

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DAN GATTIS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2911275

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 23, 2011, to consider sworn complaint SC-2911275. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 254.031, 254.0612, and 254.0912 of the Election Code, and section 20.29(a) of the Ethics Commission Rules, 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 failed to: 1) properly disclose total political contributions maintained; 2) include in campaign finance reports required information for political contributions from out-of-state political committees; 3) disclose the full name of contributors; 4) report a political contribution from a political committee and political expenditures made from that political contribution; 5) sufficiently describe the purpose of political expenditures; and 6) 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 a reporting period.

III. Facts Supported by Credible Evidence

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

1. The respondent is former state representative of District 20 and was a candidate for re-election in the November 2008 general election.

Total Political Contributions Maintained

2. The complaint alleged that the respondent incorrectly reported the amount of total political contributions maintained in four campaign finance reports. The respondent corrected the four reports at issue to disclose the correct amounts of total political contributions maintained.

Contributions from Out-of-State Political Committees

3. The complaint alleged that the respondent failed to include the out-of-state political committee identification number for nine political contributions in his January and July 2008 semiannual reports. The respondent corrected the reports to add the FEC identification number for seven political contributions. The remaining two contributions at issue were from political committees that file with the commission.

Disclosure of Full Names of Contributors

4. The complaint alleged that the respondent failed to disclose the full name of two contributors in his January and July 2008 semiannual reports. The respondent disclosed the full name of one of the contributors at issue. The respondent did not disclose the committee's full name for the other contribution at issue.

Reporting Political Contributions/Expenditures

5. The complaint alleged that the respondent failed to disclose a political contribution of \$6,456.37 from the specific-purpose committee Texans for Dan Gattis and failed to disclose political expenditures made from those political contributions in his July 2009 semiannual report.
6. The committee's July 2009 semiannual report disclosed a political expenditure of \$6,456.37 to Dan Gattis for "Mileage reimbursement."
7. The respondent's original July 2009 semiannual report disclosed no political contributions or expenditures.
8. The respondent filed a corrected report to add a political contribution of \$6,456.37 from Texans for Dan Gattis and two political expenditures to the respondent totaling approximately \$6,684.36 for "Mileage Reimbursement."

Purpose of Political Expenditures

9. The complaint alleged that the respondent failed to sufficiently describe the purpose of political expenditures based on disclosures in three campaign finance reports. The respondent filed corrected reports and clarified the purposes of expenditures to indicate that they were office overhead or campaign expenses.

Principal Occupation or Job Title and Name of Employer

10. The complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer for three individuals contributing \$500 or more on his January and July 2008 semiannual reports.

11. The respondent corrected the reports at issue and disclosed the occupation or job title and employer's name of contributors that were not included in the original reports.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. A campaign finance report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
3. The respondent corrected the reports at issue to disclose the correct amounts. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code.

Contributions from Out-of-State Political Committees

4. A candidate, officeholder, or political committee that accepts a political contribution from a political committee that files with the Federal Election Commission must include the FEC statement of organization or FEC identification number as a part of the report filed under Chapter 254 for the reporting period in which the contribution was accepted. ELEC. CODE § 253.032.
5. A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report, or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission. Ethics Commission Rules § 20.29(a).
6. The respondent filed corrections to each report at issue to disclose the FEC identification number for seven contributions from out-of-state committees. However, at the time the reports were originally filed, the respondent failed to include this information. Therefore, there is credible evidence of violations of section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules with respect to these contributions.

7. Two of the contributions at issue were from political committees that file with the commission. Thus, the respondent was not required to include an FEC identification number for the contributors. Therefore, there is credible evidence of no violations of section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules with respect to these contributions.

Disclosure of Full Name of Contributors

8. A campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
9. The respondent properly reported the full name of one contributor at issue. The full name of the other contributor was not disclosed on the original report. Therefore, there is credible evidence of no violation and credible evidence of a violation of section 254.031(a)(1) of the Election Code.

Reporting Political Contributions/Expenditures

10. A campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
11. A campaign finance report filed by a candidate 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. *Id.* § 254.031(a)(3).
12. A contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. *Id.* § 251.001(2).
13. A political contribution means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
14. A campaign contribution means, in pertinent part, a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office. *Id.* § 251.001(3).

