

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN F. HEALEY, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270333

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 10, 2008, to consider sworn complaint SC-270333. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.036(a) of the Election Code, credible evidence that the respondent committed a technical or *de minimis* violation of section 254.061 of the Election Code, and credible evidence of a violation of sections 20.61 and 20.219 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 failed to include required information in campaign finance reports, failed to file campaign finance reports in the proper format, and converted political contributions to personal use.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful opposed incumbent candidate for district attorney of the 268th Judicial District in the March 7, 2006, primary election. The respondent was unopposed in the November 7, 2006, general election.
2. The reports at issue are the respondent's reports for the period from July 1, 2004, through December 31, 2006.
3. The respondent filed a sworn response and corrected reports.

Failure to Disclose Office Sought

4. The complaint alleges that the respondent failed to disclose the office sought on his January 2006 semiannual report and on his 30-day and 8-day pre-election reports for the March 7, 2006, primary election.
5. The respondent's January 2006 semiannual report and his 30-day and 8-day pre-election reports for the March 7, 2006, primary election do not disclose the office sought.
6. The respondent swears that he clearly stated the office that he held and that he believed that information properly completed the field titled "Office."

Failure to Properly Disclose In-Kind Contributions

7. The complaint alleges that the respondent failed to include the description of in-kind political contributions on his July 2005 semiannual report and did not provide a sufficient description of several in-kind political contributions on his 30-day pre-election report for the March 7, 2006, primary election.
8. The respondent's July 2005 semiannual report discloses seven in-kind political contributions totaling \$4,150. The report did not include descriptions of the in-kind contributions.
9. The respondent's 30-day pre-election report for the March 7, 2006, primary election discloses ten in-kind political contributions totaling \$794. The in-kind contribution descriptions state, "Auction item[s] for fundraiser."
10. The respondent swears that he reported in-kind contributions of auction items as "in-kind." The respondent filed corrected reports providing more specific descriptions of these in-kind contributions of auction items.

Failure to File Reports in a Format Prescribed by the Commission

11. The complaint alleges that the respondent failed to file reports in a format prescribed by the commission. The reports in question are the respondent's July 2005 and January 2006 semiannual reports and 30-day and 8-day pre-election reports for the March 7, 2006, primary election.
12. On the reports in question, the respondent attached computer generated spreadsheets disclosing his political contributions instead of providing the information on the forms prescribed by the commission.

13. The respondent swears that his reports of contributions provided the relevant fields of information, that the computer printout used conforms to the same format and paper size as the form prescribed by the commission, and that he thought the presentation was clear and useful for the public.

Failure to Properly Disclose Total Political Contributions

14. The complaint alleges that the respondent failed to include in-kind political contributions totaling \$2,204.78 in the "Total Political Contributions" amount on his January 2006 semiannual report.
15. The respondent's January 2006 semiannual report discloses an in-kind political contribution of \$2,204.78. The report also discloses additional political contributions in the amount of \$11,930. The total of these two figures is \$14,134.78. The amount disclosed by the respondent for total political contributions was \$11,930.
16. The respondent swears regarding this allegation, that he clearly reported the in-kind contribution but due to an error of omission it was omitted from the "Total Political Contributions." The respondent filed a corrected report disclosing the correct amount of total political contributions.

Failure to Properly Disclose Political Expenditures

17. The complaint alleges that the respondent failed to provide a sufficient description of the purpose of two political expenditures from personal funds disclosed on Schedule G (Political Expenditures from Personal Funds) of his July 2005 semiannual report. The political expenditures were made on March 12, 2005. One was to Perry's for \$150, and the other one was made to the Marriott of Sugarland for \$125. The purpose of both political expenditures states "Auction item for fundraiser."
18. The respondent swears that the purposes of these Schedule G expenditures were true and correct, that the purpose of each expenditure was to purchase an auction item for his fundraiser.
19. The complaint alleges that the respondent failed to provide a sufficient description of one political expenditure reported on Schedule F (Political Expenditures) of his January 2006 semiannual report. The political expenditure was made on August 21, 2005, to the Needville Volunteer Fire Department for \$115. The purpose of the political expenditure states "Auction Items."
20. The respondent swears that the purpose of the expenditure was true and correct.

