

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ANNIE REBECCA ELLIOTT,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2612248

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 21, 2007, to consider sworn complaint SC-2612248. A quorum of the commission was present. The commission determined that there is credible evidence of technical or *de minimis* violations of sections 254.031(a)(6), 254.031(a)(8), 254.036, and 254.061 of the Election Code, and credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code (with respect to contributor and payee addresses), and section 254.031(a)(1) of the Election Code and section 20.59 of the Ethics Commission Rules (with respect to the credit card expenditures), laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to properly complete her campaign finance reports, failed to properly report political contributions and expenditures, converted political contributions to personal use, used political contributions to make a payment to her spouse for personal services, and failed to properly disclose political expenditures made by credit card.

III. Facts Supported by Credible Evidence

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

1. The respondent is Annie Rebecca Elliott, a successful candidate for Fort Bend County District Clerk in the November 7, 2006, general election.

Failure to Properly Complete Campaign Finance Reports

2. The complaint alleges that the respondent failed to fill in "Total pages filed" on certain pages of her January 2006 semiannual report, and 30-day and 8-day pre-election reports.

3. The complaint alleges that the respondent failed to fill in “Filer Name” on certain pages of her 8-day pre-election report.
4. The complaint also alleges that the respondent failed to fill in “Office Sought” on her 8-day pre-election report.
5. The respondent’s reports do not include the information at issue.

Failure to Properly Report Political Contributions and Expenditures

Total Political Contributions

6. The complaint alleges that the respondent failed to accurately record “Total Political Contributions” on the January and July 2006 semiannual reports, and the 30-day pre-election report.
7. The respondent acknowledges the errors.

Total Political Contributions Maintained

8. The complaint alleges that the amount of the respondent’s “Total Political Contributions Maintained As Of The Last Day Of Reporting Period” on her January and July 2006 semiannual reports and on her 30-day and 8-day pre-election reports do not appear to be correct.
9. On October 30, 2006, (38 days before the complaint was filed) the respondent filed a corrected 30-day pre-election report to correct a clerical error that resulted in the reporting of an incorrect contributions maintained total. The difference in what was originally reported and the correction was \$82.48.

Addresses

10. The complaint alleges that the respondent failed to include complete contributor and payee addresses on the following reports: the January and July 2006 semiannual reports and the 30-day and 8-day pre-election reports for the November 2006 election.
11. The respondent’s affidavit acknowledges that in the four reports at issue, 33 of approximately 173 entries did not have a full address.

Failure to Properly Describe the Purpose of Expenditures

12. The complaint alleges that the respondent failed to properly describe the purpose of expenditures on her January 2006 semiannual report.

Failure to Properly Report Credit Card Expenditures

13. The complaint alleges that the respondent failed to report the full name and address of the payee of an October 5, 2006, political expenditure of \$1,174.24. The complaint alleges that the respondent listed the expenditure on both her 30-day and 8-day pre-election reports disclosing Mastercard as the payee and giving Mastercard's address as the payee's address.
14. The complete name of the payee was listed on the report as "Price-Rite Company." The respondent swears that the purchase was made on the Internet and an address was not known. The respondent filed a corrected report correcting the clerical error of duplicating the same transaction.

Conversion of Political Contributions to Personal Use

15. The complaint alleges that the respondent converted political contributions to personal use, based on the disclosed purpose of the expenditures.
16. The respondent swears that: "All of the items which were purchased at fund-raiser's [sic] were connected with the performance of my duties or activities as a candidate for public office, and none were converted to personal use. Additionally, all of the complained of contributions were made at recognizable tax-exempt, charitable organization(s) which are statutorily not a personal use pursuant to section 254.204 of the Election Code (See also Ethics Advisory Opinion No. 47, 1992)." The complaint states that the description of "fence posts" could indicate use of the item for farm or ranch purposes in violation of the personal use prohibition. The respondent swears that her husband has a ranch but that does not have anything to do with the political expenditures for fence posts, they were purchased and used solely for the erection of her political signs and for no other purpose, and the remainder are stored for future election use.

Using Political Contributions to Make a Payment to One's Spouse for Personal Services

17. The complaint alleges that the respondent possibly used political contributions for payment of personal services of her spouse in the amount of \$750 for a parade float, fair shuttle, and construction as disclosed on the respondent's 30-day pre-election report.
18. The evidence indicates that a float was constructed by the respondent's husband for the use of the respondent, as well as seven other candidates who contributed the same amount to its construction and operation. The evidence indicates that the payments to the respondent's husband were for reimbursement for actual expenditures made to design, construct, implement and operate the float.

