

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RENE OLIVEIRA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280284

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-280284. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.0612 of the Election Code, a law 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 converted political contributions to personal use. The complaint also alleges that the respondent failed to include in campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during the reporting period.

III. Facts Supported by Credible Evidence

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

1. The respondent is the current state representative for District 37 and was a successful opposed candidate in the March 2008 primary election. The respondent was unopposed in the November 2008 general election.
2. The commission may not consider an allegation that is outside the applicable statute of limitations. The statute of limitations for an allegation that a person converted political contributions to personal use is three years. Ethics Commission Rules § 12.5. Allegations relating to political expenditures made or authorized before February 22, 2005 (more than

three years before the complaint's postmark date), are not within the commission's sworn complaint jurisdiction and cannot be considered.

3. The statute of limitations for the allegations of reporting violations is two years. Ethics Commission Rules § 12.5. Allegations relating to political expenditures that were required to be disclosed in a report that was due before February 22, 2006 (more than two years before the complaint's postmark date), are not within the commission's sworn complaint jurisdiction and cannot be considered.
4. The complaint alleges that the respondent converted political contributions to personal use by using political contributions to pay for food, beverages, and dry cleaning, in violation of section 253.035 of the Election Code. The complaint also alleges that the respondent failed to include in campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during the reporting period, in violation of section 254.0612 of the Election Code.
5. The complaint included a list of specific expenditures from the respondent's campaign finance reports that are alleged to be conversions to personal use.
6. The respondent's July 2005 semiannual report discloses:
 - A political expenditure of \$74 to Tony Gray on March 7, 2005, for the purpose of reimbursement for dry cleaning.
 - A political expenditure of \$1,450.33 to American Express on March 31, 2005, for the purpose of "2 Round trip flights Aus. – Hrl. HEB & Meals in Austin."
 - A political expenditure of \$1,582.51 to Bank One on March 7, 2005, for the purpose of "Target HEB Randalls Gas Meals. S.W. Flight for Staff and Member Food & Apt. Supplies."
 - A political expenditure of \$258.52 to Bloomingdales Premier Visa on April 8, 2005, for the purpose of "HEB Albertsons. Dry Cleaning."
 - A political expenditure of \$258.52 to Bloomingdales Premier Visa on April 18, 2005, for the purpose of "Dry Cleaning Meals & Laundry."
 - A political expenditure of \$556.28 to Bloomingdales Premier Visa on May 10, 2005, for the purpose of "Laundry HEB Gas Carmelos Rest. Capitol Grill Mezzaluna Rest. & Treehouse Grill Rest."

- A political expenditure of \$695.22 to Bloomingdales Premier Visa on June 7, 2005, for the purpose of “NCLR Phila. Airpt/Central Mkt. Sullivan’s La Reyna Eddie vs. Edgewater Grille & Gas in Austin.”
- A political expenditure of \$1,170.19 to American Express on June 9, 2005, for the purpose of “Groceries Gas Dry Cleaning Maid Service Walgreens Meals in Austin.”
- A political expenditure of \$2,618.84 on June 9, 2005, for the purpose of “Meals Dry Cleaning Groceries Shell Oil Gas S.W. Flights Hrl. – Austin & Apt. Supplies.”

7. The respondent’s January 2006 semiannual report discloses:

- A political expenditure of \$2,395.66 to American Express on July 6, 2005, for the purpose of “Groceries Meals Gas Gifts Rental Car Art Dealer Gallery while in Austin.”
- A political expenditure of \$1,932.96 to Chase Card Services on July 15, 2005, for the purpose of “Meals for member & constituents. Groceries gasoline. Multiple roundtrip flights to Austin.”
- A political expenditure of \$2,003.09 to Chase Card Services on August 6, 2005, for the purpose of “Meals Groceries Apartment Supplies & Roundtrip multiple flights to & from Austin.”
- A political expenditure of \$2,242.18 to American Express on September 6, 2005, for the purpose of “Dry cleaning Apt. supplies meals with constituents while in Austin Groceries.”
- A political expenditure of \$419.37 to Capitol One on October 15, 2005, for the purpose of “Groceries Meals Apartment Supplies Dry Cleaning while in Austin.”

8. The respondent’s July 2006 semiannual report discloses:

- A political expenditure of \$1,815.95 to Chase Card Services on June 15, 2006, for the purpose of “Multiple Round Trip Travel/District – Capitol Rental Cars Meals Groceries.”

