

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MJ KHAN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2907173

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-2907173. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code and section 20.62 of the Ethics Commission Rules, as well as credible evidence of technical or *de minimis* violations of section 254.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) failed to properly disclose political contributions, political expenditures, outstanding loan totals, and total political contributions maintained; 2) accepted political contributions from corporations; 3) improperly disclosed political expenditures as reimbursements; and, 4) 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 an unopposed incumbent candidate for Houston city council in the November 2007 election and a candidate for city controller in the November 2009 election.
2. The allegations were based on the respondent's July 2007 semiannual report; 30-day and 8-day pre-election reports for the November 2007 election; and January 2008, July 2008, and January 2009 semiannual reports.

Total Outstanding Loans

3. The complaint alleged that the respondent failed to disclose the total principal amount of all outstanding loans as of the last day of the reporting period in all six reports at issue. The

field in the totals section on the cover sheet for total outstanding loans was left blank on each report at issue.

4. In response to the allegation, the respondent swore that there were no outstanding loans, and the evidence does not show that there were unreported outstanding loans. The respondent filed corrections to the reports at issue to enter a zero in the field in the totals section of the cover sheet for total outstanding loans.

Total Political Contributions Maintained

5. The complaint alleged that the respondent disclosed an incorrect amount for the total political contributions maintained as of the last day of the reporting period in the 30-day and 8-day pre-election reports, and the January 2008, July 2008, and January 2009 semiannual reports.
6. The complaint provided no evidence to support the allegations that the amounts disclosed on the reports were incorrect, and the allegations appear to be based on calculations using totals reported on the cover sheets of the respondent's reports.
7. The respondent filed corrections to the January 2008 and January 2009 semiannual reports to disclose the correct amount of total political contributions maintained. The discrepancy between the actual amount and the disclosed amount on the January 2008 report was 50 cents. The discrepancy between the actual amount and the disclosed amount on the January 2009 report was approximately \$12,450.
8. The respondent swore that the amounts of total political contributions maintained disclosed on the other reports at issue were correct.

Political Contributions and Expenditures of \$50 or Less

9. The complaint alleged that the respondent failed to disclose the total amount of political contributions of \$50 or less in all six reports at issue, and failed to disclose the total amount of political expenditures of \$50 or less in five of the reports at issue.
10. The fields in the totals section on the cover sheet for total political contributions of \$50 or less and total political expenditures of \$50 or less were left blank on each report at issue. The political contributions and expenditures that were itemized on each report included political contributions and expenditures of over \$50 as well as those of \$50 or less.
11. In response to the allegations, the respondent swore that there were no unitemized contributions or expenditures. On September 7, 2009, the respondent filed corrections to the reports at issue to enter a zero in the field in the totals section on the cover sheet for total political contributions of \$50 or less and total political expenditures of \$50 or less.

Political Contributions from Corporations

12. The complaint alleged that the respondent accepted four political contributions from corporations based on disclosures in the July 2007 semiannual report and 30-day pre-election report for the November 2007 election.
13. Two of the contributions at issue were from entities that were not incorporated and had no corporate members or partners.
14. One of the contributions (\$30) was from an incorporated entity, and another contribution was from a limited partnership that had an incorporated general partner. The evidence did not establish that the respondent knew the status of the entities at the time that he accepted the contributions. The respondent has returned the contributions.

Reporting Political Contributions

15. The complaint alleged that the respondent failed to fully disclose the names of persons giving political contributions in “three places” on his July 2007 semiannual report and in “three places” on his 30-day pre-election report. The complaint also alleged that the respondent failed to disclose the amount of total political contributions accepted during the period covered in his January 2009 semiannual report.
16. The respondent disclosed acronyms or incomplete names for the contributions at issue. The respondent corrected the reports to disclose the full names of the contributors at issue.
17. The January 2009 semiannual report disclosed a blank field for the total political contributions accepted. No political contributions were itemized on Schedule A in the report.
18. The respondent swore there were no unitemized contributions or expenditures, and no political contributions were accepted. The evidence does not show that there were unreported political contributions.
19. On September 7, 2009, the respondent corrected the report to enter a zero in the field in the totals section on the cover sheet for the total political contributions accepted during the reporting period.

Payees of Political Expenditures

20. The complaint alleged that the respondent failed to properly report the actual vendors, dates, and amounts “pertaining to the stated purpose” of 19 political expenditures totaling \$12,645 that were disclosed in the respondent’s July 2007 semiannual report, 30-day pre-election report for the November 2007 election, and July 2008 semiannual report.

21. The complaint identified seven political expenditures totaling \$980 from the July 2007 semiannual report and two political expenditures totaling \$240 from the July 2008 semiannual report. The expenditures at issue were made to individuals for the purpose of reimbursing them for various expenses. The respondent corrected the reports to disclose the actual vendors of the goods or services as well as the purpose of payment.
22. The complaint identified 10 political expenditures totaling \$11,425 from the 30-day pre-election report. The expenditures at issue were made to individuals for various purposes such as "Music for event," "PA System for event," "Catering for event," "Tables/Chairs Rental for event," "Decorations for gala dinner," "Sound System/Stage Lighting for event," and "Video Photography for event." The respondent disclosed the actual vendor of the goods or services for these expenditures.

