

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL W. HAMILTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2808305, SC-2808306,
SC-2808307, AND SC-2808308

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaints SC-2808305, SC-2808306, SC-2808307, and SC-2808308. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035, 253.041, and 254.031(a)(3) of the Election Code and sections 20.59 and 20.62 of the Ethics Commission Rules, and credible evidence of technical or *de minimis* violations of section 571.1242(c) of the Government Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

Sworn complaint SC-2808305 alleged that between September 2006 and September 2008 the respondent paid his dependent children for personal services. Sworn complaint SC-2808306 alleged that the respondent converted political contributions to personal use when he used political contributions to reimburse himself for dry cleaning expenses. Sworn complaint SC-2808307 alleged that the respondent failed to properly report political expenditures made by credit card on campaign finance reports filed from October 2006 through July 2008. Sworn complaint SC-2808308 alleged that the respondent improperly reported political expenditures as reimbursements to a staff member on semiannual campaign finance reports filed from July 2007 through July 2008.

III. Facts Supported by Credible Evidence

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

1. The respondent is the state representative for District 19 and was a successful opposed candidate in the November 2006 and November 2008 general elections.
2. In response to sworn complaint SC-2808305, the respondent filed an affidavit in which he swore that he used personal funds to reimburse his campaign for the payments made to his

- children for campaign work and that the reimbursement would be reflected on his next campaign finance report.
3. In response to sworn complaint SC-2808306, the respondent filed an affidavit in which he swore that he used personal funds to reimburse his campaign for the dry cleaning expenses and that the reimbursement would be reflected on his next campaign finance report.
 4. In response to sworn complaint SC-2808307, the respondent filed an affidavit in which he swore that he would file corrected reports to address the allegations.
 5. In response to sworn complaint SC-2808308, the respondent filed an affidavit in which he swore that he would file corrected reports to disclose the true vendor of the goods and services that were purchased.
 6. On October 7, 2006, the respondent filed an original 30-day pre-election report for the November 2006 election that disclosed \$70,540 in total political contributions, \$64,714.95 in total political expenditures, and \$41,837 in total political contributions maintained as of the last day of the reporting period. Schedule F (used for reporting political expenditures) disclosed two political expenditures totaling approximately \$400 to the respondent's son for "Contract Labor," a political expenditure of \$400 to the respondent's daughter for "Contract Labor," and a political expenditure of \$1,657.84 to a credit card company for "Travel expense and supplies," which was not part of the allegations in sworn complaint SC-2808308.
 7. On November 17, 2008, after receiving notice of the sworn complaint allegations, the respondent filed a corrected 30-day pre-election report for the November 2006 election that disclosed \$70,540 in total political contributions, \$63,916.95 in total political expenditures, and \$41,837 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report stated that the report was corrected to itemize credit cards. The corrected Schedule F removed the political expenditures to the respondent's children. Schedule F disclosed the payees for approximately \$1,660 in political expenditures that previously disclosed a credit card company as the payee. The corrected report disclosed the purposes of the political expenditures made by credit card as fuel, "fundraiser expense" to a hotel, political advertising, and office supplies.
 8. On October 31, 2006, the respondent filed an original 8-day pre-election report for the November 2006 election that disclosed \$64,329.49 in total political contributions, \$2,609.31 in total political expenditures, and zero political contributions maintained as of the last day of the reporting period. Schedule F disclosed a political expenditure of \$250 to the respondent's son for "Contract Labor."

