

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
NICKOLAS GEORGE RAMUS, JR.,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-2811377

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2811377. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 253.031, 254.031(a)(3), 254.063, and 254.064 of the Election Code, and credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent accepted campaign contributions and made campaign expenditures at a time when he did not have a campaign treasurer appointment in effect, improperly reported or failed to include required information on campaign finance reports, failed to timely file campaign finance reports, used campaign funds for personal use, and made or authorized payments from political contributions for personal services.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for Hays County Commissioner, Precinct 1, in the November 4, 2008, general election.
2. The records of the Elections Office of Hays County show the following filings by the respondent: "Amendment: Appointment of a Campaign Treasurer by a Candidate" (ACTA) filed on August 13, 2008, and five campaign finance reports filed on October 30, 2008. One report was marked as a July 2008 semiannual report and covered the period from January 1, 2008, through July 15, 2008. One report was marked as a 15th day after campaign treasurer appointment report and covered the period from July 15, 2008, through July 30, 2008. One report was marked as a 30-day pre-election report for the November 4, 2008, general

election, and covered the period from July 15, 2008, through October 5, 2008. The other two reports were both marked as 8-day pre-election reports for the November 4, 2008, general election. The first one covered the period from October 5, 2008, through October 27, 2008, and the second one covered the period from October 27, 2008, through November 4, 2008.

Accepted Campaign Contributions and Made Campaign Expenditures at a Time When a Campaign Treasurer Appointment Was Not in Effect

3. The complaint alleged that the respondent accepted campaign contributions and made campaign expenditures at a time when he did not have a campaign treasurer appointment in effect.
4. The respondent filed Form ACTA with the local filing authority on August 13, 2008. The complaint alleged that the respondent accepted campaign contributions totaling \$830, and made campaign expenditures totaling \$60 prior to appointing the campaign treasurer.
5. The respondent's report marked as the July 2008 semiannual report disclosed that the respondent accepted a \$30 political contribution on May 1, 2008, and an \$800 political contribution on May 15, 2008. The report also disclosed that the respondent made \$60 of political expenditures of \$50 or less during the reporting period from January 1, 2008, through July 15, 2008.
6. The respondent swore that after receiving advice from local election officials he filed his treasurer appointment in August 2008.
7. The respondent also stated that he received two checks before he had a campaign treasurer, and that he opened a checking account in June of 2008.

Required Information on Campaign Finance Reports

8. The complaint alleged that the respondent's reports failed to disclose the dates and descriptions of political expenditures.
9. The complaint alleged that the respondent failed to include the date and description for political expenditures on his July 2008 semiannual report. The respondent's July 2008 semiannual report did not include a Schedule F (Political Expenditures) or a Schedule G (Political Expenditures from Personal Funds). On cover sheet page 2 the report disclosed "Total Political Expenditures of \$50 or Less, Unless Itemized" of \$60 and "Total Political Expenditures" of \$60.
10. The complaint also alleged that the respondent failed to properly disclose political expenditures on his 30-day pre-election report for the November 4, 2008, general election. The respondent's 30-day pre-election report did not include a Schedule F and disclosed one expenditure on Schedule G of \$215.96 to Texas Heritage Kitchen for sign material without

disclosing the date of the expenditure. Records of the Texas Secretary of State show that Texas Heritage Kitchen LLC is a business entity and the respondent holds a position on the governing body of the business. The complaint alleged that the expenditure to that entity was not properly disclosed because it did not show the respondent's interest. On cover sheet page 2 the report disclosed "Total Political Expenditures of \$50 or Less, Unless Itemized" of \$489.11 and "Total Political Expenditures" of \$717.82.

