

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DAVID MEDINA, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3130340

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 5, 2015, to consider sworn complaint SC-3130340. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031, 254.036, and 254.061 of the Election Code and section 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 proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent: 1) did not properly disclose on campaign finance reports political contributions, political expenditures, and total political contributions maintained; 2) did not include certain cover sheet information on a campaign finance report; 3) accepted political contributions from corporations or labor organizations; 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. At the time relevant to the complaint, the respondent held the position of San Antonio City Council Member, District 5.
2. At issue in the complaint are six campaign finance reports: the respondent's 30-day and 8-day pre-election reports for the May 2011 city election, and the July 2011, January and July 2012, and January 2013 semiannual reports.

Total Political Contributions Maintained

3. The complaint alleged that the respondent did not properly disclose total political contributions maintained on each of the six reports at issue. In response to the complaint, the respondent submitted his campaign account bank statements covering the reporting periods at issue in the complaint. The relevant amounts, along with the difference between the original amounts disclosed and the bank statement amounts or corrected amounts are as follows:
 - 30-day Pre-Election Report, May 2011 city election – disclosed \$0; corrected to \$11,465.43; bank statement amount \$7,053.52 (difference is \$7,053.52)
 - 8-day Pre-Election Report, May 2011 city election – disclosed \$0; corrected to \$17,977.30; bank statement amount \$11,854.90 (difference is \$11,854.90)
 - July 2011 Semiannual Report – disclosed \$0; corrected to \$15,835.36; bank statement amount \$6,690.35 (difference is \$6,690.35)
 - January 2012 Semiannual Report – disclosed \$0; corrected to \$14,088.91; bank statement amount \$4,919.07 (difference is \$4,919.07)
 - July 2012 Semiannual Report – disclosed \$0; corrected to \$31,290.55; no bank statement (difference is \$31,290.55)
 - January 2013 Semiannual Report – disclosed \$0; corrected to \$36,750.55; no bank statement (difference is \$36,750.55)
4. The bank statement amounts differ from the amounts disclosed on the respondent's original and corrected campaign finance reports. In response to the complaint, the respondent's agent explained in writing that the corrected amounts of total political contributions maintained were reported based on the respondent's campaign treasurer's own bookkeeping because the respondent only received bank statements once a month. With respect to the July 2012 and January 2013 semiannual reports, the respondent's agent stated that the respondent's campaign account was at a credit union which went through a merger in 2013. Following the merger, the respondent was informed that all previous bank records held by the former credit union were destroyed. Thus, the respondent was unable to obtain bank statements for the July 2012 and January 2013 reporting periods.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

5. The complaint alleged that, based on disclosures in the respondent's 30-day and 8-day pre-election reports for the May 2011 city election, and the January and July 2012, and January

- 2013 semiannual reports, the respondent did not disclose the full names of persons who made 20 political contributions and the full name of a payee of one political expenditure.
6. In response to the complaint, the respondent provided copies of the contribution checks.
 7. With respect to 12 contributions, the names on the contribution checks were the same as the names disclosed on the respondent's reports.
 8. With respect to five contributions, the names disclosed on the respondent's reports were substantially similar to each contributor's full name.
 9. With respect to the one expenditure, the name disclosed on the respondent's report is a commonly recognized acronym used by the payee.
 10. With respect to three contributions totaling \$450, the respondent did not disclose the full name of the contributors. As to two contributions, the respondent only provided the initial of each contributor's first name and their complete last names. As to the other contribution, the respondent disclosed an acronym for part of the contributor's name. The acronym is not a commonly recognized acronym used by the contributor.

Disclosure of the Actual Vendor Payee of Political Expenditures

11. The complaint alleged that, based on disclosures in the respondent's 30-day and 8-day pre-election reports for the May 2011 city election and the January 2011 semiannual report, the respondent did not disclose the actual vendor payee for 11 political expenditures. The expenditures at issue were disclosed as being made directly to individuals. The complaint alleged that the expenditures were made as staff reimbursements and that the respondent did not disclose the actual vendor payees of the expenditures for which the reimbursements were made. Credible evidence indicates that the expenditures were not made as staff reimbursements but were made directly to the individuals for goods and services such as block walking and food. Eight of the expenditures were made to the individuals as owners of restaurants that appear to be sole proprietorships containing the name of the individual.

Disclosure of Purpose of Political Expenditures

12. The complaint alleged that, based on disclosures in each of the six reports at issue, the respondent did not properly disclose the purpose of 97 political expenditures. In response to a request from the Commission to provide documentation for certain expenditures at issue, the respondent submitted copies of all of the checks written to make the expenditures in question, except two. All of the checks except two state "campaign support" in the lower left hand corner.