9. On January 10, 2007, the respondent filed an original January 2007 semiannual report that disclosed \$52,300 in total political contributions, \$62,664.85 in total political expenditures, and \$59,103 in total political contributions maintained as of the last day of the reporting period. Schedule F disclosed two political expenditures totaling approximately \$350 to the respondent's son for "Contract Labor," and two political expenditures totaling approximately \$650 to a credit card company for travel expenses.
10. On November 15, 2008, after receiving notice of the sworn complaint allegations, the respondent filed a corrected January 2007 semiannual report that disclosed \$52,300 in total political contributions, \$62,314.85 in total political expenditures, and \$59,103 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report stated that the report was corrected to itemize credit cards. The corrected Schedule F removed the political expenditures to the respondent's son. Schedule F disclosed the payees for approximately \$650 in political expenditures that previously disclosed a credit card company as the payee. The corrected report disclosed the purposes of the political expenditures made by credit card as "Cell phone bill" and office supplies.
11. On July 6, 2007, the respondent filed an original July 2007 semiannual report that disclosed zero political contributions, \$13,987.41 in total political expenditures, and \$41,381 in total political contributions maintained as of the last day of the reporting period. Schedule F disclosed a political expenditure of \$75 to the respondent's daughter for "Contract Labor," and a political expenditure of \$727.99 to the respondent on June 27, 2007, for "Reimbursement for dry cleaning expenses during sessioin [sic]." Schedule F also disclosed approximately \$7,020 in political expenditures to credit card companies for purposes including travel, meals, lodging, and office supplies. Schedule F also disclosed two political expenditures, which were the subject of sworn complaint SC-2808308, totaling approximately \$390 to a staff member for cell phone reimbursement and "Hotel reimbursement Golden Triangle Day in Austin." In addition to this amount, Schedule F disclosed a political expenditure of \$285.48 to another staff member for "Hotel expenses for Golden Triangle Day."
12. On November 17, 2008, after receiving notice of the sworn complaint allegations, the respondent filed a corrected July 2007 semiannual report that disclosed zero political contributions, \$16.43 in total unitemized political expenditures, \$13,279.43 in total political expenditures, and \$41,381 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report stated that the report was corrected to itemize credit cards and reimbursements. The corrected Schedule F removed the political expenditures to the respondent's daughter and the political expenditures for dry cleaning. Schedule F disclosed the payees for approximately \$7,090 in political expenditures that previously disclosed a credit card company as the payee, or which were otherwise previously undisclosed. The purposes disclosed in the corrected report for these expenditures included food/beverage, fuel expenses, apartment utilities, apartment

expenses, and office supplies. Schedule F also disclosed the payees for three political expenditures totaling approximately \$680 that were previously disclosed as reimbursements to staff members.

13. On January 6, 2008, the respondent filed an original January 2008 semiannual report that disclosed \$42,575 in total political contributions, \$50 in total unitemized political expenditures, \$15,904.99 in total political expenditures, and \$62,837 in total political contributions maintained as of the last day of the reporting period. Schedule F disclosed two political expenditures totaling approximately \$525 to the respondent's daughter for the purpose of "Contract Labor," and approximately \$2,740 in political expenditures to credit card companies for purposes including travel expenses, fuel, and food. Schedule F also disclosed two political expenditures, which were the subject of sworn complaint SC-2808308, totaling approximately \$1,290 to a staff member for "Presidential Straw Poll Reimbursement" and "Kirby Hill Fundraiser Reimbursement."
14. On November 15, 2008, after receiving notice of the sworn complaint allegations, the respondent filed a corrected January 2008 semiannual report that disclosed \$42,575 in total political contributions, \$50 in total unitemized political expenditures, \$15,389.82 in total political expenditures, and \$62,837 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report stated that the report was corrected to itemize credit cards and appeared to state that a staff member swore she was reimbursed. The corrected Schedule F removed the political expenditures to the respondent's daughter. Schedule F disclosed the payees for approximately \$2,750 in political expenditures that previously disclosed a credit card company as the payee, or which were previously undisclosed, including one expenditure of \$37.88 to a payee.¹ The purposes disclosed in the corrected report for these expenditures included fuel, donations, advertising, food, Texas A&M tickets, cell phone payments, and office supplies. Schedule F also disclosed the payees for three political expenditures totaling approximately \$1,290 that were previously disclosed as reimbursements to a staff member.
15. On February 2, 2008, the respondent filed an original 30-day pre-election report for the March 2008 primary election that disclosed \$1,300 in total political contributions, \$4,867.66 in total political expenditures, and \$58,670 in total political contributions maintained as of the last day of the reporting period. Schedule F disclosed a political expenditure of \$823.88 to a credit card company for travel expenses and fuel.
16. On November 15, 2008, after receiving notice of the sworn complaint allegations, the respondent filed a corrected 30-day pre-election report for the March 2008 primary election that disclosed \$1,300 in total political contributions, \$4,867.66 in total political expenditures, and \$58,670 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report stated that the report was corrected to itemize credit cards. Schedule F disclosed the payees for approximately \$820 in

¹The \$37.88 political expenditure was not required to be itemized because it fell under the \$50 threshold for itemization.

political expenditures that previously disclosed a credit card company as the payee. The corrected report disclosed the purposes of the political expenditures made by credit card as fuel, a donation, cell phone expenses, and office supplies.

