

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
JOHN GORDON,	§	TEXAS ETHICS COMMISSION
	§	
RESPONDENT	§	SC-3100246 AND SC-31110224

FINAL ORDER

I. Recitals

On March 27, 2013, the Texas Ethics Commission (commission) held a preliminary review hearing to consider complaints SC-3100246 and SC-31110224. After the completion of the preliminary review hearing, the commission proposed a resolution to the respondent to resolve and settle the complaints, but the respondent did not agree to the proposed resolution. The commission held a formal hearing to consider the complaints on August 20, 2014. A quorum of the commission was present. The respondent was present.

II. Findings of Fact

1. The respondent is John Gordon, whose last known mailing address is 1007 Green Meadow, Round Rock, Texas 78664-3102. Complaint SC-3100246 was filed with the commission against the respondent on February 12, 2010. The commission, by its own motion, initiated complaint SC-31110224 against the respondent on October 6, 2011.
2. The commission mailed the Notice of Formal Hearing to the respondent on July 25, 2014, by certified mail, return receipt requested, restricted delivery and delivery confirmation. The respondent received the notice on July 26, 2014.
3. The commission held the formal hearing on August 20, 2014, at 1:00 p.m., in Austin, Texas.
4. The respondent was a candidate for state representative of District 52 in a primary election held on March 4, 2008; a primary election held on March 2, 2010; and a primary runoff election held on April 13, 2010.

Complaint SC-3100246

5. Complaint SC-3100246 alleged that the respondent: 1) did not properly disclose political contributions and political expenditures on campaign finance reports, as required by section 254.031 of the Election Code and section 20.61 of the Ethics Commission Rules; 2) did not include on campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more to the

respondent during a reporting period, as required by section 254.0612 of the Election Code; 3) did not properly disclose reimbursements on campaign finance reports, as required by section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules; and 4) did not timely file a semiannual campaign finance report, as required by section 254.063 of the Election Code.

6. At issue in the complaint are the respondent's 8-day pre-election report for the March 4, 2008, primary election; the July 2008, January 2009, July 2009, and January 2010 semiannual reports; and the 30-day pre-election report for the March 2, 2010, primary election.

Total Political Contributions Maintained

7. The complaint alleged that on each report at issue, the respondent incorrectly reported the total amount of political contributions maintained as of the last day of the reporting period. The allegations were based, in part, on calculations performed from activity disclosed in each report.
8. In the 8-day pre-election report, the respondent disclosed the total amount of political contributions maintained as of the last day of the reporting period (February 23, 2008) as \$4,910.
9. In the July 2008 semiannual report, the respondent disclosed the total amount of political contributions maintained as of the last day of the reporting period (June 30, 2008) as \$0.
10. In the January 2009 semiannual report, the respondent disclosed the total amount of political contributions maintained as of the last day of the reporting period (December 31, 2008) as \$0.
11. Bank records for the periods covered by the earlier reports at issue were not available and were not in evidence.
12. In the July 2009 semiannual report, the respondent disclosed the total amount of political contributions maintained as of the last day of the reporting period (June 30, 2009) as \$20,100. Records for the bank account in which the respondent's political contributions were maintained showed a balance of \$15,000 on June 30, 2009.
13. In the January 2010 semiannual report, the respondent disclosed the total amount of political contributions maintained as of the last day of the reporting period (December 31, 2009) as \$18,651.07. Records for the bank account in which the respondent's political contributions were maintained showed a balance of \$38,954.55 on December 31, 2009.
14. In the 30-day pre-election report, the respondent disclosed the total amount of political contributions maintained as of the last day of the reporting period (January 21, 2010) as \$30,825.52. Records for the bank account in which the respondent's political contributions were maintained showed a balance of \$41,553.67 on January 21, 2010.

15. During the formal hearing, the respondent acknowledged that the total amount of political contributions maintained that was disclosed for the July 2009, January 2010, and 30-day pre-election reports did not match the amounts disclosed in the bank statements as the amounts held as of the last day of the respective reporting period.

