

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LOIS KOLKHORST,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270104

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 10, 2008, to consider sworn complaint SC-270104. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035 and 254.031 of the Election Code and sections 20.61 and 20.63 of the Ethics Commission Rules, 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 improperly reported political expenditures made with personal funds and improperly reported political expenditures as reimbursements.

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 and was an opposed incumbent candidate for the office in the 2006 general election.
2. The reports at issue are the January and July semiannual reports due in 2005 and 2006 and 30-day and 8-day pre-election reports for the 2006 general election.
3. The reports disclosed approximately \$12,235 in political expenditures from political contributions as reimbursements to staff without disclosing the individuals or entities paid by the staff. In most cases, the purpose of each expenditure was disclosed as a reimbursement for multiple goods or services, such as “reimbursement for travel phone meals event ticket expenses” and “reimbursement for phone travel meal expenses.” In instances where multiple

goods or services were listed, the amounts attributable to the listed goods or services were not disclosed.

4. Of the reimbursements to staff, one expenditure of \$131.18 was originally disclosed as a reimbursement for mileage. One expenditure of \$74.40 was also originally disclosed as a reimbursement for “copies mileage parking.”
5. In response to the complaint, the respondent corrected all of the reimbursements to staff at issue. Of the approximate \$12,235 in expenditures, the respondent corrected approximately \$5,328 of the expenditures to disclose the actual payees, all of whom were paid over \$50 in the respective reporting period in which each expenditure was made. The respondent also corrected approximately \$6,283 in expenditures by indicating that they were mileage reimbursements to staff, all of whom were paid over \$50 in the respective reporting period in which each expenditure was made. The respondent also corrected approximately \$624 in expenditures by adding the amounts to the total amount of political contributions of \$50 or less in the respective report.
6. The reports disclosed approximately \$8,592 in political expenditures made from political contributions to the respondent for reimbursements. In most cases, the purpose of each expenditure was disclosed as a reimbursement for multiple goods or services, such as “reimbursement for travel, meal expense,” “reimbursement for advertising & campaign event – expenses,” and “reimbursement for legislative session expenses.” In instances where multiple goods or services were listed, the amounts attributable to the listed goods or services were not disclosed.
7. Of the reimbursements to the respondent, two expenditures totaling approximately \$699 were originally disclosed as reimbursements for mileage. One expenditure of \$1,330.25 was originally disclosed as a reimbursement for “mileage office supplies meal expenses” and an additional expenditure of \$1,413.46 was disclosed as a reimbursement for “mileage meal expenses.”
8. In response to the allegation, the respondent swears, “[f]unds that were inappropriately reimbursed will be returned to the campaign.”
9. The respondent corrected all of the expenditures at issue. Of the approximate \$8,592 in expenditures, the respondent corrected approximately \$4,380 of the expenditures by disclosing the expenditures with the actual payee information on Schedule G of her reports, which is used for disclosing political expenditures made from personal funds. The respondent also corrected approximately \$4,212 in expenditures by indicating that they were mileage reimbursements to herself.

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, 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).
2. In Ethics Advisory Opinion No. 450 (EAO 450), which is relevant to the reports at issue, the commission stated that in a situation in which a member of a candidate's campaign staff makes a campaign expenditure on behalf of the candidate and later receives reimbursement from the candidate, the candidate is required to report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the campaign worker made the expenditure, and explaining in the "purpose" section that a campaign worker made the expenditure from personal funds and that the candidate subsequently reimbursed the campaign worker. Ethics Advisory Opinion No. 450 (2003).
3. 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(a).
4. In Ethics Advisory Opinion No. 347 (EAO 347), the commission stated that 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).
5. Of the approximate \$12,235 in expenditures made as reimbursements to staff, the respondent's corrected reports indicate that approximately \$6,283 was paid to individuals as mileage reimbursements. There is no evidence that the respondent directed the individuals to purchase gasoline at a particular location. Thus, the respondent properly disclosed the payees of the expenditures that were mileage reimbursements. However, of the expenditures for mileage reimbursements, one expenditure of \$131.18 was originally disclosed as a reimbursement for mileage. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61(a) of the Ethics Commission Rules in connection with the expenditure of \$131.18 because it was properly disclosed.
6. Of the remaining approximate \$6,152 in reimbursements to staff for mileage, one expenditure of \$74.40 was originally disclosed as a reimbursement for "copies mileage parking," but the amount attributable to mileage was not disclosed until after the complaint

