

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HAROLD V. DUTTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3100252

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-3100252. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 254.031, 254.0612, 254.063, and 254.0912 of the Election Code, and section 20.61(b) of the Ethics Commission Rules, as well as technical or *de minimis* violations of section 254.031 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 complaint alleged that the respondent did not properly disclose on campaign finance reports political contributions and political expenditures, the principal occupation or job title and the full name of the employer for each individual from whom he accepted political contributions that in the aggregate equaled or exceeded \$500 during a reporting period, information related to political contributions from out-of-state political committees, and political expenditures for travel outside of the State of Texas. The complaint also alleged that the respondent improperly reported political expenditures as reimbursements, did not timely file a campaign finance report, and accepted political contributions from corporations or labor organizations.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent is the state representative for District 142. The respondent was a successful incumbent candidate for state representative for District 142 in the 2008 general election. The reports that are at issue are the July 2008, January 2009, July 2009, and January 2010 semiannual campaign finance reports.

POLITICAL CONTRIBUTIONSName of Contributor

2. The complaint alleged that the respondent failed to fully disclose on his January 2009 semiannual report the names of 14 persons making political contributions on his January 2009 semiannual report.
3. As to 10 of the contributions, the respondent disclosed the contributor's acronym which is on file with the Federal Election Commission or the Texas Ethics Commission and may be found by searching the database or the political committee lists.
4. As to the other contributions, the report disclosed the following political contributions: \$250 from NASW, \$1,000 from TSA PAC, and \$750 from WINSTEAD PAC. The report also disclosed a \$100 political contribution from an individual, disclosing the individual's last name and the initials of their first and middle names.
5. The records of the Ethics Commission disclose a political committee by the name Political Action Committee of Winstead PC. The committee disclosed giving the respondent a \$750 political contribution on September 10, 2008.

Principal Occupation or Job Title and Employer of Contributor

6. The complaint alleged that the respondent failed to properly disclose on his January 2009 semiannual report the principal occupation or job title and the full name of the employer of 12 individuals from whom the respondent accepted political contributions that in the aggregate equaled or exceeded \$500 during the reporting period. The contributions at issue totaled \$9,500.
7. The report disclosed a \$1,000 political contribution from an individual and disclosed his principal occupation or job title as "Chairman" and his employer as "construction of highways."
8. The report disclosed contributions from 11 individuals of \$500 or more for which the respondent did not disclose the principal occupation or job title and the full name of the employer in the spaces provided for that information. In the space for "In-kind contribution description," next to the space for the amount of the contribution, the respondent made the following entries: "Attorneys," "Attorney," "Attorney," "Attorney," "Lobbyist," "Attorney," "Lawyer," "Attorney," "Attorney/Lobbyist," "Energy related," and "Investor."

Total Political Contributions Maintained

9. The complaint alleged that the respondent failed to properly disclose total political contributions maintained on four campaign finance reports.
10. The respondent acknowledged that the amounts disclosed were incorrect. The average amount of the error was approximately \$2,200 for the four reports.

Out-of-State Political Committee Information

11. The complaint alleged that the respondent failed to include information regarding political contributions from five out-of-state political committees disclosed on two campaign finance reports.
12. Four of the committees have campaign treasurer appointments filed with the commission. Three disclosed political contributions to the respondent during the periods at issue on their filings with the commission. The fourth committee disclosed that it made a political contribution to the respondent almost seven months prior to the date disclosed in the respondent's report, and during the prior reporting period. The other committee, Eli Lilly and Company Political Action Committee, was an out-of-state committee and made a \$1,000 political contribution to the respondent. The respondent did not provide the Federal Election Commission (FEC) identification number of the committee on his report or a certified copy of the committee's statement of organization filed with the FEC with his report.

Corporate or Labor Organization Contributions

13. The complaint alleged that, based on disclosures in two campaign finance reports, the respondent unlawfully accepted eight political contributions, totaling \$5,050, from corporations and or labor organizations. The respondent denied that he accepted political contributions from any corporations or labor organizations. Seven of the contributions did not come from corporations or labor organizations. For one contribution, the evidence was insufficient to show that the contributor was a prohibited source.

POLITICAL EXPENDITURESReimbursement of Political Expenditures

14. The complaint alleged that the respondent failed to disclose the actual vendor's name and address and the date and amount of the expenditures for four expenditures totaling approximately \$1,107 on two of the respondent's reports. The complaint alleged that there was a double entry of an expenditure of \$83.50 and the respondent acknowledged the error. The adjusted total is approximately \$1,020. The respondent properly reported the remaining expenditures at issue.

Name and Address of Payee

15. The complaint alleged that the respondent failed to fully disclose the names or addresses of five payees for six expenditures totaling approximately \$1,830 on three campaign finance reports
16. The respondent disclosed the name of four payees as follows: NCSL, NES, PBR, and NBCSL. The total amount of the expenditures is approximately \$950. NCSL stands for National Conference of State Legislators and NBCSL stands for National Board of the Conference of State Legislators, and NES is National Exemption Services. The identity of the contributor disclosed as "PBR" is unclear.
17. For the address of a hotel payee of approximately \$880, the respondent disclosed the city, state, and zip code but not the street name or number.

Purpose of Expenditure

18. The complaint alleged that the respondent failed to fully disclose the purposes of political expenditures totaling \$41,760.77 disclosed on four campaign finance reports.
19. The disclosures of the purposes of the expenditures were adequate.