- A political expenditure of \$509.98 to MBNA on January 3, 2006, for the purpose of “Groceries Meals and House Supplies while in Austin.”
 - A political expenditure of \$991 to MBNA on April 4, 2006, for the purpose of “Meals Groceries and House Supplies while in Austin.”
9. The respondent’s July 2007 semiannual report discloses:
- A political expenditure of \$422.51 to Central Market on January 13, 2007, for the purpose of “Groceries and Supplies for Office and Residence.”
 - A political expenditure of \$243.38 to Central Market on January 20, 2007, for the purpose of “Paper Goods Food & Beverages for Staff & Residence.”
 - A political expenditure of \$357.77 to Central Market on January 28, 2007, for the purpose of “Food Supplies for Capitol Office and Austin Residence.”
 - A political expenditure of \$582.11 to Central Market on February 4, 2007, for the purpose of “Groceries & Supplies for Capitol Office & Austin Residence.”
 - A political expenditure of \$366.52 to Central Market on March 4, 2007, for the purpose of “Groceries and supplies for Austin Residence and Capitol Office.”
 - A political expenditure of \$353.33 to Central Market on April 12, 2007, for the purpose of “Groceries and Supplies for Austin Residence.”
 - A political expenditure of \$333.39 to Central Market on May 9, 2007, for the purpose of “Groceries and Supplies for Austin Residence.”
 - A political expenditure of \$287.79 to Central Market on May 29, 2007, for the purpose of “Groceries and Supplies for Austin Residence and Capitol Office.”
 - A political expenditure of \$407.10 to Central Market on June 2, 2007, for the purpose of “Groceries and Supplies for Austin Residence.”
 - A political expenditure of \$159.13 to Crate & Barrell on June 10, 2007, for the purpose of “Supplies for Austin Apt & Capitol Office.”

- A political expenditure of \$46.23 to Jack Brown Cleaners on January 12, 2007, for the purpose of “Dry Cleaning.”
 - A political expenditure of \$76.70 to Jack Brown Cleaners on January 31, 2007, for the purpose of “Dry Cleaning.”
 - A political expenditure of \$82.56 to Target on April 28, 2007, for the purpose of “Cleaning Supplies for Austin Apt.”
10. The complaint also included a list of 32 political contributions totaling approximately \$37,000 that the respondent disclosed in his original January 2008 semiannual report and original 30-day pre-election report for the March 2008 primary election. Each of the contributions listed in the complaint is from an individual that contributed \$500 or more during the reporting period. The respondent did not disclose the principal occupation or job title and the full name of the employer for the contributors listed.
 11. In addition to the specific contributions listed in the complaint, the respondent’s original July 2006 semiannual report and original January 2008 semiannual report each disclose a political contribution from an individual that contributed \$500 or more during the reporting period and for which the respondent did not include the principal occupation or job title and the full name of the employer. The respondent’s original 8-day pre-election report for the March 2008 primary election discloses 23 political contributions from individuals that contributed \$500 or more during the reporting period and for which the respondent did not include the principal occupation or job title and the full name of the employer. These political contributions (that were not specifically alleged in the complaint) total approximately \$22,000.
 12. After receiving notice of the complaint, the respondent filed corrected July 2006 and January 2008 semiannual reports, and corrected 30-day and 8-day pre-election reports for the March 2008 primary election. Each of the corrected reports includes employer and occupation information that was originally omitted.
 13. In response to the sworn complaint, the respondent provided an affidavit in which he swears that he unintentionally omitted occupation and employer information in campaign finance reports.
 14. With regard to the allegation that the respondent converted political contributions to personal use, the respondent swears that he deposited reimbursement and legislative per diem checks totaling \$17,659 from the State into his candidate/officeholder account and that this amount exceeds any amount “which [he] may not be able to prove are permitted expenditures.”

IV. Findings and Conclusions of Law

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

Failure to Include Required Information in Reports

1. Each report by a candidate for a statewide office in the executive branch or a 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 and that are accepted 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.
2. The evidence indicates that the respondent failed to include the principal occupation or job title and the full name of the employer for individuals from whom the respondent accepted political contributions that in the aggregate equaled or exceeded \$500 during the reporting period in reports required to be filed from July 2006 through February 2008. The 57 political contributions at issue total approximately \$59,000. Fifty-five of the political contributions at issue were required to be disclosed in the respondent's January 2008 semiannual report and 30-day and 8-day pre-election reports for the March 2008 primary election. Although the respondent filed corrections to the reports at issue, the information was not included when the reports were originally due. Therefore, there is credible evidence of violations of section 254.0612 of the Election Code.

Conversion of Political Contributions to Personal Use

3. 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).
4. The commission has determined that it is permissible for a legislator to use political contributions to pay for "meals for state business not reimbursed by the state." Ethics Advisory Opinion No. 241 (1995). For meals that do not take place in connection with the conduct of state business, the commission stated that it did not interpret the "reasonable housing or household expenses" exception to extend to the cost of meals in Austin in general. *Id.*

5. The commission has determined that legislators may not use political contributions to pay laundry and dry cleaning expenses incurred in Austin, and that such an expenditure would constitute a conversion of a political contribution to personal use. Ethics Advisory Opinion No. 104 (1992).
6. Each candidate or officeholder shall keep the person's campaign and officeholder contributions in one or more accounts that are separate from any other account maintained by the person. ELEC. CODE § 253.040.
7. The respondent swears that he deposited approximately \$18,000 in reimbursement and legislative per diem checks from the State into his candidate/officeholder account during the period at issue. Based on the respondent's sworn statement that he commingled approximately \$18,000 of his personal funds with his political contributions, the evidence is insufficient to show that the respondent converted political contributions to personal use, with regard to the specific expenditures at issue in the complaint. Therefore, there is insufficient evidence that the respondent violated section 253.035(a) 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 each report by a candidate for a statewide office in the executive branch or a 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 and that are accepted during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer. 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 \$3,000 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-280284.

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

Rene Oliveira, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director