Principal Occupation or Job Title and Employer of Contributors

16. The complaint alleged that the respondent did not properly disclose the principal occupation or job title and employer for political contributions on the 8-day pre-election report, July 2008 and January 2010 semiannual reports, and the 30-day pre-election report at issue.
17. On the reports at issue, the respondent left blank the spaces on the reports for used to disclose the principal occupation or job title and employer information for approximately \$3,000 in political contributions from five individuals, all of which equaled or exceeded \$500. During the formal hearing, the respondent provided additional testimony regarding the contributions and generally swore that one contributor who gave \$1,000 was trying to retire during the time at issue and that he believed the remaining contributors had retired or were not employed.
18. The respondent also disclosed two \$1,000 political contributions from an individual on September 8, 2009, and December 14, 2009. The respondent disclosed the contributor's occupation as "Business Administrator" and the employer as "Self-Employed." During the formal hearing, the respondent testified that the contributions were from the respondent's brother, but also stated that if the contribution "was written by" the person identified in the report as the contributor, then that was the name he disclosed in the report. The respondent also testified that the person identified in the report as the contributor was the administrator of his brother's welding business. There is no evidence that the person identified as the contributor was self-employed.
19. The respondent also disclosed a \$500 political contribution from an individual on January 17, 2010, with the principal occupation of "Church Choir" and with a blank space for the name of the contributor's employer. During the formal hearing, the respondent testified that he knew the contributor from a church choir but provided no evidence regarding the contributor's occupation, job title, or employer.
20. The respondent also disclosed two political contributions of \$500, each from a different couple consisting of two individuals. The respondent left blank the space on the report used to disclose the principal occupation or job title and employer of each contributor. During the formal hearing, the respondent testified that he did not know how much the individual members of each couple intended to contribute.

Total Political Expenditures

21. The complaint alleged that the respondent failed to properly disclose the total amount of political expenditures on his July 2008 and January 2010 semiannual reports.
22. In the respondent's 8-day pre-election report, the respondent disclosed a total principal amount of all outstanding loans as \$29,837.17 and a total amount of political contributions maintained as \$4,910.
23. In the subsequent report (the July 2008 semiannual report), the respondent disclosed \$11,500 in total political contributions and \$1,217.53 in total political expenditures, all of which were itemized. The report also itemized one \$15,192.47 credit to the respondent for "Loan Repayment" on Schedule K of the report. The report disclosed an outstanding loan balance of \$14,644.70. During the formal hearing, the respondent acknowledged that the credit was a loan repayment to the respondent made from his political contributions.
24. In the respondent's July 2009 semiannual report, the respondent disclosed \$14,739.70 in total outstanding loans.
25. In the subsequent report (the January 2010 semiannual report), the respondent disclosed \$37,053.93 in total political expenditures, all of which were itemized. The report also disclosed \$0 as the total principal amount of outstanding loans. The report did not disclose any political expenditures to forgive or pay off any outstanding loans. However, the report disclosed a political contribution of \$14,740.70 from the respondent on September 1, 2009, in addition to political contributions from the respondent totaling \$20,000 during the reporting period. Regarding the outstanding loan balance of \$0 disclosed on the January 2010 report, the respondent testified during the formal hearing that he began placing his personal funds into his campaign account as a contribution and "remove[d] the loan off the balance." The records for the respondent's campaign account did not show any funds transferred to the account approximating the amount of \$14,739.70 or any expenditures made out of the account to the respondent to repay the balance of the loan.

Disclosure of Political Expenditures as Reimbursements

26. The complaint alleged that the respondent improperly disclosed reimbursements made from political contributions totaling approximately \$2,130 the reports at issue.
27. The expenditures included three expenditures to the respondent totaling approximately \$1,000 that were disclosed with the purpose of "Campaign Literature." In response to the complaint, the respondent swore, in pertinent part:

In 2008, I printed all my campaign literature off my color laser jet printer at my home. A replacement toner cartridge cost about \$75.00. I charged

back from my home office, the cost of printing multiple batches of literature – like every week I would print up another batch.

