

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DONI ANTHONY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3210491

FINAL ORDER

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on December 8, 2021, to consider sworn complaint SC-3210491. A quorum of the Commission was present. The respondent received legally sufficient notice of the hearing but did not appear at the hearing. The Commission proceeded with the hearing in the respondent's absence and found credible evidence of violations of Section 253.035 of the Election Code. The Commission voted to issue this final order.

II. Allegations

The complaint alleged that the respondent converted political contributions to personal use in violation of Section 253.035 of the Election Code by: 1) making payments to herself for "salary" or "candidate compensation;" and 2) making payments to a beauty salon for "hair care."

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent was an unsuccessful opposed candidate in the May 1, 2021 election for mayor of Arlington, Texas.

Conversion of Contributions for "Candidate Compensation" or "Salary"

2. The sworn complaint alleges that the respondent converted political contributions to personal use by making payments to herself for "salary" or "candidate compensation."
3. On her 30-day pre-election report for the May 1, 2021 election, the respondent disclosed two political expenditures totaling \$4,121.71 that she paid to herself from campaign contributions. For the category and description of these expenditures, the respondent listed "candidate compensation" and "salary."

4. In her response to the complaint, the respondent stated that she had checked the Federal Election Commission (FEC) website before running for office and “found out you could expense a salary as long as it didn’t exceed your previous year[’s] salary.” The respondent qualified this apparent admission by observing that she “took way less than [she] earned last year.” The respondent explained that she investigated whether she could pay herself a salary from her political contributions because she “was going to be running [her] whole campaign.”
5. Section 253.035(a) of the Election Code provides that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. The term “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. Tex. Elec. Code § 253.035(d). “Personal use” does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate. *Id.*
6. The respondent’s response to the complaint makes clear that she paid herself the “salary” from political contributions for her personal benefit. A salary is quintessentially personal compensation, to be used at the recipient’s discretion. Further, the respondent gives no indication of what services, if any, she rendered in exchange for the “salary” payments that she made to herself. Paying oneself a “salary” of this kind primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate. Further, the “salary” payments were not made to defray any ordinary or necessary expenses incurred in connection with the respondent’s activities as a candidate. Therefore, by paying herself a “salary” from campaign contributions, the respondent converted the funds to personal use. *See* Tex. Elec. Code § 253.035.
7. The respondent provided a link to a page on the FEC’s website explaining the FEC’s rules defining personal use of political contributions. The website indicates, and the relevant FEC regulations confirm, that a federal candidate’s principal campaign committee may pay the candidate a salary, subject to certain limitations. *See* 52 U.S.C. § 30114; 11 C.F.R. § 113.1(g)(1)(i)(I). However, this rule applies *only to candidates for federal office and holders of federal office*. The federal statute prohibiting conversion to personal use applies to “a contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office.” 52 U.S.C. § 30114(b)(1). The Federal Election Campaign Act of 1971 defines a “candidate” for purposes of the Act as an individual who seeks nomination for election, or election, to federal office. 52 U.S.C. § 30101(2). Further, the federal rule upon which the respondent relies, 11 C.F.R. § 113.1(g)(1)(i)(I), does not apply to Section 253.035 of the Texas Election Code or to Title 15 of the Texas Election Code more generally. *See* 11 C.F.R. § 100.1 (“This subchapter [of the Code of Federal Regulations] is issued by the Federal Election Commission to implement the Federal Election Campaign Act of 1971, as amended.”).

Therefore, the federal prohibition on conversion of contributions to personal use, and the regulations governing the extent of that prohibition, do not apply to contributions accepted by the respondent for her campaign for mayor. There is no similar state law or Commission regulation allowing a candidate or officeholder to pay herself a salary from political contributions.

8. Because the respondent's "salary" payments to herself constituted a personal use of political contributions, and because the federal rule relied upon by the respondent does not apply to the Texas Election Code's prohibition on personal use, there is credible evidence of violations of Section 253.035 of the Texas Election Code.

Conversion of Contributions for "Hair Care"

9. The sworn complaint alleges that the respondent converted political contributions to personal use by paying a beauty salon for "hair care."
10. On her 30-day pre-election campaign finance report for the May 1, 2021 election, the respondent disclosed two political expenditures from political contributions totaling \$119.77 to Uptown Beauty. In the fields provided for the purpose of the expenditures, the respondent wrote "salon" and "hair care." The respondent admitted that she made these payments to have her hair done.
11. As noted above, a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. Tex. Elec. Code § 253.035(a). The term "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). "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." *Id.* § 253.035(d)(1).
12. Getting a haircut is an everyday necessity, not an expenditure specifically required for campaign or officeholder activities. The Commission has declined to recognize expenditures made for personal necessities as permissible uses of political contributions. *See, e.g.*, Tex. Ethics Comm. Op. No. 104 (1992) (political contributions may not be used for dry cleaning or other clothing-related expenses because "clothes worn by members of the legislature are ordinary clothing that can be worn in places other than the Capitol"); Tex. Ethics Comm. Op. No. 241 (1995) (premising conclusion that legislators may not use political contributions to pay for meals eaten when in Austin for legislative session on the fact that legislators must eat regardless of whether they are in Austin for the session or not); *but see* Tex. Ethics Comm. Op. No. 407 (1998) (political contributions could be used to pay for a tuxedo rental, because the tuxedo would only be used for a legislative gala or charity event, and because a tuxedo is "not adaptable to general usage as ordinary clothing"). Because a candidate or officeholder

