

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
RICK HARDCASTLE,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-270225

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on June 10, 2008, to consider sworn complaint SC-270225. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.035 of the Election Code and sections 20.59 and 20.61 of the Ethics Commission Rules, 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 improperly reported political expenditures made with credit cards and improperly reported political expenditures as reimbursements.

### 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. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(3). The criminal offense for filing an incomplete or untimely campaign finance report is a Class C misdemeanor. ELEC. CODE § 254.041. The statute of limitations for a Class C misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. Therefore, allegations relating to the respondent's failure to properly disclose political expenditures in the January 2005 semiannual campaign finance report are based on alleged conduct that occurred more than

- two years before the complaint was filed and are not within the commission's sworn complaint jurisdiction.
3. The reports at issue are January and July semiannual campaign finance reports due in 2005 and 2006.
  4. The reports disclose approximately \$14,936 in political expenditures to credit card companies for "expenses."
  5. In response to the allegations, the respondent swears that he inadvertently failed to accurately report the expenditures and will file corrections to the reports.
  6. The respondent corrected the credit card expenditures by disclosing the expenditures to include the names and addresses of the vendors who received payments from the credit card companies, including the dates of the expenditures. Of these expenditures, approximately \$207 were for finance charges and late fees.
  7. The respondent disclosed a total of approximately \$17,260 in expenditures to "Ford Credit" as lease payments for a vehicle.
  8. The respondent entered into an agreement with a local dealership in or about November 2003 to lease a vehicle for three years while making monthly payments to the lending institution, Ford Credit.
  9. The respondent's reports disclose approximately \$3,462 in political expenditures from political contributions as reimbursements to staff without disclosing the names and addresses of the individuals or entities who were paid by the staff. The expenditures include a payment of \$75.75 for "reimbursement for supplies" and approximately \$3,386 in payments for "reimbursements."
  10. In response to the complaint, the respondent corrected one expenditure of \$2,500 for "reimbursement" by correcting the purpose of the expenditure to "contract labor." The respondent also corrected approximately \$949 of the expenditures by disclosing the individuals or entities who were paid by the staff as the payees. Of the approximate \$949 in corrected expenditures, one expenditure of \$12 was made to a payee to whom the respondent paid \$50 or less in the reporting period.
  11. In addition, the respondent disclosed approximately \$1,715 in total political expenditures of \$50 or less that were not itemized.

#### 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, 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).
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. For purposes of reporting under chapter 254 of the Election Code, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. ELEC. CODE § 254.035(a). The amount of a political expenditure made by credit card in a period other than a period covered by a 30-day or 8-day pre-election report is readily determinable by the person making the expenditure on the date the person receives the credit card statement that includes the expenditure. *Id.* § 254.035(c).
4. A political expenditure means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
5. A campaign expenditure means, in pertinent part, a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment in connection with a campaign for an elective office. *Id.* § 251.001(6), (7).
6. An officeholder expenditure means, in pertinent part, a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment to defray expenses that are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. *Id.* § 251.001(a)(6), (9).
7. The respondent made approximately \$14,936 in political expenditures using credit cards and disclosed a credit card company as the payee for each expenditure. All of the expenditures were made to a payee to whom the respondent paid over \$50 in the respective reporting period. Thus, the respondent was required to disclose approximately \$14,936 of the expenditures by reporting the names and addresses of the actual vendors who were paid by the credit card companies.

8. Of the approximate \$14,936 in political expenditures at issue, the respondent paid approximately \$207 to credit card companies for finance charges and late fees. In an instance where an expenditure is made for finance charges or late fees, the credit card company is the actual payee. Thus, the respondent correctly disclosed the payees of those expenditures for the finance charges and late fees. However, the expenditures were not originally disclosed as bank fees and interest charges, but rather for “expenses.” Thus, the respondent failed to properly disclose the purpose of the expenditures that were for finance charges and late fees. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with approximately \$207 in political expenditures.
9. Regarding the remaining approximate \$14,729 in political expenditures that were for purposes other than finance charges and late fees, the credit card companies were not the actual payees. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.59 of the Ethics Commission Rules in connection with approximately \$14,729 in political expenditures.
10. The complaint also alleges that the respondent incorrectly disclosed the dates of the credit card expenditures. There is credible evidence that the respondent violated section 254.035 of the Election Code by failing to properly disclose the dates of approximately \$14,729 in political expenditures.
11. The respondent made approximately \$17,620 in political expenditures from political contributions as lease payments and disclosed “Ford Credit” as the payee of the expenditures. There is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code regarding the expenditures because the amount of the expenditure was readily determinable at the time the agreement was made.
12. In Ethics Advisory Opinion No. 450 (EAO 450), which is relevant to the reports at issue, the commission stated that in a situation in which a member of a candidate’s campaign staff makes a campaign expenditure on behalf of the candidate and later receives reimbursement from the candidate, the candidate is required to report a single expenditure by listing the name of the individual or entity paid by the campaign worker as the payee, showing the date of the expenditure as the date the campaign worker made the expenditure, and explaining in the “purpose” section that a campaign worker made the expenditure from personal funds and that the candidate subsequently reimbursed the campaign worker. Ethics Advisory Opinion No. 450 (2003).
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(a).

14. A campaign finance report must include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
15. Of the expenditures to staff, the evidence indicates that one expenditure of \$2,500 for “reimbursement” was a payment for contract labor. Thus, the payee information for the expenditure was properly disclosed when the report was originally filed. However, the respondent did not properly disclose the purpose of the expenditure because the report originally indicated that the expenditure was for a “reimbursement,” rather than contract labor. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules by failing to properly disclose the purpose of the \$2,500 expenditure.
16. Regarding the remaining approximate \$962 in expenditures to staff at issue, the respondent corrected his reports to disclose the actual payees of approximately \$949 of the expenditures. Of the approximate \$949 in expenditures, approximately \$937 in expenditures was paid to payees to whom the respondent paid over \$50 in the respective reporting periods. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61(a) of the Ethics Commission Rules in connection with approximately \$937 in expenditures because the payee information for the expenditures was not properly disclosed. Approximately \$12 in expenditures were not required to be itemized because the respondent paid \$50 or less to the payees during the respective reporting periods. Therefore, the respondent did not violate section 254.031(a)(3) of the Election Code or section 20.61(a) of the Ethics Commission Rules in connections with the \$12 in expenditures.
17. Of the approximate \$962 in expenditures at issue, the remaining approximate \$13 in expenditures that were originally disclosed as reimbursements was not required to be itemized. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code in connection with the \$13 in expenditures at issue.
18. The respondent corrected his reports to disclose an additional approximate \$1,702 in political expenditures of \$50 or less that were not originally disclosed. Therefore, there is credible evidence that the respondent violated section 254.031(a)(5) of the Election Code by failing to properly disclose the total amount of political expenditures of \$50 or less in campaign finance reports.
19. The respondent corrected his reports to itemize approximately \$6,188 in additional expenditures that were not originally disclosed in his reports. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code by failing to properly disclose the expenditures.

## 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, 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. The respondent acknowledges that a report of a political expenditure by credit card must identify the vendor who receives payment from the card company. The respondent acknowledges that, for purposes of reporting, a political expenditure is considered to have been made when the amount is readily determinable by the person making the expenditure. The respondent acknowledges that the proper method of reporting reimbursements to staff members is in accordance with section 20.62 of the Ethics Commission Rules. The respondent acknowledges that a report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. The respondent acknowledges that the report must include the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. 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 \$2,600 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-270225.

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

\_\_\_\_\_  
Rick Hardcastle, Respondent

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

Texas Ethics Commission

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