

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ALAN E. WARRICK, II,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3170456

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on January 30, 2018, to consider sworn complaint SC-3170456. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031 and 253.035 of the Election Code, and credible evidence of a violation of section 12.83(a) 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 and/or reimbursements and a payment to a business in which he had an interest; and 2) 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 all times relevant to the complaint, the respondent was the San Antonio City Councilmember for District 2.
2. The complaint alleged that the respondent converted political contributions to personal use. In his January 2016 semiannual report, the respondent disclosed a \$15,000 loan as a political expenditure to World Technical Services ("WTS"), made on October 19, 2015, with a category of "Loan" and no description. The respondent is the President and CEO of WTS, which is listed as a domestic nonprofit corporation, exempt from taxation under Section 501(c)(4), Internal Revenue Code of 1986.
3. In a February 14, 2017, newspaper article in the *San Antonio Express-News*, the respondent is reported as saying that he made the loan to WTS because "there was a cash flow issue."

The respondent's campaign strategist is reported as saying that the loan was made as "bridge funding" to WTS, but that none was converted to the respondent's personal use. The respondent did not explain his reason for making the loan in his response to the complaint, but according to the newspaper article, WTS had a negative fund balance of \$470,717 at the end of 2014. According to the balance summaries the respondent sent in response to the complaint, WTS's account had \$55,697.57 in funds by October 30, 2015.

4. The complaint also alleged that the respondent did not properly disclose political contributions and/or reimbursements and a payment to a business in which the respondent had an interest. The respondent repaid the loan, absent any accrued interest, in three installments of \$5,000 each on October 25, 2015, January 1, 2016, and May 4, 2016. The repayments were disclosed as political contributions in his January and July 2016 semiannual reports. He disclosed himself, rather than WTS, as the contributor of each loan repayment. However, in response to the complaint, the respondent submitted documentation showing that the loan repayments were drawn from WTS's account.
5. Commission staff then sent written questions and a request for additional documentation by a letter dated August 9, 2017. United States Postal Service records show that the respondent received the written questions on August 10, 2017. The letter asked the respondent to explain why he made the \$15,000 loan to WTS and to provide the detailed bank statements. The respondent did not respond to this request.

IV. Findings and Conclusions of Law

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

Personal Use of Political Contributions

1. 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" means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d). The term does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or officeholder. *Id.*
2. Ethics Advisory Opinion No. 47 (1992) states that an expenditure for one of the purposes set forth in section 254.204 of the Election Code (pertaining to the disbursement of unexpended contributions) is not a personal use. One of the purposes in that section is a donation of political contributions to a recognized tax-exempt, charitable organization formed for educational, religious, or scientific purposes. The current version of section 254.204 of the Election Code specifies that the organization must be exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments.

3. WTS is a nonprofit corporation organized under Section 501(c)(4), not Section 501(c)(3), of the Internal Revenue Code. Accordingly, the "safe harbor" provision of section 254.204 of the Election Code does not apply.
4. Further, under Ethics Advisory Opinion No. 149 (1993), a donation to a recognized 501(c)(3) nonprofit corporation will still constitute a conversion of political contributions to personal use if the candidate or officeholder is employed by the organization in an executive position and would have direct or indirect control over the disposition of the funds. As the President and CEO of WTS, the respondent is employed in an executive position and necessarily has direct or indirect control over the disposition of its funds.
5. As admitted by the respondent and his campaign manager, the loan was made in order to address a "cash flow issue" and/or serve as "bridge funding." Based on these statements, there is credible evidence that the loan furthered WTS's interests, an entity in which, as President and CEO, the respondent necessarily had a personal and individual interest.
6. In addition, there is no indication that the loan was a payment made to defray ordinary and necessary campaign or officeholder expenses, which could establish the loan as a permissible campaign or officeholder expenditure. Therefore, there is credible evidence of a violation of section 253.035(a) of the Election Code.

Disclosure of the Loan Repayments

7. A campaign finance report must include the amount of any credit, interest, refund, or reimbursement resulting from the use of a political contribution exceeding \$100, and the full name and address of each person from whom a refund or reimbursement is made, and the date and purpose for which the amount is received. *See* ELEC. CODE § 254.031(a)(9), (13).
8. The respondent disclosed his own name and address in the fields for disclosing the contributor information for the three "political contributions" (the loan repayments) of \$5,000 each. WTS's financial records show that the actual person making the loan repayments was WTS, and they should have been disclosed as refunds or reimbursements on Schedule K, rather than as political contributions that are disclosed on Schedule A1. Therefore, there is credible evidence of a violation of section 254.031(a)(9) and (13) of the Election Code.

Payments to Officeholder's Business

9. A campaign finance report by an officeholder must include, on a separate page or pages of the report, the identification of any payment from political contributions made to a business in which the officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business. ELEC. CODE § 254.091(3).

10. The respondent did not disclose the \$15,000 loan on Schedule H of his January 2016 semiannual report. It was merely disclosed on Schedule F1 (used to disclose political expenditures from political contributions).
11. There is credible evidence that the respondent, as President and CEO of WTS, holds a position on the governing body of the business and serves as an officer of the business.
12. There is no evidence that the \$15,000 loan was a "payment" required to be disclosed separately on Schedule H (used to disclose payments made from political contributions to a business of a candidate/officeholder) of the respondent's campaign finance report. A "payment" is defined in Black's Law Dictionary as follows: 1. Performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation. 2. The money or other valuable thing so delivered in satisfaction of an obligation. Black's Law Dictionary 1309 (10th ed. 2014).
13. Because there is no evidence that the loan was given to discharge or satisfy some obligation, or in other words, given as consideration in return for goods or services, the loan is not a "payment" required to be disclosed on Schedule H. Therefore, there is credible evidence of no violation of section 254.091(3) of the Election Code.

Did Not Respond to Written Questions

14. A respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. Ethics Commission Rules § 12.83(a).
15. The respondent did not respond to written questions. Therefore, there is credible evidence of a violation of section 12.83(a) of the Ethics Commission Rules.

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) a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. 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; 2) a campaign finance report must include the amount of a refund or reimbursement resulting from the use of a political contribution exceeding \$100, and the full name and address of each person from whom a refund or reimbursement is made, and the date and purpose for which the amount is received; and 3) a respondent must respond to written questions submitted to the respondent pursuant to section 571.1243 of the Government Code not later than 15 business days after the respondent receives the written questions. 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 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 \$5,000 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-3170456.

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

Alan E. Warrick, II, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director