21. The complaint alleges that the respondent failed to provide a sufficient description of the purpose of two political expenditures disclosed on Schedule F and of two political expenditures from personal funds disclosed on Schedule G of his 30-day pre-election report for the March 7, 2006, primary election. One of the political expenditures disclosed on Schedule F was made on January 14, 2006, to the Needville Pro Grad Senior Serve for \$275, and the other one was made on January 22, 2006, to the Fort Bend Senior Citizens for \$175. The purpose of the political expenditures was for auction items. One of the political expenditures from personal funds disclosed on Schedule G was made on January 18, 2006, to John and Theadora Healy for \$450 and the purpose states "Appreciation gifts for fundraiser activists." The other political expenditure from personal funds was made on January 19, 2006, to John and Theadora Healy for \$320 and the purpose states "Auction items for fundraiser."
22. The respondent swears that the purposes of the Schedule F expenditures were true and correct, that the purpose of the expenditures was to purchase items for goodwill among campaign supporters, for a future political auction, and to construct campaign signs.
23. The respondent swears that the purposes of the Schedule G expenditures were true and correct. He swears that the purpose of the \$450 expenditure on January 18, 2006, to John and Theodora Healey was to purchase appreciation gifts for his January 19, 2006, fundraiser workers and volunteers. He swears that the purpose of the \$320 expenditure on January 19, 2006, to John and Theodora Healey was to account for assorted items which were collected over a period of time and placed in his fundraiser's auction.
24. The complaint alleges that the respondent failed to provide a sufficient description of one political expenditure disclosed on Schedule F of his 8-day pre-election report for the March 7, 2006, primary election. The political expenditure was made on February 20, 2006, to the St. John's Methodist Church for \$275, and the purpose of the political expenditure states "Auction Item Donation."
25. The respondent's 8-day pre-election report for the March 7, 2006, primary election, also discloses an expenditure on Schedule G of \$336.30 on January 31, 2006, to John and Theodora Healey for "Ink cartridges and other office supplies." The respondent swears that he and his wife inadvertently listed themselves as the payee for the political expenditure on his 8-day pre-election report. The respondent filed a corrected report to disclose the correct payee information regarding these expenditures.
26. The complaint alleges that the respondent failed to provide a sufficient description of one political expenditure disclosed on Schedule F of his July 2006 semiannual report. The political expenditure was made on April 2, 2006, to the Spirit of Freedom for \$165, and the purpose of the political expenditure states "Fundraiser banquet auction items."

27. The complaint alleges that the respondent failed to provide a sufficient description of one political expenditure disclosed on Schedule F of his January 2007 semiannual report. The political expenditure was made on October 29, 2006, to the Republican Party of Fort Bend County for \$450, and the purpose of the political expenditure states "auction item purchase."

Failure to Properly Disclose Total Political Expenditures

28. The complaint alleges that the respondent failed to properly disclose total political expenditures on his 8-day pre-election report for the March 7, 2006, primary election. The report discloses total political expenditures on Schedule F of \$27,586.94 and total political expenditures from personal funds on Schedule G of \$336.30. These amounts total approximately \$27,900 but the respondent disclosed approximately \$31,600 on the report's totals section.
29. The respondent swears that this was an inadvertent arithmetic error. The respondent filed a corrected report.

Failure to Properly Disclose Loans

30. The complaint alleges that the respondent failed to disclose loans on his July 2005 semiannual report and on his 30-day pre-election report for the March 7, 2006, primary election, and failed to properly disclose the total principal amount of all outstanding loans on his July 2005 semiannual report and on his 30-day and 8-day pre-election reports for the March 7, 2006, primary election.
31. The complaint alleges that the respondent incorrectly included Schedule G expenditures in his reports' outstanding loan totals.
32. The respondent swears that regarding all of the expenditures, he believed that political expenditures from personal funds disclosed on Schedule G must also be included in the outstanding loan totals if he intended to seek reimbursement. He swears that he felt that he could not get reimbursed for this money unless it was fully reported as a loan. The evidence indicates that all loans were from the respondent or his wife, and that no loans were from outside parties. The respondent's reports that show that the respondent had disclosed loans from he and his wife on Schedule F between 1993 and 1995 and had disclosed such loans on Schedule G from 1996 to present. The respondent filed a corrected report to disclose the correct amount for total principal amount of all outstanding loans for each report.