- was filed. The remaining approximate \$6,077 in expenditures were not originally disclosed as mileage reimbursements, but rather for numerous goods or services, such as travel, meals, phone expenses, or other expenses. Thus, the respondent failed to properly disclose that the expenditures were reimbursements for mileage. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules in connection with approximately \$6,152 in expenditures because the purposes of the expenditures were not properly disclosed.
7. Of the remaining approximate \$5,952 in reimbursements to staff, approximately \$624 was paid to various payees to whom \$50 or less was paid during the respective reporting period in which each expenditure was made. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61(a) of the Ethics Commission Rules in connection with the approximate \$624 in expenditures because she was not required to itemize those expenditures.
 8. Of the remaining approximate \$5,328 in reimbursements to staff, all of the expenditures were made to payees to whom the respondent made political expenditures that exceeded \$50 in each respective reporting period. The respondent did not disclose the names or addresses of the actual payees of the expenditures in accordance with EAO 450. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules by failing to properly disclose approximately \$5,328 in political expenditures.
 9. A candidate is required to report a campaign expenditure from personal funds. ELEC. CODE § 20.63(a).
 10. A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h); Ethics Commission Rules § 20.63(d).
 11. The respondent made approximately \$8,592 in political expenditures from political contributions to herself as reimbursements without disclosing any expenditures from personal funds. Of the expenditures at issue, the corrected reports indicate that the respondent paid approximately \$4,212 to herself as mileage reimbursements for the use of a personal vehicle. In accordance with EAO 347, the respondent was not required to disclose

- the use of her personal vehicle for campaign or officeholder purposes, but only when a payment to reimburse herself for the use of the vehicle was actually made. Thus, the payee information for the expenditures for mileage was properly disclosed.
12. Of the approximate \$4,212 in expenditures for mileage reimbursements, two expenditures totaling approximately \$699 were originally disclosed as a reimbursement for mileage. Therefore, there is credible evidence that the respondent did not violate sections 253.035(h) or 254.031(a)(3) of the Election Code or section 20.63 of the Ethics Commission Rules in connection with the approximate \$699 in expenditures because they were properly disclosed.
 13. Of the remaining approximate \$3,513 in reimbursements for mileage, one expenditure of \$1,330.25 was originally disclosed as a reimbursement for “mileage office supplies meal expenses” and an additional expenditure of \$1,413.46 was disclosed as a reimbursement for “mileage meal expenses.” Regarding these two expenditures, which total approximately \$2,744, the amounts attributable to mileage were not disclosed until after the complaint was filed. The remaining approximate \$769 in mileage reimbursements were not originally disclosed as mileage reimbursements, but rather for other numerous goods or services. Thus, the respondent failed to properly disclose that the expenditures were reimbursements for mileage. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules in connection with approximately \$3,513 in expenditures because the purposes of the expenditures were not properly disclosed.
 14. The respondent also made approximately \$4,380 in expenditures to herself from political contributions as reimbursements for political expenditures made from personal funds. To properly reimburse herself for the expenditures made from personal funds, the respondent was required to disclose the expenditures and indicate that reimbursement was intended. None of the expenditures made from personal funds were disclosed when the reports were originally filed. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules by failing to properly disclose approximately \$4,380 in political expenditures made from personal funds.

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, 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 acknowledges that the proper method of reporting reimbursements to staff members is in accordance with section 20.62 of the Ethics Commission Rules. The respondent acknowledges that the report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. The respondent acknowledges that a candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. 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 \$1,900 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-270104.

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

Lois Kolkhorst, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director