13. As to 25 of the expenditures, the respondent disclosed one of the following for the purpose category and purpose description:

Printing Expense; Campaign Supplies
Other: Campaign Supplies; Campaign Supplies
Printing Expense; Campaign Printing
Other: Campaign Phone; Campaign Phone

14. As to the remaining 72 expenditures, totaling approximately \$32,240, the respondent disclosed one of the following for the purpose category and purpose description:

Other: Campaign Support; Campaign Support
Other: Campaign; Campaign
Advertising Expense; Campaign
Printing Expense; Campaign
Travel in District; Campaign
Campaign Support; Campaign Support
Printing Expense; Campaign Support
Travel in District; Travel in District
Printing Expense; Printing Expense
Other: Food Expense; Food Expense
Contributions/Donations Made by Candidate/Officeholder/Political
Committee; Contributions/Donations
Contributions/Donations Made by Candidate/Officeholder/Political
Committee; Contribution
Other: Office Supplies; Office Supplies
Other: Other; Other
Other: Publications; Publications
Other: Services Rendered; Services Rendered

15. The respondent filed corrected reports to clarify the purposes of the expenditures.

Cover Sheet Information

16. The complaint alleged the respondent did not include his telephone number and his campaign treasurer's telephone number on the cover sheet of his January 2012 semiannual report. In response to the complaint, the respondent swore that if he did not include the telephone numbers, it was by accident or oversight. The respondent filed a corrected report and disclosed the telephone numbers in the appropriate sections.

Political Contributions from Corporations or Labor Organizations

17. The complaint alleged that, based on disclosures in the respondent's 30-day pre-election report for the May 2011 city election, and the January and July 2011 and July 2012 semiannual reports, the respondent accepted 14 political contributions from corporations or labor organizations. In response to the complaint, the respondent denied that he accepted political contributions from any corporations or labor organizations.
18. For 11 contributions at issue, there is credible evidence that the entities are not corporations or labor organizations.
19. The respondent disclosed a \$100 political contribution from River City and a \$100 political contribution from Kwick Kab on the 30-day pre-election report for the May 2011 city election. With respect to these contributions, the respondent's agent stated:

These contributions were originally received as personal money orders with a note to indicate how we knew the contributor, but did not intend for the contribution to be listed under "River" or "KWICK" as seen on the money orders. They were to be listed under the names [name of individual] and [name of individual], but a clerical error was made and the money orders were entered incorrectly. I have included a copy of the money orders.

20. The respondent filed a corrected report and disclosed the name of an individual as the contributor for both contributions. This individual is listed as the registered agent for Kwick Kab. It is unclear whether the contributions at issue were intended to come from the entities or the individuals.
21. The respondent disclosed a \$500 political contribution from McDonalds on the July 2011 semiannual report. With respect to this contribution, the respondent's agent stated:

This was a clerical error and was incorrectly reported. We have since amended this report entry. This contribution was in fact an in-kind contribution of \$500 worth of food for volunteers and has been amended as such under the name [name of an individual].

22. The original and corrected reports indicate that the contribution was an in-kind contribution of meals. The corrected report identifies the name of the individual as the contributor. It is unclear whether the contribution was intended to come from the entity or the individual.

Personal Use of Political Contributions

23. The complaint alleged that the respondent converted political contributions to personal use based on six political expenditures disclosed on the respondent's 30-day pre-election report for the May 2011 city election. The complaint did not provide specific evidence to support the allegations. In response to the complaint, the respondent swore that the expenditures were all for campaign purposes. The respondent filed a corrected report to clarify the purposes of the expenditures. The expenditures were disclosed as follows:

March 3, 2011, \$47.04, Pizza Patron – original category/purpose: Food/Beverage Expense/Campaign; corrected category/purpose: Food/Beverage Expense/Food for volunteers

March 20, 2011, \$50.53, Pizza Hut – original category/purpose: Food/Beverage Expense/Campaign; corrected category/purpose: Food/Beverage Expense/Food for volunteers

March 15, 2011, \$52.40, Pizza Hut – original category/purpose: Food/Beverage Expense/Campaign; corrected category/purpose: Food/Beverage Expense/Food for volunteers

March 12, 2011, \$50, The Little BullDogs – original category/purpose: Food/Beverage Expense/Campaign; corrected category/purpose: Food/Beverage Expense/Food for volunteers

March 12, 2011, \$50, Class of 1969 – original category/purpose: Food/Beverage Expense/Campaign; corrected category/purpose: Food/Beverage Expense/Food for volunteers

March 28, 2011, \$27.02, Suzys Q's – original category/purpose: Food/Beverage Expense/Campaign; corrected category/purpose: Food/Beverage Expense/Food for volunteers

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. Each report must include as of the last day of the reporting period, 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 respondent's original reports disclosed \$0 in the spaces for total political contributions maintained. The respondent subsequently submitted bank records and filed corrections to each report. However, the corrected amounts differed from the amounts disclosed on the respondent's bank statements. With respect to the respondent's 30-day and 8-day pre-election reports for the May 2011 city election, and the July 2011 and January 2012 semiannual reports, the respondent did not collectively disclose approximately \$30,520 in total political contributions maintained. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code with respect to those reports. With respect to the respondent's July 2012 and January 2013 semiannual reports, the respondent was unable to provide bank records, however, the respondent filed corrected reports disclosing approximately \$68,040 in total political contributions maintained that were not disclosed on the originally filed reports. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code with respect to those reports.