11. The complaint also alleged that the respondent failed to include the date and description for political expenditures on his 8-day pre-election report for the November 4, 2008, general election. The respondent's first 8-day pre-election report did not include a Schedule F or a Schedule G. On cover sheet page 2 the report disclosed "Total Political Expenditures of \$50 or Less, Unless Itemized" of \$119.92 and "Total Political Expenditures" of \$119.92.
12. The complaint also alleged that the respondent failed to include the date and description for political expenditures on a second 8-day pre-election report that he designated as being for the November 4, 2008, general election. The respondent's second 8-day pre-election report did not include a Schedule F or a Schedule G. On cover sheet page 2 the report disclosed "Total Political Expenditures of \$50 or Less, Unless Itemized" of \$30 and "Total Political Expenditures" of \$30.
13. The respondent's response stated, "This was my first campaign. Funds spent were under \$50.00 per each expenditure so they were not itemized."

Failure to Timely File Campaign Finance Reports

14. The complaint alleged that the respondent failed to timely file five campaign finance reports and failed to cover the proper reporting period on one of the reports.
15. The respondent filed an appointment of campaign treasurer on August 13, 2008. The respondent then filed five campaign finance reports on October 30, 2008. One report is marked as a July 2008 semiannual report and covers the period from January 1, 2008, through July 15, 2008. The due date for the report was July 15, 2008. Another report is marked as a 15th day after campaign treasurer appointment report and covers the period from July 15, 2008, through July 30, 2008. A third report is marked as a 30th day before election report and covers the period from July 15, 2008, through October 5, 2008. The due date for the 30-day pre-election report for the November 2008 election was October 6, 2008. A fourth report is marked as an 8th day before election report and covers the period from October 5, 2008, through October 27, 2008. The due date for the 8-day pre-election report for the November 2008 election was October 27, 2008. A fifth report is marked as an 8th day before election report also and covers the period from October 27, 2008, through November 4, 2008.

Used Campaign Funds for Personal Use

16. The complaint alleged that the respondent used his political funds for personal use and reported the use of the political funds as “sign material” that he purchased from his own LLC, Texas Heritage Kitchen. The complaint stated that the respondent failed to display a campaign sign of any kind at any time during the 2008 Hays County election cycle during which he filed as a candidate. The complaint also stated that the respondent has also failed to identify and account for political campaign contributions he received as a candidate but did not provide any evidence of this.
17. There was no evidence that the respondent used political contributions to make the expenditure at issue, or that undisclosed political contributions were used to make the expenditure.

Made or Authorized Payments from Political Contributions for Personal Services

18. The complaint alleged that the respondent made or authorized payments from political contributions for personal services, rendered by the respondent, to a business in which the respondent has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business. The complaint did not provide any evidence that the respondent made or authorized payments from political contributions for personal services other than the 30-day pre-election report that disclosed a \$215.96 political expenditure from personal funds to Texas Heritage Kitchen. There was no other evidence to support the allegation.

IV. Findings and Conclusions of Law

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

Accepted Campaign Contributions and Made Campaign Expenditures at a Time When a Campaign Treasurer Appointment Was Not in Effect

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by this chapter. ELEC. CODE § 252.001.
2. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031 (a).
3. The respondent accepted \$830 in political contributions and made \$60 in political expenditures before appointing a campaign treasurer. Therefore, there is credible evidence that the respondent violated sections 252.001 and 253.031 of the Election Code.

Required Information on Campaign Finance Reports

4. Each 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).
5. Each report by a candidate must include on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the candidate has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business. ELEC. CODE § 254.061(5).
6. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
7. The respondent's July 2008 semiannual report disclosed that the respondent made \$60 of political expenditures of \$50 or less. There was no evidence that any of these political expenditures exceeded the \$50 threshold. The respondent was not required to disclose the date or description of these political expenditures. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code with respect to those expenditures.
8. The respondent's 30-day pre-election report disclosed that the respondent made a political expenditure from personal funds of \$215.96 to Texas Heritage Kitchen without disclosing the date of the expenditure. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with respect to that expenditure. The complaint also alleged that the respondent failed to properly disclose the political expenditure to Texas Heritage Kitchen LLC, a business in which the respondent had a participating interest of more than 10 percent, held a position on the governing body, or served as an officer of the business. Because the expenditure at issue was made from the respondent's personal funds, no additional disclosure was required. Therefore, there is credible evidence that the respondent did not violate section 254.061(5) of the Election Code.
9. The 30-day pre-election report also disclosed total political expenditures of \$50 or less, unless itemized, of \$489.11. When added to the itemized expenditure total of \$215.96 the total is \$705.07. The respondent's report disclosed total political expenditures of \$717.82, a difference of \$12.75. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.
10. The respondent's first 8-day pre-election report disclosed that the respondent made \$119.92 of political expenditures of \$50 or less. There was no evidence that any of these political expenditures exceeded the \$50 threshold. The respondent was not required to disclose the

