

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ISMAEL “KINO” FLORES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31005137

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-31005137. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 254.031, and 254.0612 of the Election Code and section 20.29 of the Ethics Commission Rules, 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) did not properly report political contributions, political expenditures, and loans on multiple campaign finance reports, 2) accepted political contributions from a corporation or labor organization, 3) did not include on campaign finance reports the principal occupation or job title and the full name of the employer for individuals who contributed \$500 or more during a reporting period, and 4) did not disclose on campaign finance reports information related to political contributions from out-of-state political committees.

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 state representative in the November 4, 2008, general election, and had a campaign treasurer appointment in effect during the period at issue.
2. The allegations were based on the respondent’s July 2008, January 2009, July 2009, and January 2010 semiannual campaign finance reports.
3. On October 9, 2008, the respondent filed a correction to the July 2008 semiannual report. In the correction affidavit, the respondent swore that he filed the corrected report not later than the 14th business day after the date he learned that the report as originally filed was

inaccurate or incomplete and that any error or omission in the report as originally filed was made in good faith. The respondent has not filed corrections in response to the complaint.

4. The respondent's July 2008 semiannual report disclosed the following:
 - \$176.37 in total political contributions of \$50 or less, unless itemized
 - \$210,644.18 in total political contributions
 - \$866.62 in total political expenditures of \$50 or less, unless itemized
 - \$227,092.78 in total political expenditures
 - \$13,120.83 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
5. The respondent's January 2009 semiannual report disclosed the following:
 - \$58.02 in total political contributions of \$50 or less, unless itemized
 - \$88,098.32 in total political contributions
 - \$601.27 in total political expenditures of \$50 or less, unless itemized
 - \$63,808.52 in total political expenditures
 - \$40,182.44 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
6. The respondent's July 2009 semiannual report disclosed the following:
 - \$0 in total political contributions of \$50 or less, unless itemized
 - \$0 in total political contributions
 - \$923.16 in total political expenditures of \$50 or less, unless itemized
 - \$27,979.87 in total political expenditures
 - \$14,640.28 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans
7. The respondent's January 2010 semiannual report disclosed the following:
 - \$0 in total political contributions of \$50 or less, unless itemized
 - \$56,550 in total political contributions
 - \$210 in total political expenditures of \$50 or less, unless itemized
 - \$71,021.75 in total political expenditures
 - \$56.75 in total political contributions maintained as of the last day of the reporting period
 - \$0 in outstanding loans

Total Political Contributions Maintained

8. 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 all four of the semiannual reports at issue. The evidence did not establish that the amounts disclosed were incorrect.

Total Outstanding Loans

9. 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 four of the semiannual reports at issue. The respondent disclosed "0.00" in the field for total outstanding loans in the totals section on the cover sheet in each report at issue.
10. In the reports at issue, the respondent disclosed on Schedule F 11 expenditures totaling approximately \$9,780 to financial institutions for loan payments. Ethics Commission records show that the respondent disclosed a \$10,000 loan from First National Bank on December 21, 2007, and a \$10,000 loan from Texas State Bank on December 3, 2007, in his January 2008 semiannual report (immediately preceding the reporting periods at issue).

Political Contributions from Out-of-State Political Committees

11. The complaint alleged that the respondent failed to disclose information related to political contributions from out-of-state political committees in the July 2008 and January 2009 semiannual reports.

July 2008 Semiannual Report

12. Out of 138 total political contributions itemized in the July 2008 semiannual report, the complaint alleged that a \$1,000 political contribution on June 30, 2008, from Wal Pac of Bentonville AR, was contributed by an out-of-state political committee and did not include the identification number that the Federal Election Commission (FEC) assigns to registered political committees or any additional information regarding the committee.
13. FEC records show that the committee (Wal-Mart Stores Inc. PAC For Responsible Government of Bentonville AR) is registered with the FEC. During the general time period at issue, the committee made a political contribution to the respondent in the amount disclosed in the respondent's report.

January 2009 Semiannual Report

14. Out of 105 total political contributions itemized in the January 2009 semiannual report, the complaint alleged that a \$1,500 political contribution on October 3, 2008, from JPMorgan Chase & Co. PAC of Chicago IL, was contributed by an out-of-state political committee and did not include the identification number that the FEC assigns to registered political committees or any additional information regarding the committee.
15. FEC records show that the committee (JPMorgan Chase & Co. PAC of Chicago IL) is registered with the FEC. During the general time period at issue, the committee made a political contribution to the respondent in the amount disclosed in the respondent's report.