Failure to Properly Disclose Total Political Contributions Maintained

33. The complaint alleges that the respondent failed to properly disclose the correct amount of political contributions maintained on his July 2005, January 2006, July 2006, and January

- 2007 semiannual reports, and on his 30-day and 8-day pre-election reports for the March 7, 2006, primary election.
34. The complaint alleges that the respondent's July 2005 semiannual report failed to include \$275 in political contributions maintained, which is the amount of political expenditures disclosed on Schedule G.
 35. The complaint alleges that the respondent's 8-day pre-election report for the March 7, 2006, primary election, failed to disclose \$336.30 in political contributions maintained, which is the amount of political expenditures disclosed on Schedule G.
 36. The complaint alleges that the respondent should have had certain amounts of political contributions maintained at the end of each reporting period based upon a formula whereby the amount of political contributions maintained is calculated by beginning with the amount of political contributions maintained disclosed in the previous report and then adding contributions and subtracting expenditures. According to the complaint, when this formula is applied to the respondent's reports, the disclosed amounts of political contributions maintained fell short of the correct amount by \$275 on the July 2005 semiannual report and \$336.30 on the 8-day pre-election report for the March 7, 2006, primary election.
 37. The complaint alleges that the respondent's reports overstated the amounts of political contributions maintained as follows: January 2006 semiannual report and 30-day pre-election report amounts were overstated by \$1,880; the July 2006 semiannual report amount was overstated by \$6,726.87; and the January 2007 semiannual report amount was overstated by \$6,826.87.
 38. The respondent swears that the complainant's statement is wrong and that he properly reported the total political contributions maintained.

Conversion of Political Contributions to Personal Use

39. The respondent's July 2005 semiannual report discloses two political expenditures on Schedule G made on March 12, 2005, (one for \$150 to Perry's, and one for \$125 to the Marriott of Sugar Land). The complaint alleges that the expenditures were a conversion of political contributions to personal use.
40. The respondent swears that the two items were purchased by a personal credit card in his name and were placed in the live auction at his March 17, 2005, fundraiser, and that they were won by the high bidder. There is no additional evidence to refute the respondent's statement.
41. The respondent's January 2006 semiannual report discloses two expenditures on Schedule F, one on August 14, 2005, to the Fort Bend County Fair Association for "Fair Club Dues," and

- one on August 21, 2005, to the Needville Volunteer Fire Department for the purchase of “Auction items.” The amount of the first expenditure was \$40 and the amount of the second expenditure was \$115. The complaint alleges that these expenditures were a conversion of political contributions to personal use.
42. The respondent swears that the first expenditure was exclusively for campaign or officeholder purposes, not for personal purposes, and that it was made for good public relations purposes. The respondent swears that the second expenditure was made for campaign or officeholder purposes and that the items were not used for personal use. There is no additional evidence to refute the respondent’s statement.
 43. The respondent’s 30-day pre-election report for the March 7, 2006, primary election discloses two political expenditures reported on Schedule F, one was made on January 14, 2006, to the Needville Pro Grad Senior Serve for \$275, and the other one was made on January 22, 2006, to the Fort Bend Senior Citizens for \$175. The purpose of both political expenditures states “Auction item.” The complaint alleges that these expenditures were a conversion of political contributions to personal use.
 44. The respondent swears that the purpose of the expenditures was true and correct, that the purpose of the expenditures was for a future political auction. The respondent swears that the items were not used for personal use. There is no additional evidence to refute the respondent’s statement.
 45. The respondent’s 30-day pre-election report for the March 7, 2006, primary election, discloses two expenditures on Schedule G to John and Theodora Healey, one on January 18, 2006, in the amount of \$450 for “Appreciation gifts for fundraiser activists” and one on January 19, 2006, in the amount of \$320 for “Auction items for fundraiser.” The complaint alleges that the expenditures were a conversion of political contributions to personal use.
 46. The respondent swears that the purpose of the Schedule G expenditures was true and correct, that the purpose of the January 18, 2006, expenditure of \$450 was to purchase appreciation gifts for his January 19, 2006, fundraiser workers and volunteers, and that the purpose of the January 19, 2006, expenditure of \$320 was to account for assorted items which were collected over a period of time and placed in his fundraiser auction. The respondent swears that the items were not used for personal use. There is no additional evidence to refute the respondent’s statement.
 47. The respondent’s 8-day pre-election report for the March 7, 2006, primary election, discloses an expenditure on Schedule G of \$336.30 on January 31, 2006, to John and Theodora Healey for “Ink cartridges and other office supplies.” The complaint alleges that the expenditure was a conversion of political contributions to personal use.

