

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JESSE QUACKENBUSH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2211130

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 15, 2002, and voted to accept jurisdiction of Sworn Complaint SC-2211130 filed against Jesse Quackenbush. The commission met again on April 11, 2003, to consider Sworn Complaint SC-2211130. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 254.031 and 254.063 of the Election Code, laws 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, a candidate for state representative, improperly reimbursed himself for political expenditures made from personal funds, failed to report a political expenditure on a campaign finance report, and failed to include complete payee addresses on a campaign finance report.

III. Facts Supported by Credible Evidence

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

1. In January 2002, the respondent filed a campaign treasurer appointment as a candidate for state representative.
2. On July 9, 2002, the respondent filed a July 2002 semiannual report.
3. The report disclosed contributions totaling \$22,922.35, which included five "contributions" from the respondent in the amounts of \$600, \$2,500, \$4,000, \$2,667.35, and \$1,000.

4. The report disclosed expenditures on Schedule F (used to report expenditures made from political contributions) totaling \$22,576.43, which included two expenditures listing the respondent as the payee, one for \$600 and the other for \$2,467.35.
5. The report disclosed a \$2,467.35 expenditure listing the respondent's business as the payee. The purpose provided for the expenditure was "rent, office supplies, postage, paper."
6. The report includes three payees with incomplete addresses.
7. In response to this complaint, the respondent filed a corrected report and good-faith affidavit for the July 2002 semiannual report.
8. Regarding the allegation that he improperly reimbursed himself from political funds, the respondent's corrected report deleted the \$600 expenditure and the \$2,467.35 expenditure that listed the respondent as the payee. In his good-faith affidavit, the respondent swears that the \$600 expenditure should have been reported only on Schedule G (for reporting political expenditures made from personal funds) and that the \$2,467.35 expenditure should have been reported only on Schedule H (for reporting payments from political contributions to a business of the candidate/officeholder).
9. Regarding the allegation that he failed to report a \$600 filing fee expenditure, the respondent's corrected report disclosed a \$600 filing fee expenditure on Schedule G (used to report political expenditures from personal funds) and deleted the \$600 previously reported as a contribution to his campaign and the \$600 originally reported as a payment to himself. In the good-faith affidavit he stated that the \$600 should have been reported only on Schedule G.
10. Regarding the allegation that he failed to provide complete addresses for three payees, the respondent's corrected report included the full addresses for those three payees.
11. In his good-faith affidavit the respondent swears, "These were inadvertent mistakes by a novice candidate."

IV. Findings and Conclusions of Law

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

1. An individual who has a campaign treasurer appointment on file is a candidate and is required to file semiannual reports. Elec. Code §§ 251.001(1)(A) (defining "candidate") and 254.063 (requiring a candidate to file semiannual reports).

2. The respondent had a campaign treasurer appointment on file during the period covered by the July 2002 semiannual report and was therefore required to file that report.
3. Each report filed under title 15 of the Election Code must contain details about contributions accepted during the reporting period that in the aggregate exceed \$50, including the full name and address of the contributor. *Id.* § 254.031.
4. Each report must contain details about expenditures made during the reporting period that in the aggregate exceed \$50, including the full name and address of the payee. *Id.*
5. A filer may correct a reporting error at any time by filing a corrected report. Ethics Commission Rules § 18.9.
6. Under Ethics Commission Rules § 18.27, the commission is not required to waive the fine for a respondent in a sworn complaint who files a corrected report, but may consider the correction to be a mitigating factor in determining the amount of any fine.
7. A candidate or officeholder who makes political expenditures from personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully and timely reported on the report covering the period in which the expenditures were made, including payees, dates, purposes, and amounts. Elec. Code § 253.035(h). Additionally, the report must indicate that the expenditures were made from personal funds and that reimbursement from political contributions is intended. *Id.* Ethics Commission Rules specifically provide that the failure of a candidate or officeholder to comply with the procedures for reporting political expenditures made from personal funds may not be cured by filing a corrected report after the original report deadline has passed. Ethics Commission Rules § 22.19(e).
8. The respondent's July 2002 semiannual report indicated that the respondent used political funds to reimburse himself for \$3,067.35. The corrected July 2002 semiannual report, however, disclosed that that was not the case.
9. Originally, the respondent reported a \$600 entry as both a contribution from himself and as a reimbursement to himself. The corrected report disclosed that the \$600 should have been reported only as a \$600 expenditure made from personal funds to pay a filing fee.
10. Originally, the respondent also reported a \$2,467.35 entry as both a payment to himself and as a payment to his business. The corrected report disclosed that it should have been reported only as a payment to the business. The respondent swears that the errors were inadvertent mistakes by a novice candidate.

11. The evidence shows that the respondent did not use political contributions to make payments to himself. Therefore, there is credible evidence that the respondent did not violate section 253.035 of the Election Code.
12. The evidence shows that the respondent improperly reported the contribution and the two expenditures at issue here. Therefore, there is credible evidence that the respondent violated sections 254.031 and 254.063 of the Election Code.
13. The respondent's original July 2002 semiannual report did not disclose a \$600 expenditure for a filing fee. Rather, it included a \$600 contribution from the respondent to his own campaign and a \$600 payment to the respondent.
14. The respondent's corrected July 2002 semiannual report disclosed a \$600 filing fee on Schedule G and deleted the \$600 previously reported as a contribution from himself and the \$600 previously reported as a payment to himself. In the good-faith affidavit the respondent stated that the \$600 should have been reported only on Schedule G.
15. The evidence shows that the respondent failed to correctly report a \$600 expenditure for a filing fee. Therefore, there is credible evidence that the respondent violated sections 254.031 and 254.063 of the Election Code.
16. The respondent's original July 2002 semiannual report did not provide a complete address for three payees. The respondent's corrected July 2002 semiannual report provided the missing information.
17. There is credible evidence that by failing to provide complete addresses on the original July 2002 semiannual report, the respondent violated sections 254.031 and 254.063 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 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 title 15 of the Election Code sets out specific reporting requirements for political expenditures from personal funds and for payments from political contributions to a business of the candidate. The respondent also acknowledges that section 254.031 of the Election Code requires that a filer report a complete address for a contributor or payee. 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 violations described under Section IV, Paragraph 12, 15, and 17, 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 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. No Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, 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 no civil penalty for the violations described under Section IV, Paragraphs 12, 15, and 17.

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-2211130;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and

4. that the executive director shall promptly refer SC-2211130 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-2211130 as proposed in this ORDER and AGREED RESOLUTION.

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

Jesse Quackenbush, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director