid the \$100 to defray expenses the respondent incurred as a candidate or officeholder.
38. The firm had the requisite intent to make a political contribution to the respondent. Accordingly, the respondent was required to report the \$100 payment as an in-kind contribution from the firm, which the respondent did not do. Therefore, there is credible evidence that the respondent violated section 254.031 of the Election Code.

Charitable Donation:

39. The complainant alleges that the respondent's July 2000 semiannual campaign finance report does not disclose that the respondent made charitable contributions.
40. The respondent swears that he made several charitable contributions and reported them on his July 2001 semiannual report.
41. The respondent's July 2001 semiannual report discloses that the respondent made three contributions to charity totaling \$2,000. Therefore, as to the reporting of those charitable contributions, there is credible evidence that the respondent did not violate section 254.031 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that a candidate or officeholder who makes political expenditures from personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts. Elec. Code § 253.035(h). Additionally, the report must indicate that the expenditures were made from personal funds and that reimbursement from political

contributions is intended. *Id.* The respondent agrees to fully and strictly comply with this requirement of the law.

The respondent also acknowledges that before accepting a contribution received from an out-of-state political committee, a candidate or officeholder must have received certain documentation from the out-of-state committee. *Id.* § 253.032. Regardless of the amount of the contribution, if the out-of-state political committee is registered with the Federal Election Commission (FEC), this documentation requirement may be satisfied by receiving a copy of the committee's statement of organization filed with the Federal Election Commission (FEC) and certified by an officer of the committee. *Id.*

The candidate, officeholder, or political committee must include the documentation with the appropriate campaign finance report. *Id.* § 253.032. Additionally, a candidate, officeholder, or political committee must disclose in each campaign finance report the contributions accepted during the reporting period. *Id.* § 254.031.

4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraphs 11, 17, 25, 30, and 38, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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, consequences, extent, and gravity of the violations, after considering the fact that previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$3,100 civil penalty for the violation described under Section IV, Paragraphs 11, 17, 25, 30, and 38.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-220214;

- 3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$3,100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and
- 4. that the executive director shall promptly refer SC-220214 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-220214 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2003.

Lee P. Brown, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director