

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JOHN OTTO,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2612256

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) held a preliminary review hearing on February 12, 2008, to consider sworn complaint SC-2612256. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.035(h) and 254.031(a)(3) of the Election Code and sections 20.59 and 20.63 of the Ethics Commission Rules, laws and rules 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 report political expenditures made by credit card and failed to properly report, and improperly reimbursed, political expenditures made from personal funds.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative.
2. The allegations of failure to properly report political expenditures made by credit card are based on the respondent's January 2005, July 2005, January 2006, and July 2006 semiannual reports and 30-day and 8-day pre-election reports for the November 2006 general election.
3. On these reports the respondent disclosed the credit card company as payee for political expenditures totaling approximately \$7,100.
4. The complaint also alleged that the respondent violated section 254.035 of the Election Code as to the credit card expenditures. That provision relates to disclosing the dates of political

- expenditures made by credit card. The complaint did not state how the respondent violated that provision. There is no evidence to support the allegation.
5. The allegations of failure to properly report, and improperly reimbursed, political expenditures made with personal funds are based on the respondent's January 2005, July 2005, January 2006, and July 2006 semiannual reports, and 30-day pre-election report for the November 2006 general election.
  6. The total of the alleged improper reimbursements is approximately \$900.
  7. The evidence indicates that seven reimbursements totaling approximately \$400 were reimbursements for the use of the respondent's personal vehicle for candidate and officeholder purposes.
  8. The reports disclose that the respondent reimbursed himself and his wife for approximately \$500 in political expenditures made from personal funds. The respondent did not report the initial expenditures or indicate he would seek reimbursement for the expenditures.
  9. The respondent filed corrected reports at issue.

#### **IV. Findings and Conclusions of Law**

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

1. A campaign finance report must include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. ELEC. CODE § 254.031(a)(3).
2. 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.
3. The evidence shows that the respondent made political expenditures with a credit card and disclosed the credit card company as payee and not the names and addresses of the vendors who actually received payment from the company. The total amount at issue is approximately \$7,100 in political expenditures over multiple reports. The improper reporting was clear from the face of the reports. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules.
4. There is no evidence to support the allegation that the respondent did not properly disclose the dates of political expenditures made by credit card in violation of section 254.035 of the Election Code.

5. A candidate is required to report a campaign expenditure from personal funds. Ethics Commission Rules § 20.63(a).
6. A candidate or officeholder who makes political expenditures from his or her 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 that covers the period during 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); Ethics Commission Rules § 20.63(d).
7. 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 (1996).
8. The evidence shows that the respondent made approximately \$500 in political expenditures with personal funds, other than expenditures for the use of his personal vehicle, and reimbursed himself from his political contributions for these expenditures. The evidence shows that the respondent did not properly disclose the expenditures during the reporting period in which they were made. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63(d) of the Ethics Commission Rules.

#### **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 a campaign finance report must include the full name and address of the payees, and the dates and purposes of political expenditures that in the aggregate exceed \$50 to a single payee in the reporting period. The respondent also acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the card company. The respondent also acknowledges that a candidate or officeholder who makes political expenditures from his or her 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 that covers the period during 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. 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 an \$800 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-2612256.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
John Otto, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director