17. On July 7, 2008, the respondent filed an original July 2008 semiannual report that disclosed \$10 in total unitemized political contributions, \$104,538 in total political contributions, \$507.41 in total unitemized political expenditures, \$17,388.63 in total political expenditures, and \$142,572 in total political contributions maintained as of the last day of the reporting period. Schedule F disclosed a political expenditure of \$300 to the respondent's son for "Contract Labor," approximately \$2,170 in political expenditures to credit card companies for travel expenses and fuel², and a political expenditure of \$86.66 to a staff member for "Reimbursement," which was the subject of sworn complaint SC-2808308.
18. On July 9, 2008, the respondent filed a corrected July 2008 semiannual report that disclosed \$10 in total unitemized political contributions, \$109,708 in total political contributions, \$507.41 in total unitemized political expenditures, \$17,388.63 in total political expenditures, and \$147,742 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report stated that the report was corrected to add three political contributions. The corrections to the report were not related to the sworn complaint allegations.
19. On November 15, 2008, after receiving notice of the sworn complaint allegations, the respondent filed a second corrected July 2008 semiannual report that disclosed \$10 in total unitemized political contributions, \$109,708 in total political contributions, \$464.57 in total unitemized political expenditures, \$17,089.63 in total political expenditures, and \$147,742 in total political contributions maintained as of the last day of the reporting period. The correction affidavit that accompanied the report stated that the report was corrected to itemize credit cards and a staff member reimbursement. The corrected Schedule F removed the political expenditure to the respondent's son. Schedule F disclosed the payees for approximately \$2,160 in political expenditures that previously disclosed a credit card company as the payee, including one expenditure of \$39.26 to a payee and one expenditure of \$37.82 to a payee.³ The purposes disclosed in the corrected report for these political expenditures included office supplies, fuel, and "convention." Schedule F also disclosed the payee for a political expenditure of \$86.66 that was previously disclosed as a reimbursement to a staff member.

² For eight political expenditures totaling approximately \$440, the respondent disclosed as the payee the name of the credit card company, as well as the name of the gas station and city where the expenditures were reported to have been made.

³ The \$39.26 political expenditure was not required to be itemized because it fell under the \$50 threshold for itemization. As to the \$37.82 expenditure, the payment was made to a gas station and there was no evidence that the respondent made over \$50 in political expenditures to that particular payee during the reporting period.

20. On October 26, 2008, the respondent filed an 8-day pre-election report for the November 2008 election. Schedule A (used for reporting political contributions) indicated that on October 24, 2008, the respondent reimbursed his campaign \$1,300 for salary paid to his son, \$1,000 for salary paid to his daughter, and \$727.99 for dry cleaning expenses.
21. The respondent's personal financial statements filed from 2006 through 2009 disclosed that the respondent reported financial activity for two dependent children.
22. United States Postal Service records indicated that the respondent received the notices for the sworn complaints on August 25, 2008. The notice of sworn complaint for SC-2808305 and notice of sworn complaint for SC-2808306 stated that each complaint would be processed as a Category Two violation and that the respondent was required to respond to an allegation of a Category Two violation not later than 25 business days from the date he received notice of the sworn complaint. The notice of sworn complaint for SC-2808307 and notice of sworn complaint for SC-2808308 stated that each complaint would be processed as a Category One violation and that the respondent was required to respond to an allegation of a Category One violation not later than 10 business days from the date he received notice of the sworn complaint. The respondent filed a timely response for sworn complaints SC-2808305 and SC-2808306, but filed responses approximately two weeks late for sworn complaints SC-2808307 and SC-2808308. Shortly after the due date for responses to sworn complaints SC-2808307 and SC-2808308, the respondent's attorney provided a statement that the delay in response was due to two hurricanes that impacted the respondent's district.
23. The respondent used personal funds to reimburse his political contributions.