15. An officeholder contribution means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(4).
16. An expenditure means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
17. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
18. A campaign expenditure means, in pertinent part, an expenditure made by any person in connection with a campaign for an elective office. *Id.* § 251.001(7).
19. An officeholder expenditure means an expenditure made by any person to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(9).
20. A candidate or officeholder who has complied with Ethics Commission Rule § 20.63(d) and whose personal funds have been reimbursed from political contributions must report the amount of the reimbursement as a political expenditure in the report covering the period during which the reimbursement was made. Ethics Commission Rules § 20.63(f).
21. 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 (EAO 347) (1996).
22. According to Ethics Advisory Opinion No. 281 (EAO 281) (1995), for most purposes a specific-purpose political committee supporting a candidate or officeholder has an identity separate from the identity of that candidate or officeholder. EAO 281 also states that a committee must report a transfer of funds to the candidate or officeholder as an expenditure, and the candidate or officeholder must report the transfer as a contribution. *Id.* Similarly, Ethics Advisory Opinion No. 271 (EAO 271) states that if a candidate transfers money or personal equipment to a specific-purpose political committee that supports the candidate, the committee must report a contribution from the candidate. Ethics Advisory Opinion No. 271 (1995). EAO 271 contrasted such a transfer with a situation in which a candidate transfers funds from a personal account to a campaign account, in which no reporting requirement would arise. *Id.* at n.2. In addition, EAO 271 states that creating a specific-purpose committee to support a candidate “confers no advantage on a candidate in terms of the reporting requirements and restrictions in the campaign finance law.” *Id.* at n.1.
23. While the information about the payment was properly reported on the candidate’s SPAC report as an expenditure to the candidate for mileage reimbursement, the candidate failed to

- report a corresponding contribution and expenditure on his COH report as required in various commission opinions.
24. The July 2009 semiannual report filed by Texans for Dan Gattis Inc. disclosed that the committee paid approximately \$6,456.37 to the respondent during the reporting period. The original July 2009 semiannual report filed by the respondent did not disclose any political contributions or political expenditures. The respondent filed a corrected report disclosing \$6,456.37 in political contributions and \$6,684.36 in political expenditures. The respondent indicated the expenditures were for mileage reimbursement.
 25. There was no requirement that the respondent disclose the use of his personal vehicle as a political expenditure from personal funds. However, because the payment the respondent accepted from Texans for Dan Gattis Inc. was made with the intent that it be used to defray expenses the respondent incurred in performing a duty or engaging in an activity in connection with his office, or as a candidate for public office, the payment was a political contribution. As discussed previously, the commission held in EAO 281 that a committee must report a transfer of funds to a candidate or officeholder as an expenditure, and the candidate or officeholder must report the transfer as a contribution. Thus, the respondent was required to report the political contribution he accepted from Texans for Dan Gattis Inc. during the period at issue. The respondent did not disclose this information in his report.
 26. Additionally, under EAO 347, the respondent was required to report a political expenditure when he used political contributions to reimburse himself for the use of his personal vehicle. The respondent did not disclose the reimbursements he made from political contributions as political expenditures in his report.
 27. The respondent failed to include in his July 2009 semiannual report approximately \$6,460 in political contributions from Texans for Dan Gattis Inc. and approximately \$6,680 in political expenditures he made as reimbursements for the use of his personal vehicle. Therefore, there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code.

Purpose of Political Expenditures

28. A campaign finance report filed by a candidate 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).
29. 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.

30. Although the respondent filed corrected reports to provide additional information for the political expenditures at issue, the original disclosures were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Principal Occupation or Job Title and Name of Employer

31. Each report by a candidate for or holder of a statewide office in the executive branch or 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 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, 254.0912.
32. As state representative and a candidate for a legislative office, the respondent was required to disclose the occupations and employers of contributors whose contributions equaled or exceeded \$500. The respondent failed to provide complete information for three contributors at the time the reports were originally due. Therefore, there is credible evidence of violations of section 254.0612 and 254.0912 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 for a candidate or officeholder that files with the commission the proper way to report political contributions from out-of-state political committees is in accordance with section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules.

The respondent acknowledges that each campaign finance report must include: (1) as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period; (2) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions; and (3) 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 also acknowledges that each report by a candidate for or holder of a statewide office in the executive branch or 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 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 \$1,000 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-2911275.

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

Dan Gattis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director