

TEXAS ETHICS COMMISSION

IN THE MATTER OF

THE HONORABLE RICHARD J.
NORIEGA

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-210647

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 10, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210647 filed against the Honorable Richard J. Noriega, Respondent. The commission met again on April 12, 2002, to consider Sworn Complaint SC-210647. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 253.035(h), Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent failed to include the political advertising disclosure statement on political advertising and misrepresented the office held, and also alleges that the respondent used political contributions to pay his spouse for personal campaign-related services.

III. Facts Supported by Credible Evidence

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

1. The complaint was filed June 7, 2001, against Richard J. Noriega, a member of the Texas House of Representatives.
2. The political advertising allegations address conduct that allegedly occurred February 2, 1998.

3. The respondent's January 2000 campaign finance report shows an expenditure on Schedule F (Political Expenditures) to Melissa Noriega for "campaign expenses" in the amount of \$1,400.69.
4. The complainant alleges the respondent made the expenditure to the respondent's wife for personal services.
5. The respondent submitted a sworn response, along with copies of receipts.
6. The respondent swears that the receipts "represent out-of-pocket expenditures reimbursed to Mrs. Richard Noriega from the campaign account of Rick Noriega." The respondent swears that both he and his wife made the expenditures and then he reimbursed his wife from the campaign account.
7. The respondent swears that "[n]one of the expenses listed were for personal use or were payment for any service."
8. The expenditures were not reported on Schedule G (Political Expenditures Made From Personal Funds), nor on Schedule E (Loans).
9. In response to the complaint, the respondent filed a good-faith affidavit and corrected report itemizing the expenditures for which he reimbursed his wife. The expenditures on the corrected report total \$1,400.69.

IV. Findings and Conclusions of Law

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

Political Advertising

1. The commission may not consider an allegation if the alleged violation is also a criminal offense and is barred from criminal prosecution by the operation of the applicable statute of limitations. Section 12.5(3), Ethics Commission Rules.
2. An indictment or information for any misdemeanor may be presented within two years from the date of the commission of the offense, and not afterward. Article 12.02, Code of Criminal Procedure.
3. The political advertising allegations under Sections 255.001 and 255.006, Election Code, are Class A misdemeanors.
4. The complainant alleges that the conduct related to Sections 255.001 and 255.006, Election Code, occurred on or about February 2, 1998. The complaint was filed June 7, 2001, outside

the applicable statute of limitations. Therefore, the commission does not have jurisdiction to consider the political advertising allegations.

Payment for Personal Services

5. A candidate or officeholder may not knowingly make or authorize a payment from a political contribution for personal services rendered by the spouse of the candidate or officeholder. Section 243.041, Election Code.
6. The complainant alleges that the \$1,400.69 expenditure listed on Schedule F of page 40 of the respondent's January 2000 semiannual report was for personal services rendered by the respondent's wife.
7. The respondent swears that the expenditures were not for personal use, and were not payments to his wife for personal services.
8. The respondent swears that the expenditures shown on the receipts submitted with his sworn response were expenses incurred by both the candidate and his wife that were later reimbursed from campaign contributions.
9. The complainant did not provide evidence to show that the expenditures actually went to the respondent's wife for personal services, and the copies of the receipts the respondent submitted do not show his wife as the payee. Therefore, there is credible evidence that the respondent did not violate Section 253.041, Election Code.

Political Expenditures From Personal Funds

10. A political expenditure is defined as a campaign or officeholder expenditure. Section 251.001(10), Election Code.
11. A campaign expenditure is an expenditure made in connection with a campaign for elective office. Section 251.001(7), Election Code.
12. An officeholder expenditure is one 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 that are not reimbursable with public money. Section 251.001(9), Election Code.
13. A candidate or officeholder must report all political expenditures. Section 254.031, Election Code.
14. A candidate or officeholder who makes political expenditures from personal funds may use political contributions to reimburse those expenditures only if the candidate or officeholder

- reported the expenditures during the reporting period in which the expenditures were made. Section 253.035(h), Election Code.
15. The report on which the expenditures from personal funds are disclosed must clearly designate that the expenditures were from personal funds and that the expenditures are subject to reimbursement. Section 253.035(h), Election Code.
 16. An expenditure reported as a political expenditure from personal funds for which the candidate will seek reimbursement must be shown on Schedule G of the candidate's campaign finance report.
 17. Alternatively, a candidate or officeholder may report the amount of a political expenditure from personal funds as a loan, and may reimburse those personal funds from political contributions in the amount of the reported loan. Section 253.0351, Election Code. If the candidate chooses to report the amount of the expenditure as a loan, it must be reported on Schedule E.
 18. The respondent did not originally report on Schedule G the political expenditures from personal funds for which he was reimbursed from political contributions, nor did the respondent report the expenditures as a loan on Schedule E.
 19. After the complaint was filed, the respondent filed a corrected report and good-faith affidavit disclosing those expenditures for which he reimbursed his wife. Thus, the respondent is not subject to a fine for a late report. Sections 18.49 and 18.33, Ethics Commission Rules.
 20. Reimbursement without properly reporting political expenditures on the original report may not be cured by filing a corrected report after the report deadline has passed. Section 22.19(e), Ethics Commission Rules.
 21. The respondent did not properly report the political expenditures from personal funds for which he made the reimbursement. Therefore, there is credible evidence that the respondent violated Section 253.035(h), 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the

commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.

3. The respondent acknowledges that a candidate or officeholder who makes political expenditures from personal funds may use political contributions to reimburse those expenditures only if the candidate or officeholder reported the expenditures during the reporting period in which the expenditures were made. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 21, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the violation described under Section IV, Paragraph 21.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-210647;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$500 civil penalty to the

Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 10, 2002; and

- 4. that the executive director shall promptly refer SC-210647 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-210647 as proposed in this ORDER and AGREED RESOLUTION.

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

 The Honorable Richard J. Noriega, Respondent

EXECUTED ORIGINAL received by the commission on: _____
 Texas Ethics Commission

By: _____
 Tom Harrison, Executive Director