Principal Occupation or Job Title and Name of Employer

16. The complaint alleged that the respondent failed to disclose the principal occupation or job title and the full name of the employer for individuals contributing \$500 or more disclosed in the July 2008, January 2009, and January 2010 semiannual reports.
17. The respondent disclosed the contributor's principal occupation or job title and the full name of the individual's employer as: "Self Employed / Business," "Managerial / Self," "SPECIAL ACCOUNT / Self Employed," and "Employed / Self" for political contributions totaling approximately \$7,020 on the reports at issue.
18. The remaining political contributions at issue, adequately disclosed the contributors' principal occupations or job titles and employers.

Political Contributions from Corporations or Labor Unions

19. The complaint alleged that the respondent accepted 24 political contributions totaling approximately \$22,000 from 23 different corporations or labor unions. The allegations are based on disclosures in the July 2008, January 2009, and January 2010 semiannual reports.
20. Three of the political contributions at issue totaling approximately \$1,500 appear to be from corporations.
21. The reports also disclosed a \$1,000 political contribution from Doctor's Care Home Health, and a \$1,000 political contribution from The Chickasaw Nation. Public records did not establish the status of the contributor.
22. The remaining political contributions at issue appear to be from unincorporated entities or political committees.

Full Names of Persons Making Political Contributions and Receiving Political Expenditures

23. The complaint alleged that the respondent failed to fully disclose the names of contributors in the July 2008, January 2009, and January 2010 semiannual reports. The complaint also alleged that the respondent failed to fully disclose the names of persons receiving political expenditures in the January 2009, July 2009, and January 2010 semiannual reports.
24. In the July 2008, January 2009, and January 2010 semiannual reports, the respondent did not disclose a full name for eight political contributions totaling \$7,850, all of which either did not disclose the individual's full name or did not disclose the full name or registered acronym of the committee.
25. The remaining political contributions at issue contained full names of contributors or contained acronyms that were part of the names of political committees.
26. In the January 2009, July 2009, and January 2010 semiannual reports, the respondent disclosed an acronym instead of the full name of the payee for five political expenditures totaling approximately \$450.

Actual Payees of Political Expenditures for Reimbursement

27. The complaint alleged that the respondent failed to disclose the payees, addresses, dates, and amounts "pertaining to the stated purpose" of political expenditures in all four of the semiannual reports at issue.
28. The respondent's July 2008 semiannual report disclosed five political expenditures totaling approximately \$460 to individuals for the purchase of food.
29. The respondent's January 2009 semiannual report disclosed three political expenditures totaling approximately \$1,450 to individuals for the purchase of food.
30. The respondent's July 2009 semiannual report disclosed three political expenditures totaling approximately \$410 to individuals with purposes of "flag framing," "rental equipment," and "travel to Austin for MissionDay."
31. The remaining political expenditures at issue clearly identified payees for the purchase of goods or services.

Purpose Descriptions of Political Expenditures

32. The complaint alleged that the respondent failed to fully disclose the purposes of political expenditures disclosed in all four of the semiannual reports at issue.

33. In the respondent's July 2008 semiannual report the respondent disclosed a \$710 political expenditure with a purpose description as "payment."
34. In the respondent's July 2009 semiannual report, four of the political expenditures at issue totaling approximately \$2,780 disclosed the purpose descriptions as "sws 972-246-5900 collection 7385-27661923," "for 36684," and "for Note 43232."
35. The remaining political expenditures at issue clearly stated a purpose on their face.

IV. Findings and Conclusions of Law

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

Total Political Contributions Maintained

1. 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).
2. 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).
3. There is insufficient evidence that the respondent violated section 254.031(a)(8) of the Election Code.

Total Outstanding Loans

4. 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).
5. 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 the July 2008, January 2009, July 2009, and January 2010 semiannual reports. Ethics Commission records show that the respondent disclosed \$20,000 in loans from financial institutions on a report prior to the reporting periods at issue and the respondent's reports do not show that the respondent paid off the loans. The respondent left blank the field for total outstanding loans in the totals section on the cover sheet in each report at issue and swore that corrections to the reports were needed to accurately reflect the total amounts of outstanding loans for the reporting

periods at issue, thus the outstanding loans totals were incorrect at the time the reports were due. Therefore, there is credible evidence of violations of section 254.031(a)(2) of the Election Code in all four of the semiannual reports at issue.

Political Contributions from Out-of-State Political Committees

6. A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission. ELEC. CODE § 253.032; Ethics Commission Rules § 20.29(a).
7. The respondent accepted two political contributions totaling \$2,500 from out-of-state political committees during the periods covered by his July 2008 and January 2009 semiannual reports. The committees filed their statements of organization with the FEC. The respondent did not include the committees' statements of organization or FEC identification numbers in the reports at issue. Therefore, there is credible evidence that the respondent violated section 253.032 of the Election Code and section 20.29(a) of the Ethics Commission Rules in connection with political contributions totaling \$2,500.