IV. Findings and Conclusions of Law

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

Payments to Dependent Children (SC-2808305)

1. A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to the candidate or officeholder or the spouse or dependent child of the candidate or officeholder. ELEC. CODE § 253.041(a)(2).
2. The respondent used political contributions to pay his dependent children approximately \$2,300 for campaign work. Therefore, there was credible evidence of violations of section 253.041 of the Election Code.

Conversion to Personal Use (SC-2808306)

3. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. *Id.* § 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).
4. The commission determined that legislators may not use political contributions to pay laundry and dry cleaning expenses incurred in Austin; such an expenditure would constitute a conversion of a political contribution to personal use. Ethics Advisory Opinion No. 104 (1992).
5. The respondent converted approximately \$730 of political contributions to personal use when he reimbursed himself for laundry and dry cleaning expenses. Such use of political contributions is prohibited by section 253.035 of the Election Code. Therefore, there is credible evidence that the respondent violated section 253.035 of the Election Code.

Political Expenditures Made by Credit Card (SC-2808307)

6. 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. ELEC. CODE § 254.031(a)(3).
7. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. *Id.* § 254.031(a)(5).
8. 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.
9. On campaign finance reports filed from October 2006 through July 2008, the respondent disclosed a credit card company as the payee for approximately \$15,130 in political expenditures instead of the vendors who actually received payment from the credit card companies. However, approximately \$110 of these political expenditures were not required to be itemized because they fell under the \$50 threshold for itemization. Although the respondent corrected the reports at issue to disclose the actual payees for the political expenditures made by credit card, the information was not properly disclosed when the reports were due. Therefore, with regard to approximately \$15,020 in political expenditures made by credit card, 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.

Staff Reimbursement (SC-2808308)

10. Political expenditures made out of personal funds by a staff member of a candidate with the intent to seek reimbursement from the candidate that in the aggregate do not exceed \$5,000 (\$500 until November 2007) during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:
 - (1) 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; and
 - (2) Included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.

11. If the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 (\$500 until November 2007) in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of a candidate with the intent to seek reimbursement from the candidate must be reported as follows:
 - (1) The aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the candidate;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the candidate; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the candidate.

Ethics Commission Rules § 20.62.⁴

12. The respondent's July 2007, January 2008, and July 2008 semiannual reports improperly disclosed approximately \$1,770 in political expenditures at issue in sworn complaint SC-2808308 as reimbursements to a staff member. The respondent failed to disclose the person who actually received payment for the goods or services that were purchased. Although the respondent corrected the reports at issue to disclose the actual payees, the political expenditures were not properly reported when the reports were originally due. Additionally, although not at issue in the sworn complaint, the respondent filed a corrected report to disclose the actual payee for a political expenditure of \$285.48 reported as reimbursement to another staff member. Therefore, with regard to approximately \$2,060 in political expenditures that were disclosed as reimbursements on the respondent's original reports, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.

⁴Ethics Commission Rule § 20.62 originally became effective on February 25, 2007. On October 26, 2007, the rule was amended to raise the threshold for reporting staff reimbursements as a loan from \$500 to \$5,000. The change became effective on November 18, 2007.

Timeliness of Response

13. A respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(a). A respondent must respond to the notice of a Category Two violation not later than the 25th business day after the date the respondent receives the notice. *Id.* § 571.1242(b). Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. *Id.* § 571.1242(c).
14. The respondent filed late responses to sworn complaints SC-2808307 and SC-2808308. However, there is credible evidence that the delay constituted technical or *de minimis* violations of section 571.1242(c) of the Government Code. The commission imposes no civil penalty with regard to the late responses.

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 these sworn complaints.
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 or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to the candidate or officeholder or the spouse or dependent child of the candidate or officeholder. The respondent acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The respondent 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 acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent acknowledges that a political expenditure by credit card must identify the vendor who receives payment from the credit card company. The respondent acknowledges that a respondent must respond to a sworn complaint that contains a Category One violation within 10 business day of receiving the notice of the sworn complaint. 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 \$2,000 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 sworn complaints SC-2808305, SC-2808306, SC-2808307, and SC-2808308.

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

Michael W. Hamilton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director