28. The respondent also swore, in pertinent part:

I was the vendor – my campaign literature was printed on my home office printer using my home office business supplies. I estimated the cost per piece (COLOR LITERATURE) given the nominal consumption of paper, printer cartridges, printer wear and charged a per piece fee to my campaign from my campaign office. It was less than if I contracted out for printing services.

29. During the formal hearing, the respondent testified that the expenditures to himself were for the use of his laser printer, ink, and paper.
30. The expenditures also include approximately \$300 to an individual disclosed with the purpose of “reimbursement for gasoline.” Records for the respondent’s campaign account included checks totaling \$300 to the individual for “Gasoline Reimbursement” and “Gasoline Reimb.” During the formal hearing, the respondent testified that the expenditures were payments for the person’s mileage to distribute signs.
31. The expenditures also include two political expenditures totaling approximately \$700 disclosed with purposes, in part, as “In Kind Donations.” During the formal hearing, the respondent testified that the expenditures were disclosed to show the use of goods donated as in-kind contributions. Other than the face of the respondent’s reports, there is no evidence that the disclosed expenditures were actually made.
32. The expenditures also include a \$125 political expenditure to an individual disclosed with the purpose of “Campaign Buttons.” Records for the respondent’s campaign account included a check of \$125 to the individual with no stated purpose. During the formal hearing, the respondent generally testified that other individuals began spending their money for his campaign and that he paid the individual for campaign buttons.

Timely Filing of Report

33. The complaint alleged that the respondent filed his January 2009 semiannual report late. The respondent filed the report on January 16, 2009.

Purposes of Political Expenditures

34. The complaint alleged that the respondent failed to properly disclose the purposes of approximately \$10,620 in political expenditures on the reports at issue. Examples of the purposes alleged to be improperly disclosed included: Gas, Tools for Sign Work, Campaign Meals and Legal Representation. There is no evidence supporting the allegations other than the face of the reports.

Disclosure of Full Name or Addresses of Persons Receiving Political Expenditures

35. The complaint alleged that the respondent failed to disclose the full name or address of the payee of two political expenditures totaling \$10,000, which the respondent disclosed on the 30-day pre-election report to "FBHH," including an address, for the purpose of "Legal Representation." The complaint included no evidence other than the face of the report.

Complaint SC-31110224**Maintaining Political Contributions in a Separate Account**

36. Complaint SC-31110224 alleged that, during the period at issue, the respondent failed to keep his political contributions in one or more accounts that were separate from any other account the respondent maintained. During the formal hearing, the respondent acknowledged that he deposited his personal funds into his campaign account for the purpose of using the funds to make political expenditures.

III. Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. *Id.* § 571.032; 1 TAC § 12.21.

Total Political Contributions Maintained

3. Each report must include 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. ELEC. CODE § 254.031(a)(8).
4. Regarding the July 2009 and January 2010 semiannual reports and the 30-day pre-election report at issue, the respondent disclosed in each report a total amount of political contributions maintained that differed from the amount that the respondent held in his campaign account as of the last day of the respective reporting period. The approximate difference between the disclosed amount and the actual amount was, respectively, \$5,100, \$20,300, and \$10,700. Therefore, there is a preponderance of the evidence that the respondent violated section 254.031(8) of the Election Code in connection with the reports.
5. Regarding the remaining reports at issue, there is insufficient evidence that the total amount of political contributions maintained that was disclosed in each report differed from the amount that the respondent held in his campaign account as of the last day of the

respective reporting period. Therefore, there is insufficient evidence that the respondent violated section 254.031(8) of the Election Code in connection with the reports.