Disclosure of Full Names of Persons Making Political Contributions and Receiving Political Expenditures

3. 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 a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
4. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
5. It is not a valid basis of a complaint to allege that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. GOV'T CODE § 571.122(e).
6. At any stage of a proceeding under this subchapter, the Commission shall dismiss a complaint to the extent the complaint alleges that a report required under Chapter 254, Election Code, contains the improper name or address of a person from whom a political contribution was received if the name or address in the report is the same as the name or address that appears on the check for the political contribution. *Id.* § 571.1222.

7. With respect to 12 contributions, the names on the contribution checks were the same as the names disclosed on the respondent's reports. The Commission is required to dismiss the allegations regarding those contributions.
8. With respect to five contributions, the names disclosed on the respondent's reports were substantially similar to each contributor's full name. With respect to the one expenditure, the name disclosed on the respondent's report is a commonly recognized acronym used by the payee. Therefore, there is credible evidence of no violation of sections 254.031(a)(1) and 254.031(a)(3) of the Election Code with respect to those five contributions and one expenditure.
9. With respect to three contributions totaling \$450, the respondent did not disclose the full name of the contributors. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code with respect to those contributions.

Disclosure of the Actual Vendor Payee of Political Expenditures

10. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
11. Credible evidence indicates that the expenditures were not made as staff reimbursements but were made directly to the individuals for goods and services such as block walking and food. Eight of the expenditures were made to the individuals as owners of restaurants that appear to be sole proprietorships containing the name of the individual. Thus, the disclosures substantially comply. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code.

Disclosure of Purpose of Political Expenditures

12. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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).
13. The purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure and an additional indication if the expenditure is an officeholder expenditure for living in Austin, Texas. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the

description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. Ethics Commission Rules § 20.61(a).

14. The 25 expenditures that disclosed one of the following for the purpose category and purpose description substantially identified the purpose of the expenditures:

Printing Expense; Campaign Supplies
Other: Campaign Supplies; Campaign Supplies
Printing Expense; Campaign Printing
Other: Campaign Phone; Campaign Phone

Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with respect to those expenditures.

15. The purposes of the remaining 72 expenditures, totaling approximately \$32,240, were not properly disclosed because the respondent did not disclose a proper category and/or description. The following purpose categories of the remaining 72 expenditures were not adequate because they did not properly disclose a category of goods, services, or other thing of value for which the expenditure was made:

Other: Campaign Support
Other: Campaign
Campaign Support
Other: Other
Other: Services Rendered

None of the purpose descriptions of the remaining 72 expenditures were adequate because they did not include the item or service purchased and/or did not state the candidate or officeholder activity that was conducted by making the expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with respect to the remaining 72 expenditures totaling approximately \$32,240.

Cover Sheet Information

16. Each report filed under this chapter with an authority other than the Commission must be in a format prescribed by the Commission. ELEC. CODE § 254.036(a).
17. Each report by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number. *Id.* § 254.061(2).

18. The respondent did not disclose his telephone number and his campaign treasurer's telephone number on his original January 2012 semiannual report. The report was corrected to disclose the telephone numbers. The omissions did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of sections 254.036(a) and 254.061(2) of the Election Code.

Political Contributions from Corporations or Labor Unions

19. 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.
20. 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.
21. 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.
22. In order to prove 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.
23. For 11 contributions at issue, there is credible evidence that the entities are not prohibited corporations or labor organizations. Therefore, there is credible evidence of no violation of sections 253.003 and 253.094 of the Election Code.
24. For three contributions at issue, it is unclear whether the contributions at issue were intended to come from the entities disclosed as the contributors or from individuals that appear to be connected with the entities. Therefore, there is insufficient evidence of violations of sections 253.003 and 253.094 of the Election Code with respect to those contributions.

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. Personal use does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of reasonable housing or household expenses incurred in maintaining a residence in Travis County by members of the legislature who do not ordinarily reside in Travis County. *Id.* § 253.035(d)(1).
27. The corrected purposes of the expenditures and the respondent's sworn response indicate that the expenditures were made for food and beverage for campaign volunteers, which is a permissible use of campaign funds. Therefore, there is credible evidence of no violation of section 253.035(a) 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: 1) each report must include as of the last day of the reporting period, 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; 2) 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 a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions; 3) a campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) 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; 4) the purpose of an expenditure must be disclosed as required by section 20.61(a) of the Ethics Commission Rules; 5) each report filed under chapter 254 of the Election Code with an authority other than the Commission must be in a format prescribed by the Commission; and 6) each report by a candidate must include the campaign treasurer's name, residence or business street address, and telephone number. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes certain 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,000 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-3130340.

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

David Medina, Jr., Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director