date or description of these political expenditures. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code with respect to those expenditures.

11. The respondent's second 8-day pre-election report disclosed that the respondent made \$30 of political expenditures of \$50 or less. The respondent was not required to disclose the date or description of these political expenditures. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code with respect to those expenditures.

Failure to Timely File Campaign Finance Reports

12. A candidate shall file two reports for each year as provided by this section. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. ELEC. CODE § 254.063.
13. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day. The second report must be received by the authority with whom the report is required to be filed not later than the 8th day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064.
14. An officeholder who appoints a campaign treasurer shall file a report as provided by this section. The report covers the period beginning the first day after the period covered by the last report required to be filed under this chapter or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed. The report shall be filed not later than the 15th day after the date the officeholder's campaign treasurer is appointed. *Id.* § 254.094.
15. The complaint alleged the respondent filed the July 2008 semiannual report late. That report was due July 15, 2008. The respondent was a candidate for county commissioner. The respondent did not file the report until October 30, 2008. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

16. The complaint also alleged that the respondent filed the 30-day and 8-day pre-election reports for the November 4, 2008, election late. The respondent was an opposed candidate in that election. The respondent filed both the 30-day and 8-day pre-election reports on October 30, 2008. The reports were due October 6 and October 27, 2008, respectively. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code.
17. The complaint also alleged that the respondent's second 8-day pre-election report covered a period after the date the report was filed. The respondent's second 8-day pre-election report was not required. The respondent may have intended the second 8-day pre-election report to be a final report but checked the wrong box. Nevertheless, the respondent was not required to file a second 8-day pre-election report. Therefore, there is credible evidence that the respondent did not violate section 254.064 of the Election Code with respect to the second 8-day pre-election report.
18. The complaint also alleged that the respondent filed the 15th day after campaign treasurer appointment report late. The respondent was not an officeholder, therefore, the requirement of section 254.094 of the Election Code to file a campaign finance report not later than the 15th day after the date the officeholder's campaign treasurer is appointed did not apply to the respondent. Therefore, there is credible evidence that the respondent did not violate section 254.094 of the Election Code.

Used Campaign Funds for Personal Use

19. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. *Id.* § 253.035.
20. The respondent's 30-day pre-election report disclosed that the respondent expended personal funds to pay Texas Heritage Kitchen for the sign material. The respondent's reports do not disclose that the respondent used political contributions to pay for the sign material and there was no evidence that the expenditure was made from political contributions. Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code.

Made or Authorized Payments from Political Contributions for Personal Services

21. 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: (1) a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or

serves as an officer of the business, or (2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder. *Id.* § 253.041.

22. There is no evidence that the respondent made or authorized payments from political contributions for personal services and the evidence indicated that the expenditure at issue was made from personal funds. Therefore, there is credible evidence that the respondent did not violate section 253.041 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 candidate and each political committee shall appoint a campaign treasurer as provided by this chapter. The respondent also acknowledges that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. The respondent also acknowledges that each 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 also acknowledges that each report must include the total amount of all political expenditures made during the reporting period. The respondent also acknowledges that a candidate shall file two reports for each year, one not later than July 15, and one not later than January 15. The respondent also acknowledges that for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports, the first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day, and the second report must be received by the authority with whom the report is required to be filed not later than the 8th day before election day. 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.

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-2811377.

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

Nickolas George Ramus, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director