Principal Occupation or Job Title and Name of Employer

8. The respondent had an active campaign treasurer appointment on file during the periods at issue. Thus, the respondent was a candidate for title 15 filing purposes. Each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer. ELEC. CODE § 254.0612.
9. The respondent did not properly disclose the contributor's principal occupation or job title and the full name of the individual's employer for the following:

Self Employed / Business
Managerial / Self
SPECIAL ACCOUNT / Self Employed
Employed / Self
10. Therefore, there is credible evidence that the respondent violated section 254.0612 of the Election Code in connection with political contributions totaling approximately \$7,020.

11. As to the remaining political contributions at issue, the respondent adequately disclosed the contributors' principal occupations or job titles and employers. Therefore, with regard to the remaining political contribution at issue, there is credible evidence that the respondent did not violate section 254.0612 of the Election Code.

Political Contributions from Corporations or Labor Unions

12. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
13. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. *Id.* § 253.094.
14. 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. *Id.* § 253.091.
15. 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.
16. Three of the political contributions at issue totaling approximately \$1,500 appear to be from corporations. However, the evidence is insufficient to show that the respondent knew that the contributions were from corporations at the time he accepted the contributions. Therefore, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.
17. The reports also disclosed a \$1,000 political contribution from Doctor's Care Home Health, and a \$1,000 political contribution from The Chickasaw Nation. There is insufficient evidence of violations of sections 253.003 and 253.094 of the Election Code, with regard to these contributions.
18. The remaining political contributions at issue appear to be from unincorporated entities or political committees. Therefore, with regard to the remaining contributions, there is credible evidence no of violations of sections 253.003 and 253.094 of the Election Code.

Full Names of Persons Making Political Contributions and Receiving Political Expenditures

19. 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).
20. 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. *Id.* § 254.031(a)(3).
 21. In the July 2008, January 2009, and January 2010 semiannual reports, the respondent failed to disclose the contributor's full name for eight political contributions totaling \$7,850, all of which either failed to disclose the individual's full name or failed to disclose the full name or registered acronym of the committee. Therefore, with regard to those allegations, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code.
 22. The remaining political contributions at issue in the July 2008, January 2009, and January 2010 semiannual reports were correct or in substantial compliance. Therefore, there is credible evidence that the respondent did not violate section 254.031(a)(1) of the Election Code in connection with those political contributions.
 23. In the January 2009, July 2009, and January 2010 semiannual reports, the respondent failed to disclose the payee's full name for five political expenditures totaling \$450, all of which disclosed an acronym instead of the full name of the payee. Therefore, with regard to those expenditures, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.

Actual Payees of Political Expenditures for Reimbursement

24. 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).
25. 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.

26. In the July 2008 semiannual report, five political expenditures at issue totaling approximately \$460 disclosed individuals as the payees and the purchase of food as the purpose description. In the January 2009 semiannual report, three political expenditures at issue totaling approximately \$1,450 disclosed individuals as the payees and the purchase of food as the purpose description. In the July 2009 semiannual report, three political expenditures at issue totaling approximately \$410 disclosed individuals as the payees with purposes of “flag framing,” “rental equipment,” and “travel to Austin for MissionDay.” It is unclear whether these expenditures were paid to individual contractors or to staff members as reimbursement for payments to vendors for the goods. Therefore, with regard to those expenditures, there is insufficient evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.
27. The payees were disclosed correctly for the remaining political expenditures at issue. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules with regard to those expenditures.

Purpose Descriptions of Political Expenditures

28. 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).
29. In the July 2008 semiannual report, a \$710 political expenditure at issue disclosed the purpose description as “payment.” The respondent failed to adequately disclose the purpose description. Therefore, with regard to that expenditure, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.
30. In the July 2009 semiannual report, four of the political expenditures at issue totaling approximately \$2,780 disclosed the purpose descriptions as “sws 972-246-5900 collection 7385-27661923,” “for 36684,” and “for Note 43232.” The respondent failed to adequately disclose the purpose descriptions. Therefore, with regard to those expenditures, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

31. The remaining allegations regarding the purpose of expenditures were sufficient under the statute.

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 person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either enter the out-of-state committee's federal PAC identification number in the appropriate place on the report or timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission.

The respondent also acknowledges that each campaign finance report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period. The report must also 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. The report must also 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 also acknowledges that each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer.

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 \$700 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-31005137.

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

Ismael "Kino" Flores, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director