Principal Occupation or Job Title and Employer of Contributors

6. 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.
7. The respondent disclosed approximately \$3,000 in political contributions from five individuals that equaled or exceeded \$500 and left blank the spaces on the report used to disclose the principal occupation or job title and employer for each contributor. The respondent generally testified that he believed that the contributors were retired, trying to retire, or were not employed at the time the contributions were accepted, as applicable. However, the reports left the appropriate spaces on the form blank and provided no disclosure as to the nature of the contributors' occupations. Therefore, there is a preponderance of the evidence that the respondent violated section 254.0612 of the Election Code in connection with the contributions.
8. The respondent also disclosed approximately \$2,000 in political contributions from an individual and disclosed her occupation as "Business Administrator" and her employer as "Self-Employed." However, the respondent's testimony indicated that the contributor was actually the respondent's brother and that the person he identified in the report as the contributor was the administrator of the brother's business. Regardless of whether the contribution was from the owner of the business or the owner's administrator, either the contributor's principal occupation or employer was incorrect. Therefore, there is a preponderance of the evidence that the respondent violated section 254.0612 of the Election Code in connection with the contributions.
9. The respondent also disclosed a \$500 political contribution from an individual that disclosed an incorrect principal occupation or job title and did not disclose an employer. Therefore, there is a preponderance of the evidence that the respondent violated section 254.0612 of the Election Code in connection with the contribution.
10. Regarding the remaining two political contributions of \$500, for which the respondent provided no principal occupation, job title, or employer, there is insufficient evidence that the respondent violated section 254.0612 of the Election Code.

Total Political Expenditures

11. A campaign finance 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).

12. The evidence shows that the respondent used political contributions to repay himself \$15,192.47 for political expenditures made from personal funds and did not include that amount in the total amount of political expenditures disclosed in his July 2008 semiannual report. Therefore, there is a preponderance of the evidence that the respondent violated section 254.031(a)(6) of the Election Code in connection with the total amount of political expenditures disclosed on the report.
13. The evidence shows that the respondent had disclosed in his July 2009 semiannual report \$14,739.70 in outstanding loans, which consisted of the amount of funds that the respondent had spent from his personal funds for campaign purposes and for which he had not been reimbursed. In his January 2010 semiannual report, the respondent disclosed the outstanding loan balance as \$0. However, the available evidence indicates that the respondent did not use political contributions to repay himself for the remaining balance of the loan and there is no evidence that the total amount of political expenditures in the report was incorrect. Therefore, there is a preponderance of the evidence that the respondent did not violate section 254.031(a)(6) of the Election Code in connection with the total amount of political expenditures disclosed on the January 2010 semiannual report.

Disclosure of Political Expenditures as Reimbursements

14. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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. ELEC. CODE § 254.031(a)(3).
15. Ethics Commission Rule § 20.62 states that political expenditures made out of personal funds by a staff member of an officeholder or candidate, with the intent to seek reimbursement from the officeholder or candidate, that in the aggregate do not exceed \$5,000 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 \$100 (\$50 until September 28, 2011) 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 \$100 (\$50 until September 28, 2011) or less made during the reporting period.

Ethics Commission Rules § 20.62(a).

16. If the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of an officeholder or

candidate with the intent to seek reimbursement from the officeholder or 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 officeholder, or candidate;
- (2) The expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate; and
- (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate.

Ethics Commission Rules § 20.62(b).