48. The respondent swears that the purpose of the expenditures was true and correct.

Failure to Disclose Receipt of Notice of Direct Campaign Expenditure by Other Individuals

49. The complaint alleges that the respondent failed to include additional pages on his 8-day pre-election report for the March 7, 2006, primary election, to disclose direct expenditures notices from individuals.

50. The report has the box checked indicating that there are additional pages for this part of the form but no such additional pages are included with the report.

51. The evidence indicates that no other notices of direct campaign expenditures by other individuals were received by the respondent, that there were no additional pages for this part of the form, and that the box was checked inadvertently. The respondent filed a corrected report.

IV. Findings and Conclusions of Law

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

Failure to Disclose Office Sought

1. Each report by a candidate must include the office sought. ELEC. CODE § 254.061(1).
2. The respondent's January 2006 semiannual report and his 30-day and 8-day pre-election reports for the March 7, 2006, primary election do not disclose the office sought. In context, the error was minor. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.061(1) of the Election Code.

Failure to Properly Disclose In-Kind Contributions

3. Each report must include for each person from whom the candidate accepted a political contribution of more than \$50 in value or political contributions that total more than \$50 in value a description of any in-kind contribution. Ethics Commission Rules § 20.219(11)(E).
4. The respondent's July 2005 semiannual report discloses seven in-kind political contributions totaling \$4,150 without describing the in-kind political contributions. The respondent's 30-day pre-election report for the March 7, 2006, primary election discloses ten in-kind political contributions totaling \$794. The in-kind contribution descriptions state, "Auction item[s] for fundraiser." That description does not adequately describe what was actually contributed as an in-kind contribution. Therefore, there is credible evidence that the respondent violated section 20.219(11)(E) of the Ethics Commission Rules.

Failure to File Reports in a Format Prescribed by the Commission

5. Each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a). The executive director shall prescribe forms for campaign finance reports. Ethics Commission Rules §18.1, § 20.19.
6. The respondent filed his campaign finance reports with the cover pages and schedules for the other information required to be disclosed on the report, but the pages disclosing political contributions were computer printouts of a spreadsheet. The report was filed with the county clerk of Fort Bend County. The report was required to be filed in a format prescribed by the commission. The spreadsheet format used by the respondent was not prescribed by the commission. Therefore, there is credible evidence that the respondent violated section 254.036(a) of the Election Code.

Failure to Properly Disclose Total Political Contributions

7. Each report must include the total amount of all political contributions accepted. ELEC. CODE § 254.031(a)(6).
8. The evidence shows that on his January 2006 semiannual report, the respondent did not include a \$2,204.78 in-kind contribution in the total political contribution amount. Therefore, there is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code.

Failure to Properly Disclose Political Expenditures

9. Each report must include the amount of 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 the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3). 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.
10. The evidence shows that the respondent failed to provide a sufficient description of the purpose of political expenditures as alleged in the sworn complaint. In addition, the evidence shows that the respondent disclosed himself and his wife as payee for three political expenditures instead of disclosing the actual payee. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules.

