

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ANNE CLUTTERBUCK,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2905115

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-2905115. 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 sections 254.031 and 254.064 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 sworn complaint alleged that the respondent: 1) failed to properly disclose political contributions, political expenditures, and loans, 2) failed to timely file the 8-day pre-election report for the November 2007 election, and 3) 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 is a Houston city council member.
2. The reports at issue are the 30-day and 8-day pre-election reports for the November 2007 election, and the July 2007, January 2008, July 2008, and January 2009 semiannual reports.

Disclosure of Total Outstanding Loans and Total Political Contributions Maintained

3. The complaint alleged that the respondent failed to properly disclose the total principal amount of all outstanding loans on all of the reports at issue and failed to disclose the total political contributions maintained on the 30-day and 8-day pre-election reports for the

November 2007 election, and the January 2008, July 2008, and January 2009 semiannual reports.

4. The following describes the reports at issue, the allegations, and any corrections made regarding these allegations.
 - A. On July 12, 2007, the respondent filed a July 2007 semiannual report. The report disclosed a blank space for total principal amount of all outstanding loans. The report did not include a loan schedule (Schedule E). The respondent filed a corrected report that disclosed \$0.00 for total principal amount of all outstanding loans.
 - B. On October 5, 2007, the respondent filed a 30-day pre-election report for the November 2007 election. The report disclosed \$127,928.12 for total political contributions maintained and disclosed a blank space for total principal amount of all outstanding loans. The complaint alleged that total political contributions maintained should be at least \$129,954.17. Schedule A (used to report political contributions) disclosed \$2,025.05 of in-kind political contributions. The report did not include a loan schedule. The respondent has not filed a corrected report.
 - C. On October 31, 2007, the respondent filed an 8-day pre-election report for the November 2007 election. The report disclosed \$153,655.69 for total political contributions maintained and disclosed a blank space for total principal amount of all outstanding loans. The complaint alleged that total political contributions maintained should be at least \$158,204.44. The political contribution schedule disclosed \$2,522.70 of in-kind political contributions. The report did not include a loan schedule. The respondent has not filed a corrected report.
 - D. On January 15, 2008, the respondent filed a January 2008 semiannual report. The report disclosed \$104,273.67 for total political contributions maintained and disclosed a blank space for total principal amount of all outstanding loans. The complaint alleged that total political contributions maintained should be at least \$108,147.42. The political contribution schedule did not disclose any in-kind political contributions. The report did not include a loan schedule. Schedule K (used to disclose credits) disclosed a credit of \$675. The respondent filed a corrected report that disclosed \$0.00 for total principal amount of all outstanding loans.
 - E. On July 15, 2008, the respondent filed a July 2008 semiannual report. The report disclosed \$100,242.54 for total political contributions maintained and disclosed a blank space for total principal amount of all outstanding loans. The complaint alleged that total political contributions maintained should be at least \$104,116.29. The political contribution schedule did not disclose any in-kind political contributions. The report did not include a loan schedule. The respondent filed a corrected report that disclosed \$0.00 for total principal amount of all outstanding loans.

- F. On January 14, 2009, the respondent filed a January 2009 semiannual report. The report disclosed \$91,464.32 for total political contributions maintained and disclosed a blank space for total principal amount of all outstanding loans. The complaint alleged that the total political contributions maintained should be at least \$95,338.07. The report did not include a political contribution schedule. The report included a loan schedule that disclosed \$0.00 for total of unitemized loans and did not itemize any loans. The report disclosed \$119.09 for total political expenditures of \$50 or less, unless itemized and \$8,778.22 for total political expenditures. The report did not include a Schedule F (used for disclosing political expenditures). The respondent filed a corrected report that included a political expenditure schedule that itemized \$8,778.22 of political expenditures and disclosed \$0.00 for total principal amount of all outstanding loans.
5. The respondent filed an affidavit in response to the sworn complaint. The respondent's affidavit stated:

[The complainant] simply added the receipt and subtracted the expenditure lines without considering that in-kind contributions and business credits also play into the balance on hand. I reported in-kind contributions totaling \$2026.05 (report ending 9/27/07) and \$2522.70 (report ending 10/27/07). I also reported a business credit for \$675.00 (report ending 12/31/07). When taken into account, you will find that the total reported is correct. . . .

My loan amount is zero and the blank for loans was left blank because it is zero. I also checked that the loans report sheet was "not applicable" because the campaign does not have any loans.

Disclosure of Political Expenditures

6. The complaint alleged that the respondent improperly disclosed political expenditures on the July 2007, January 2008, and July 2008 semiannual reports.
7. The allegations are based on seven expenditures totaling approximately \$7,030 where the respondent disclosed the name and address of the individual being reimbursed for the expenditure as the payee and the date of the reimbursement, instead of providing the name and address of the actual vendor and the date of the purchase from the actual vendor. The respondent filed corrected reports.

