

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FREDERICK H. BROWN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2711227

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-2711227. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules, and credible evidence of a technical or *de minimis* violation of sections 254.031 and 253.035(h) 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 properly report political expenditures made by credit card, made payments from political contributions to purchase real property, and failed to properly report, and improperly reimbursed, political expenditures made from personal funds.

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 who was first elected to that office in 1999. He represents District 14.

Failure to Properly Disclose Political Expenditures Made by Credit Card

2. The allegations related to credit card payments are based on the respondent's January 2006, July 2006, January 2007, and July 2007 semiannual campaign finance reports.

3. On those reports, the respondent disclosed the credit card company as the payee for political expenditures totaling approximately \$4,535.
4. The respondent submitted a sworn response stating that “I did not know the vendor who receives payment from the card company must be identified. All of the infractions have been corrected.”
5. The respondent corrected the reports at issue.

Expenditures Related to Motor Home

6. The complaint alleges that the respondent used campaign contributions to buy real property in the form of a “motor home,” and, during the period covered by the January 2007 semiannual report, improperly reimbursed himself approximately \$37,319 for motor home payments made in prior years.
7. The allegation regarding the reimbursements is based on the belief that political expenditures were made by the respondent from personal funds for motor home payments during 2001, 2003, and 2005 but were not reported on Schedule G (political expenditures from personal funds) of the respondent’s reports during those periods. The complaint alleges that the respondent failed to report political expenditures from personal funds for the motor home payments at the time that the expenditures occurred, and, thus, he improperly made reimbursements to himself in 2007.
8. On the January 2007 semiannual report, the respondent disclosed five political expenditures totaling approximately \$37,319 to himself for repayment of motor home payments made during previous sessions (2001, 2003, and 2005).
9. The respondent provided copies of photographs of the motor home at issue. The photographs depict a vehicle with approximately 10 wheels and the amenities of an apartment or home.
10. The respondent purchased the motor home at issue with personal funds in September 2000, for approximately \$210,000.
11. The evidence indicates that the respondent’s intent when he purchased the motor home was that it be used as a place to live during session and for personal use when not in session.
12. The respondent stated that he did not seek reimbursement for the payments at issue at an earlier date because he did not have enough funds in his campaign account to do so.
13. The evidence indicates that the respondent reimbursed himself for the amount of loan payments that were made during session, which was approximately \$2,500 per month.

14. The evidence indicates that in November 2006 the respondent sold the motor home for an amount equal to the balance of the note, and realized no gain from the sale.

IV. Findings and Conclusions of Law

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

Failure to Properly Disclose Political Expenditures Made by Credit Card

1. A campaign finance report must include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
2. A report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. Ethics Commission Rules § 20.59.
3. On the four reports at issue, the evidence shows that the respondent disclosed the name of the credit card company and not the names or addresses of the vendors who actually received payment from the credit card company, for approximately \$4,535 in political expenditures. The improper reporting was clear from the face of the reports. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules.

Made Payments to Purchase Real Property

4. A candidate or officeholder may not knowingly make or authorize a payment from a political contribution to purchase real property or to pay the interest on or principal of a note for the purchase of real property. ELEC. CODE § 253.038.
5. The complaint alleges that the respondent made payments from political contributions to purchase real property when he reimbursed himself for payments related to a motor home.
6. The motor home at issue in the complaint is not real property. Thus, the payments made related to the motor home were not payments to purchase real property. Therefore, there is credible evidence of no violation of section 253.038 of the Election Code.

Failed to Properly Report, and Improperly Reimbursed, Political Expenditures Made from Personal Funds

7. Each report must include the amount of political expenditures that are made during the reporting period. ELEC. CODE § 254.031.

8. A candidate or officeholder who makes political expenditures from the candidate's or officeholder's 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 required to be filed that covers the period in 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).
9. In Ethics Advisory Opinion No. 116, the commission stated, "The use of a personal asset for political purposes is not required to be reported under title 15. A candidate may reimburse his personal funds from political contributions for use of personal assets for political purposes." Ethics Advisory Opinion No. 116 (1993).
10. The complaint alleges that the respondent improperly reimbursed himself for political expenditures made from personal funds from 2001 through 2005 because he did not properly report the political expenditures during the reporting period in which they were made. The evidence indicates that the respondent purchased the motor home at issue with personal funds in September 2000 and made loan payments thereafter. If the respondent purchased the motor home exclusively for personal use, reporting would only be required at the time that the respondent reimbursed himself for the political use of the motor home (reporting the reimbursement on Schedule F). However, the evidence indicates that at the time the respondent purchased the motor home, his intent was to use it for both political and personal purposes. Thus, the respondent should have reported a portion of the original purchase price at the time he made the purchase (that portion which he estimated would be attributable to political use of the asset), on Schedule G for political expenditures made from personal funds with the intent to seek reimbursement, then reimbursed himself at any point thereafter (reporting the reimbursements on Schedule F).
11. Although the respondent reported the reimbursements on Schedule F in 2007, the evidence indicates that the respondent failed to report any portion of the expenditure made in 2000 for the purchase of the motor home on the appropriate 2000 campaign finance report. However, considering the facts that the asset at issue is not real property, that determining the amount to be attributed to future political use would have been difficult at the time of purchase, that the respondent did not personally profit from the sale of the motor home, and that the respondent reported the activity in a manner that would have been correct if the motor home had been purchased exclusively for personal use, there is credible evidence of technical or *de minimis* violations of sections 254.031 and 253.035(h) 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 campaign finance report must include the amount of political expenditures that are made during the reporting period, and the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. The respondent acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the credit card company. The respondent also acknowledges that a candidate or officeholder who makes political expenditures from the candidate's or officeholder's 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 required to be filed that covers the period in 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 \$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-2711227.

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

Frederick H. Brown, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director