

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARK ELLIS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2511188

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 11, 2006, to consider sworn complaint SC-2511188. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032 and 254.031(a)(3) of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to include with his campaign finance reports certain documentation from out-of-state political committees from which he accepted political contributions. The complaint also alleges that the respondent incorrectly reported reimbursements to himself and his staff. Finally, the complaint alleges that the respondent unlawfully accepted corporate contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent was a member of the Houston City Council during all periods relevant to this complaint.
2. The respondent failed to include with his January and July 2004 semiannual campaign finance reports certain documentation from out-of-state political committees from which he accepted political contributions.
3. The reports disclose three \$250 contributions from out-of-state political committees. The reports did not include a statement of organization for the three out-of-state political committees.

4. The respondent reported on his January 2005 semiannual report a \$225 political expenditure as a reimbursement to a staff member. The respondent reported on his July 2004 and January 2005 semiannual reports three reimbursements to himself described as "Officeholder: Travel Reimbursement."
5. Regarding the \$225 reimbursement to a staff member, the expenditure was a reimbursement for the purchase of an auction item. The report disclosed a staff member as the payee, the date the staff member was reimbursed, and the amount of the reimbursement. The purpose of the expenditure is disclosed as "Reimbursement of Auction Item- St. Frances De Sales."
6. Regarding the three other expenditures totaling \$807.25 that were reported as travel reimbursements to the respondent, these reimbursements were for the use of his personal vehicle. The three expenditures disclose the respondent as the payee, the amount of the reimbursements, and the dates of the reimbursements.
7. The respondent's January 2004 semiannual report discloses a \$250 contribution from Southwest Airlines.
8. The contribution from Southwest Airlines was actually from the Southwest Airlines Co. Freedom Fund, which is a political committee registered with the Federal Election Commission.
9. The respondent's July 2004 semiannual report discloses a \$100 contribution from the HT Land Company.
10. The HT Land Company is a corporation.
11. The respondent hired a firm to handle his campaign finance reports, and relied upon them to make sure that he did not accept any unauthorized contributions. The respondent returned the contribution.

IV. Findings and Conclusions of Law

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

1. A candidate, officeholder, or political committee that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include with the appropriate report a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. ELEC. CODE § 253.032(e).

2. 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 Federal Election Commission 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 Federal Election Commission. Ethics Commission Rules § 20.29(a).
3. Because the respondent files his campaign finance reports with the City Secretary of Houston, Ethics Commission Rules § 20.29 does not apply to him.
4. The respondent's reports did not include the statements of organization at issue.
5. The respondent claims that he was told by commission staff that he only needed to include the federal political committee's identification number on his reports. Even if commission staff informed the respondent that he could comply with the filing requirements by disclosing the federal political committee's identification number, the respondent did not provide that number for one of the out-of state political committee's contributions. Therefore, there is credible evidence of a violation of section 253.032(e) of the Election Code.
6. A candidate must report 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. ELEC. CODE § 254.031(a)(3).
7. In this case, where an expenditure was made by a staff member, and then the staff member was reimbursed by the candidate during the same reporting period, the proper way to report the expenditure was for the candidate to report the actual payee, date, and payee address of the expenditure made by the staff member, not the reimbursement.
8. The \$225 reimbursement to the staff member did not disclose the date the expenditure was initially made or the address of the actual payee. Therefore, with respect to the reimbursement to the staff member there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
9. A candidate or officeholder may pay himself reasonable reimbursement from political contributions for the use of a personal asset for political purposes. Any such payment is to be reported on Schedule F as an expenditure from political contributions. Thus, if a candidate or officeholder uses a personal car for political purposes, reporting is required only if and when the candidate or officeholder pays himself reimbursement from political contributions. Ethics Advisory Opinion No. 347 (1996).

10. The reimbursements were reported in accordance with Ethics Advisory Opinion No. 347. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code with respect to the travel reimbursements.
11. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter. ELEC. CODE § 253.094.
12. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
13. Regarding the contribution from Southwest Airlines, there is evidence that the contribution was given by a political committee instead of a corporation. Therefore, there is credible evidence of no violation of section 253.003 of the Election Code.
14. Regarding the contribution from the HT Land Company, there is insufficient evidence to show that the respondent knew that the contributor was a corporation when he accepted the contribution. There is insufficient evidence that the respondent knowingly accepted a political contribution that he knew was made in violation of section 253.094 of the Election Code. Therefore, there is insufficient evidence of a violation of section 253.003 of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a candidate or officeholder that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report filed under Chapter 254 that covers the reporting period in which the contribution is accepted, the same information required to be disclosed by a general purpose committee on a campaign treasurer appointment, or a copy of the out-of-state committee's statement of organization filed with the Federal Election Commission and certified by an officer of the out-of state committee. The respondent further acknowledges that each campaign finance report must 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 seriousness of 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 \$200 civil penalty for the violations described under Sections III and IV.

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-2511188.

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

Mark Ellis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director