IV. Findings and Conclusions of Law

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

Failure to Properly Complete Campaign Finance Reports

1. A report filed under chapter 254 of the Election Code with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a).
2. Each report by a candidate must include the office sought. ELEC. CODE § 254.061(1).
3. The respondent failed to fill in “Total pages filed” on different parts of three reports and failed to fill in “Filer Name” on one report. That information is not specifically required by statute, but filing the report in a format prescribed by the commission is required. However, the missing information is easily ascertained by looking at the report. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.036 of the Election Code.
4. The respondent failed to fill in “Office Sought” on one report. The respondent included the information on the other reports at issue. The office sought would be readily apparent to a person looking at the respondent’s reports. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.061 of the Election Code.

Failure to Properly Report Political Contributions and Expenditures

Total Political Contributions

5. Each report must include the total amount of all political contributions. ELEC. CODE § 254.031(a)(6).
6. The evidence indicates that the respondent failed to include the correct total amount of all contributions on three reports due to a clerical error. Thus, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code.

Total Political Contributions Maintained

7. Each 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).

8. There is insufficient evidence to show that the respondent violated section 254.031(a)(8) of the Election Code by failing to enter the correct amount for “Total Political Contributions Maintained As Of The Last Day Of Reporting Period” on the January and July 2006 semiannual reports and the 8-day pre-election report. Before the complaint was filed, the respondent filed a corrected report for the 30-day pre-election report correcting the amount for total political contributions maintained. Therefore, there is credible evidence that the respondent did not report the correct amount on her original 30-day pre-election report. The difference was \$82.48. Thus, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(8) of the Election Code.

Addresses

9. Each report must include the full address of persons making contributions that in the aggregate exceed \$50 during a reporting period. ELEC. CODE § 254.031(a)(1).
10. Each report must include the full address of the persons to whom expenditures are made that in the aggregate exceed \$50 during a reporting period. ELEC. CODE § 254.031(a)(3).
11. There is credible evidence that the respondent failed to include complete addresses of contributors and payees on four reports. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(1) and (3) of the Election Code.

Failure to Properly Describe the Purpose of Expenditures

12. Each report must include the purpose of a political expenditure that in the aggregate exceeds \$50 during a reporting period. ELEC. CODE § 254.031(a)(3).
13. 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.
14. The respondent disclosed the category of goods and services as required by rule. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code.

Failure to Properly Report Credit Card Expenditures

15. A report of a political expenditure by credit card must identify the vendor who receives payment from the card company. Ethics Commission Rules § 20.59.
16. A report is required to include the amount of political expenditures that in the aggregate exceeded \$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).

17. When detailed reporting is required, the proper way to disclose a political expenditure made by credit card is to disclose the vendor as the payee and disclose the vendor's address. It is not proper to name the credit card company as the payee and to identify the vendor where the report asks for the purpose of the expenditure.
18. There is credible evidence that the respondent failed to properly report the October 5, 2006, credit card purchase. The respondent disclosed the credit card company's name and address, instead of the vendor's name and address, as the payee's name and address. Therefore, there is credible evidence of a violation of section 20.59 of the Ethics Commission Rules.
19. There is credible evidence that the respondent improperly reported the credit card expenditure on both her 30-day and 8-day pre-election reports instead of just on her 8-day pre-election report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.

Conversion of Political Contributions to Personal Use

20. A person who accepts a political contribution may not convert the contribution to personal use. ELEC. CODE § 253.035(a).
21. "Personal use" means, in pertinent part, a use that primarily furthers individual or family purposes not connected with the performance of activities as a candidate for a public office. The term does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate. ELEC. CODE § 253.035(d).
22. The evidence indicates that the expenditures at issue were related to the respondent's activities as a candidate for public office. There is no evidence that political contributions were converted to the respondent's personal use. Therefore, there is credible evidence that the respondent did not convert political contributions to personal use in violation of section 253.035(a) of the Election Code.

Using Political Contributions to Make a Payment to One's Spouse for Personal Services

23. A candidate may not knowingly make or authorize a payment from a political contribution for the personal services rendered by the spouse of the candidate. ELEC. CODE § 253.041(a).
24. There is credible evidence that the payment made from political contributions to the respondent's husband was not for personal services but was made to reimburse him for expenditures he made related to the float. Although the reimbursement may not have been

properly reported, there is credible evidence that the respondent did not violate section 253.041 of the Election Code by paying her spouse for personal services.

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 report filed under chapter 254 of the Election Code with an authority other than the commission must be in a format prescribed by the commission; each report by a candidate must include the office sought; each report must include the total amount of all political contributions; each 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; each report must include the full address of persons making contributions that in the aggregate exceed \$50 during a reporting period; each report must include the full address of the persons to whom expenditures are made that in the aggregate exceed \$50 during a reporting period; a report of a political expenditure by credit card must identify the vendor who receives payment from the card company; a report is required to include the amount of political expenditures that in the aggregate exceeded \$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 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 \$100 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-2612248.

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

Annie Rebecca Elliott, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director