17. A candidate who uses a personal asset for campaign purposes is not required to disclose the use of that asset. However, a candidate must disclose on Schedule F any reimbursement for the use of the asset. Ethics Advisory Opinion Nos. 116 (1993) and 347 (1996). If a political expenditure is made or an asset is purchased for campaign use, it must be disclosed in the report covering the period in which the expenditure is made. *Id.*
18. A candidate who makes political expenditures from the candidate'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 under this title 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).
19. The respondent disclosed approximately \$1,000 in political expenditures made from political contributions to himself for "Campaign Literature." The evidence indicates that the respondent made the payments to himself for the use of his personal laser printer and supplies to create political advertising. Thus, the respondent was not required to disclose the use of the personal assets for campaign purposes. Therefore, there is a preponderance of the evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.62 of the Ethics Commission Rules in connection with the use of the assets.
20. The respondent also disclosed approximately \$700 in political expenditures made from political contributions to two individuals that were described as "In Kind Donations." The evidence indicates that the expenditures were not actually made, but that the respondent disclosed the activity to show that he uses goods that were accepted as in-kind political contributions. Therefore, there is a preponderance of the evidence that the

respondent violated section 254.031(a)(3) of the Election Code by improperly disclosing the activity as political expenditures.

21. The respondent disclosed a \$125 political expenditure made from political contributions to an individual for "Campaign Buttons." The evidence seemed to indicate that the individual independently purchased the campaign buttons with the intent of making a political contribution to the respondent, but that the respondent ultimately purchased the campaign buttons from the individual. Therefore, there is not a preponderance of the evidence that the respondent violated section 254.031(a)(3) of the Election Code or section 20.62 of the Ethics Commission Rules in connection with the expenditure.

Timely Filing of Report

22. A candidate is required to file two reports for each year. ELEC. CODE § 254.063(a). 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, as applicable, and continuing through December 31. *Id.* § 254.063(c).
23. The respondent's January 2009 semiannual report was due on January 15, 2009, and the respondent filed it on January 16, 2009. There is a preponderance of the evidence that the respondent violated section 254.063(c) of the Election Code in connection with the report.

Purposes of Political Expenditures

24. A campaign finance report must include, 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. ELEC. CODE § 254.031(a)(3).
25. 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(a).
26. The purposes of the political expenditures at issue were adequately disclosed. Therefore, there is a preponderance of the evidence that the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61 of the Ethics Commission Rules in connection with the purposes of the expenditures.

Disclosure of Full Name or Addresses of Persons Receiving Political Expenditures

27. Each report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).

28. The respondent disclosed two political expenditures to “FBHH” for legal services. There is no evidence that the name of the payee was incorrectly disclosed. Therefore, there is not a preponderance of the evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with the expenditures.

Complaint SC-31110224

Maintaining Political Contributions in a Separate Account

29. During the time at issue, section 253.040 of the Election Code stated that 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(a). Subsequently, section 253.040 of the Election Code was amended to state that, except as provided by section 253.0351(c), 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. Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 76.02, eff. September 28, 2011.
30. A candidate or officeholder who deposits personal funds in an account in which political contributions are held shall report the amount of personal funds deposited as a loan and may reimburse the amount deposited as a loan from political contributions or unexpended personal funds deposited in the account. The reimbursement may not exceed the amount reported as a loan. Personal funds deposited in an account in which political contributions are held are subject to section 253.035 and must be included in the reports of the total amount of political contributions maintained required by section 254.031(a)(8) and section 254.0611(a). ELEC. CODE § 253.0351(c); Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 76.01, eff. September 28, 2011.
31. The evidence indicates that the respondent deposited his personal funds into his campaign account, in which he maintained political contributions. However, the applicable law was subsequently amended to permit a candidate to deposit personal funds into an account in which political contributions are held and report the amount deposited as a loan. Therefore, there is a preponderance of the evidence that the respondent did not violate section 253.040 of the Election Code.

IV. Confidentiality

The final order entered by the commission after the completion of a formal hearing on these complaints describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this final order is not confidential pursuant to Section 571.140 of the Government Code, and may be disclosed by members and staff of the commission.

V. Sanction

The commission imposes a \$1,500 civil penalty against the respondent. The commission orders that the respondent pay the penalty within 30 days of the date of this order.

Date: _____

FOR THE COMMISSION

Natalia Luna Ashley
Executive Director
Texas Ethics Commission