must tend to grooming and hair care regardless of whether he or she is engaged in candidate or officeholder duties or activities, and because the candidate or officeholder enjoys the benefit of a haircut or other hair treatment at all times, not merely when he or she is engaged in political activities, political contributions may not be used for hair care. There is therefore credible evidence that the respondent's use of political contributions to pay for hair care constituted a conversion of political contributions to personal use, in violation of Section 253.035 of the Election Code.

IV. Default Judgment

1. The preliminary review hearing was held in Austin, Texas on December 8, 2021, at 1:15 p.m. Remote attendance and participation by video teleconference was available. The respondent failed to appear at the hearing, either in person or remotely.
2. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the Complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b). A respondent or complainant in a complaint may waive the right under Section 571.032 of the Government Code to receive written notices related to the complaint by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices related to the complaint by first class mail, electronic mail, or other means. *Id.* § 12.21(d).
3. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. 1 Tex. Admin. Code § 12.23.
4. The respondent consented to receiving notices by a less restrictive means than registered or certified mail, including by electronic mail (email), by filing a waiver with the Commission on April 23, 2021.
5. Commission staff sent the first notice of hearing to the respondent on October 20, 2021. The notice stated that the hearing would be held on December 8, 2021, at 1:15 p.m., in the State Capitol Extension, Room E1.014, Austin, Texas. The notice further stated that the respondent could participate in the hearing either by appearing physically or by video teleconference. The notice cautioned that if the respondent failed to appear at the hearing, then the allegations may be deemed admitted as true and the relief sought may be granted by default. Commission staff sent a second notice of hearing to the respondent on November 5, 2021. This notice also stated that the hearing would be held on December 8, 2021, at 1:15 p.m., in the State Capitol Extension, Room E1.014, Austin, Texas, and that the allegations may be deemed admitted as true and the relief sought may be granted by default if the respondent failed to appear. Commission staff sent both the first and second notices of hearing by both email and USPS Priority Mail with electronic delivery

confirmation. Commission staff sent the physical notices to the address that the complainant provided for the respondent in the sworn complaint, which the respondent had confirmed to Commission staff as her valid address. Commission staff sent the emailed notices to both the email address provided in the respondent's email waiver and to a second email address at which the respondent later asked Commission staff to communicate with her. Commission staff had successfully exchanged emails with the respondent at both email addresses.

6. The Commission finds that the respondent received legally sufficient notice of the sworn complaint and the December 8, 2021 preliminary review hearing in this case. The respondent did not respond to the notices of hearing or appear at the hearing, despite multiple notices from the Commission and attempts by Commission staff to communicate with the respondent and resolve the complaint. The Commission proceeded in the respondent's absence and issued this final order in accordance with Section 12.23 of the Ethics Commission Rules. By failing to appear at the preliminary review hearing, the respondent forfeited her right to further proceedings before the Commission in this matter. This final order is a final and complete resolution of this complaint before the Commission, except for the issue of collection of the civil penalty.
7. The Commission finds credible evidence of violations of Section 253.035 of the Election Code.

V. Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations; and 5) any other matters that justice may require. *Id.* § 571.177.
3. The amount of campaign contributions that the respondent converted to personal use requires a substantial penalty. Specifically, in determining the appropriate penalty for conversion of political contributions to personal use, the Commission considers the amount converted. *See, e.g.,* Tex. Ethics Comm'n, *In re Canales*, SC-280295 (February 12, 2009) (imposing a \$3,900 civil penalty for conversion of \$3,080 in political contributions to personal use). In determining the appropriate penalty, the Commission also considers that the respondent relied on the Federal Election Commission's rules in paying herself a salary, and that no

previous sworn complaints have been filed against the respondent. *See* Tex. Gov't Code § 571.177 (including the violator's good faith and history and extent of prior violations as factors to be considered in assessing a civil penalty). However, the Commission must also consider the respondent's failure to engage in the sworn complaint process, by her unresponsiveness to, and evasion of, Commission staff's communications, and by her failure to appear at the preliminary review hearing. *See id.* (including the violator's good faith and "any other matters that justice may require" as relevant factors).

4. Therefore, the Texas Ethics Commission orders that the respondent pay to the Commission, with 30 days of the date of this order, a civil penalty in the amount of \$7,500. If the respondent does not pay the \$7,500 civil penalty within 30 days of the date of this order, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: _____

FOR THE COMMISSION

Anne Temple Peters
Executive Director
Texas Ethics Commission