Failure to Properly Disclose Total Political Expenditures

11. Each report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
12. The evidence shows that the respondent failed to properly disclose approximately \$3,700 in the total political expenditures amount on his 8-day pre-election report. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

Failure to Properly Disclose Loans

13. Political expenditures from personal funds, when reimbursement is intended, may be disclosed in one of two ways. A candidate or officeholder may disclose the expenditures on Schedule G of the report that covers the period in which the expenditures were made and designate that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h)(2). A candidate or officeholder may report the amount expended as a loan and may reimburse those expenditures in the amount of the reported loan. ELEC. CODE § 253.0351. Each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, and the amount of the loans guaranteed by each guarantor, and the principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
14. A candidate or officeholder is not required to include political expenditures from personal funds under “aggregate principal amount of all outstanding loans as of the last day of the reporting period.” Ethics Advisory Opinion No. 349 (1996).
15. The complaint alleges that the respondent failed to disclose loans on Schedule E on his July 2005 semiannual report and on his 30-day pre-election report for the March 7, 2006, primary election and improperly included Schedule G expenditures in the outstanding loan totals on these reports.
16. The evidence shows that the respondent properly disclosed the political expenditures at issue from personal funds on Schedule G. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(2) of the Election Code as to the allegation that he failed to disclose loans on Schedule E.
17. The evidence shows that the respondent included the political expenditures from personal funds disclosed on Schedule G on the cover page of his report in the outstanding loans total.

The respondent was not required to include Schedule G amounts in the outstanding loans totals. It was not a violation for the respondent to include his Schedule G amounts in the outstanding loans totals. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(2) of the Election Code as to the allegation that he included his Schedule G amounts in the outstanding loans total.

Failure to Properly Disclose Total Political Contributions Maintained

18. Each report must include as of the last day of the 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. ELEC. CODE § 254.031(a)(8).
19. The reports filed by the respondent disclose total political contributions maintained at the end of the reporting periods that differ from the amounts that the complaint alleges are accurate. The complaint uses a formula that treats the reporting system as an accounting system and strictly relies upon the total contributions and expenditures disclosed on a cover page less in-kind contributions and less expenditures from personal funds. That method cannot consistently arrive at the correct amount of contributions maintained because of the statutory requirements of the reporting system. The law only requires the amount of political contributions maintained in one or more accounts to be disclosed in a report and the respondent has sworn that the proper amounts have been disclosed. There is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code in connection with these reports.

Conversion of Political Contributions to Personal Use

20. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a).
21. The evidence shows that the expenditures were made for campaign or officeholder purposes. Therefore, there is credible evidence that the respondent did not violate section 253.035(a) of the Election Code.

Failure to Disclose Receipt of Notice of Direct Campaign Expenditure by Other Individuals

22. Each report by a candidate must include the full name and address of each individual acting as a campaign treasurer of a political committee under section 253.062 of the Election Code from whom the candidate received notice under section 254.128 or 254.161 of the Election Code. ELEC. CODE § 254.061(4).
23. The evidence shows that the respondent did not fail to disclose receipt of notice of direct campaign expenditure by other individuals. The evidence shows that the respondent

inadvertently checked the box indicating that there were additional pages regarding receipt of such a notice. Checking that box in error does not violate title 15 of the Election Code or the rules of the Ethics Commission. Therefore, there is credible evidence that the respondent did not violate section 254.061(4) 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 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 by a candidate must include the office sought. The respondent also acknowledges that each report must include, among other requirements, for each person from whom the candidate accepted a political contribution of more than \$50 in value or political contributions that total more than \$50 in value a description of any in-kind contribution. The respondent also acknowledges that each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. The respondent also acknowledges that each report must include the total amount of all political contributions accepted during the reporting period. The respondent also acknowledges that each report must include the amount of 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 the expenditures are made, and the dates and purposes of the expenditures. The respondent also acknowledges that each report must include the total amount of all political expenditures 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 \$1,500 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-270333.

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

John F. Healey, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director