Timely Filing of Report

8. The complaint alleged that the respondent failed to timely file the 8-day pre-election report for the November 2007 election.

9. The respondent's affidavit stated in part:

Electronic filing was new to the City of Houston in 2007 and there were occasional glitches. The report in question was originally filed on 10/29/07 at 11:32am, receipt # COH20071029113241ed3333 (copy attached) as stated on the website. There was an uploading problem, but the report was considered filed. After the technical issue was resolved the report was filed with a correction affidavit on 10/31/07.

10. The Houston City Secretary submitted an affidavit regarding the respondent's 8-day pre-election report. The affidavit stated that on October 29, 2007, the respondent submitted a spreadsheet using Excel 2007, a format the city's electronic filing system (System) did not recognize. The affidavit also stated:

For that reason, the System treated the data submitted as being incorrectly filed. . . . At the time Ms. Clutterbuck's original attempt to file her campaign report on 10/29/07, the System required the use of Excel 2003 to file the information required and was not configured to advise a filer of this type of discrepancy. . . . Since these events occurred, the System was modified to accept Excel 2003, 2007 and 2010.

11. The affidavit provided a receipt showing that the respondent successfully filed her campaign finance report on October 31, 2007.

Personal Use of Political Contributions

12. The complaint alleged that the 30-day pre-election report for the November 2007 election and the July 2007, January 2008, and July 2008 semiannual reports disclosed expenditures that the respondent made that were conversions of political contributions to personal use in violation of section 253.035(a) of the Election Code.

13. The allegations are based on 13 expenditures.

14. The respondent's affidavit stated, "All of the items [the complainant] alleges as personal use were bought for use at events, meetings, workshops and other official and political activities." There was no evidence that the expenditures at issue were made to further an individual or family purpose not connected to the respondent's 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:

Disclosure of Total Outstanding Loans and Total Political Contributions Maintained

1. Each 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. Each 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).
3. On all of the reports at issue, the respondent left blank the space for disclosing total outstanding loans. The respondent filed corrected reports for the July 2007, January 2008, July 2008, and January 2009 semiannual reports that disclosed \$0 for this amount. The respondent did not file corrected reports for the 30-day and 8-day pre-election reports for the November 2007 election. The respondent swore that she did not have any campaign loans, and the evidence did not show unreported loans. There is credible evidence of technical or *de minimis* violations of section 254.031(a)(2) of the Election Code.
4. The complaint alleged that the respondent incorrectly disclosed total political contributions maintained on her 30-day and 8-day pre-election reports for the November 2007 election and the January 2008, July 2008, and January 2009 semiannual reports. The complaint did not specifically state the basis for the allegations. The 30-day pre-election report disclosed \$2,025.05 in in-kind political contributions. The 8-day pre-election report disclosed \$2,527.70 in in-kind political contributions. The January 2008 semiannual report disclosed a \$675 credit on Schedule K. The allegations appear to be based on calculations made using information disclosed on the face of the reports. However, beginning with the October 2007 30-day pre-election report, and looking solely at the face of the reports, when the in-kind political contributions are deducted from the alleged proper totals, and the \$675 credit is considered for the reports beginning in January 2008, the amount disclosed on the face of the reports appears correct. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code.

Disclosure of Political Expenditures

5. Each 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).

6. Political expenditures made out of personal funds by a staff member of a candidate, officeholder, or political committee with the intent to seek reimbursement from the candidate, officeholder, or political committee that in the aggregate do not exceed \$5,000 (\$500 until November 18, 2007) during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made:

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 included with the total amount of political expenditures of \$50 or less, or a specific listing of, the political expenditures of \$50 or less made during the reporting period.

Ethics Commission Rules § 20.62(a).¹

7. The respondent failed to properly disclose the political expenditures at issue totaling approximately \$7,030. The respondent corrected the errors. 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.

Timely Filing of Report

8. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. ELEC. CODE § 254.064(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. ELEC. CODE § 254.064(c).
9. The respondent did not use the proper format to file her report by the filing deadline. There is credible evidence of a technical or *de minimis* violation of section 254.064(c) of the Election Code.

¹ Ethics Commission Rule § 20.62 originally became effective on February 25, 2007. Prior to its adoption, Ethics Advisory Opinion No. 450 (2003) described the proper way to report staff reimbursement. On October 26, 2007, the rule was amended to raise the threshold for reporting staff reimbursements as a loan from \$500 to \$5,000. The change became effective on November 18, 2007. Thus, the amount of reimbursement exceeding \$500 that was disclosed on the July 2007 semiannual report should have been disclosed as a loan.

Personal Use of Political Contributions

10. 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). The prohibitions include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution. *Id.* § 253.035(c).
11. “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).
12. 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).
13. There is insufficient evidence of a 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 each report must include the aggregate principal amount of all outstanding loans as of the last day of the reporting period; that each 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; that in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports, the first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day, and the second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day; and 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 \$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-2905115.

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

Anne Clutterbuck, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director