Personal Use of Political Contributions

23. The complaint alleged that the respondent converted political contributions to personal use in "two places" in the July 2007 semiannual report. The allegation was based on two political expenditures totaling approximately \$535.
24. The complaint alleged that the respondent converted political contributions to personal use in "four places" in the July 2008 semiannual report. The allegation was based on four political expenditures totaling approximately \$1,160.
25. The respondent swore there was no personal use and corrected the reports at issue to further clarify the purpose of payment. There was no evidence that showed the expenditures were made to further an individual or family purpose not connected with his performance of duties or activities as a candidate or officeholder.

IV. Findings and Conclusions of Law

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

Total Outstanding Loans

1. Each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. ELEC. CODE § 254.031(a)(2).
2. The complaint alleged that the respondent failed to disclose the total principal amount of all outstanding loans as of the last day of the reporting period in all six of the reports at issue. The respondent swore that there were no outstanding loans and there is no evidence to refute this statement. The respondent corrected each report at issue to disclose an outstanding loan total of zero. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code.

Total Political Contributions Maintained

3. A campaign finance 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).
4. The total amount of political contributions maintained in one or more accounts includes balance on deposit in banks, savings and loan institutions and other depository institutions and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
5. The complaint included no evidence to support the allegations that the respondent failed to disclose the correct amounts of total political contributions maintained other than calculations according to a formula. Due to statutory reporting requirements, the amount of political contributions maintained cannot necessarily be computed by using the totals on a report's cover sheet.
6. The respondent swore that the amounts of total political contributions maintained were correct in the 30-day and 8-day pre-election reports, January 2008 semiannual report (the respondent corrected the report to increase the total by 50 cents), and July 2008 semiannual report, and the evidence did not refute that assertion. There is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code with regard to those reports.
7. The respondent acknowledged that the amount of total political contributions maintained was incorrect in the January 2009 semiannual report and corrected the report to increase the total by approximately \$12,450. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) of the Election Code with regard to that report.

Political Contributions and Expenditures of \$50 or Less

8. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and 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).
9. The respondent disclosed all political contributions and expenditures in the reports at issue, including those that in the aggregate did not exceed \$50 during a reporting period. Although the respondent left blank the fields for disclosing total political contributions of \$50 or less and total political expenditures of \$50 or less, it is apparent when viewing each of the reports at issue that the respondent detailed all of his political contributions and expenditures. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(5) of the Election Code.

Political Contributions from Corporations

10. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253, Election Code. ELEC. CODE § 253.003.
11. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
12. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
13. A partnership or limited liability company that has a corporate partner or member is subject to the prohibition on corporate political contributions. Ethics Advisory Opinion Nos. 221 (1994) and 383 (1997).
14. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
15. Two of the contributions at issue were made by entities that were not prohibited by section 253.094 of the Election Code from making a contribution. Therefore, there is credible evidence that the respondent did not violate sections 253.003 and 253.094 of the Election Code with respect to these contributions.
16. The evidence is insufficient to show that at the time that the respondent accepted the other two contributions that he knew that he had accepted a contribution from a corporation. Therefore, there is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code with respect to these contributions.

Reporting Political Contributions

17. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file the report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
18. Each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).

19. In the original July 2007 semiannual report, the respondent failed to disclose the contributor's full name for three political contributions totaling \$2,100. In the original 30-day pre-election report for the November 2007 election, the respondent failed to disclose the contributor's full name for three political contributions totaling \$1,600. The respondent corrected the reports at issue to disclose the required information. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code in connection with \$3,700 in political contributions in the July 2007 semiannual report and 30-day pre-election report for the November 2007 election.
20. In the January 2009 semiannual report, the respondent disclosed a blank field for the amount of total political contributions accepted during the reporting period. The evidence did not show that there were unreported contributions. The respondent corrected the report at issue to disclose a zero as the total amount of political contributions accepted during the reporting period. Therefore, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 254.031(a)(6) of the Election Code in connection with the January 2009 semiannual report.

Payees of Political Expenditures

21. Each campaign finance 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).
22. A political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: (1) 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; and (2) included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided by subsection (a) of this section, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: (1) the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; (2) the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and (3) the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.

23. The complaint alleged that the respondent did not disclose the actual payee information for approximately \$11,425 in political expenditures on the 30-day pre-election report for the November 2007 election. The payees disclosed in the reports for the political expenditures at issue were the actual payees. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(3) of the Election Code in connection with the expenditures.
24. In the July 2007 and July 2008 semiannual reports, approximately \$1,220 in political expenditures at issue were improperly disclosed as reimbursements to staff members. The respondent failed to disclose the person who actually received payment for the goods or services that were purchased. Although the respondent corrected the reports at issue to disclose the actual payees, the political expenditures were not properly reported when the reports were originally due. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules in connection with approximately \$1,220 in political expenditures in the July 2007 and July 2008 semiannual reports.

Personal Use of Political Contributions

25. 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). Personal use is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *Id.* § 253.035(d).
26. The complaint alleged that six political expenditures totaling approximately \$1,700 that were disclosed in the July 2007 and July 2008 semiannual reports were for personal use. The evidence was insufficient to show that the expenditures primarily furthered an individual or family purpose not connected with the respondent's performance of duties or activities as a candidate or officeholder. Therefore, there is insufficient evidence of a violation of section 253.035 of the Election Code with regard to 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 each campaign finance report must include:
- a. the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;
 - b. 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;
 - c. the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period;
 - d. 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;
 - e. 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 and address 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, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period; and,
 - f. the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.

The respondent also acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. 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 \$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-2907173.

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

MJ Khan, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director