Political Expenditures for Travel Outside of the State of Texas

20. The complaint alleged that the respondent failed to properly disclose on three campaign finance reports expenditures for travel outside of the State of Texas totaling approximately \$7,840.
21. The respondent made an expenditure of \$315 To Southwest Airlines for "Travel to NCSL in New Orleans." The respondent did not complete Schedule T (used for reporting in-kind contributions or political expenditures for travel outside the state of Texas) regarding this expenditure.
22. The other alleged expenditures were not for travel.

Timely Filing of Report

23. The complaint alleged the respondent failed to timely file the January 2009 semiannual report.
24. The respondent filed the January 2009 semiannual report on January 18, 2009. The report was due on January 15, 2009.

25. On January 29, 2009, the respondent paid a \$700 fine for the late report through the administrative process.

IV. Findings and Conclusions of Law

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

POLITICAL CONTRIBUTIONS

Name of Contributor

1. Each 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).
2. The respondent failed to disclose the full name of the following contributors whose contributions totaled \$1,350: NASW, TSA PAC, and the individual whose last name and the initials for his first and middle names were disclosed. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.
3. As to the contribution from Political Action Committee of Winstead PC, which the respondent disclosed as WINSTEAD PAC, the entry on the report did not substantially affect disclosure. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code as to this contribution.
4. As to the other contributions, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

Principal Occupation or Job Title and Employer of Contributor

5. 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 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.
6. Each report by a holder of a statewide office in the executive branch or a legislative office must include the contents prescribed by section 254.0612 of the Election Code. ELEC. CODE § 254.0912.

7. None of the contributions at issue disclosed an employer. Twelve of the contributions at issue disclosed a job title, but 11 of those disclosed the information in the wrong field on the report.
8. The respondent failed to properly disclose the required information. Therefore, there is credible evidence of violations of sections 254.0612 and 254.0912 of the Election Code.

Total Political Contributions Maintained

9. 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).
10. The respondent acknowledged that the amounts disclosed were incorrect. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code. The average amount of the error was approximately \$2,200 for the four reports.

Out-of-State Political Committee Information

11. Out-of-state political committee means a political committee that makes political expenditures outside this state and in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder) makes 80 percent or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. ELEC. CODE § 251.001(15).
12. A candidate that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report that covers the reporting period in which the contribution is accepted the same information for the out-of-state political committee required for general-purpose committees by sections 252.002 and 252.003 of the Election Code, or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. ELEC. CODE § 253.032(e).
13. In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee a written statement, certified by an officeholder of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or a copy of the out-of-state committee's statement of organization filed as

- required by law with the Federal Election Commission and certified by an officer of the out-of-state committee. ELEC. CODE § 253.032(a).
14. A candidate, officeholder, or political committee shall include the statement or copy required by Subsection (a) as a part of the report filed under Chapter 254 that covers the reporting period to which Subsection (a) applies. ELEC. CODE § 253.032(d).
 15. 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. Ethics Commission Rules § 20.29(a).
 16. Four of the committees have campaign treasurer appointments filed with the commission. Three disclosed political contributions to the respondent during the reporting periods at issue on their filings with the commission. The fourth committee disclosed that it made a political contribution to the respondent almost seven months prior to the date disclosed in the respondent's report, and during the prior reporting period. Given the time between the date disclosed by the contributor and the date disclosed by the respondent, the evidence is insufficient to show the source of the contribution. Therefore, there is insufficient evidence of a violation of section 253.032 of the Election Code with regard to that contribution. If a committee is a Texas committee, then it is not an out-of-state committee for purposes of the requirement at issue. Therefore, with regard to the remaining political contributions described above, there is credible evidence of no violation of section 253.032 of the Election Code.
 17. The other committee at issue was an out-of-state committee from which the respondent accepted a \$1,000 political contribution. The respondent failed to either provide the FEC identification number of the committee or a certified copy of the committee's statement of organization filed with the Federal Election Commission with the report that disclosed the contribution. Therefore, there is credible evidence of a violation of section 253.032 of the Election Code.

Corporate or Labor Organization Contributions

18. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. ELEC. CODE § 253.094. That subchapter does not authorize a corporation or labor organization to make a political contribution to a candidate.

19. “Corporation” means a corporation that is organized under the Texas Business Corporation Act, the Texas Non-Profit 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. ELEC. CODE § 253.091.
20. 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(b).
21. The evidence indicated that seven of the contributions at issue were not from corporations. Therefore, there is credible evidence of no violation of sections 253.003(b) and 253.094(a) of the Election Code, with regard to those contributions. Regarding the remaining contribution, there is insufficient evidence of a violation of sections 253.003(b) and 253.094(a) of the Election Code.

POLITICAL EXPENDITURES

Reimbursement of Political Expenditures

22. 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. ELEC. CODE § 254.031(a)(3).
23. Political expenditures made out of personal funds by a staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate must be disclosed in accordance with section 20.62 of the Ethics Commission Rules.
24. The respondent properly reported the 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 as to those expenditures.

Name and Address of Payee

25. 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. ELEC. CODE § 254.031(a)(3).
26. The respondent failed to disclose the full name of four payees: NCSL, NES, PBR, and NBCSL. NCSL stands for National Conference of State Legislators and NBCSL stands for National Board of the Conference of State Legislators, and NES is National Exemption Services. The errors regarding the expenditures to NCSL, NBCSL and NES, totaling approximately \$790, are minor in context. Therefore, there is credible evidence of technical

or *de minimis* violations of section 254.031(a)(3) of the Election Code as to these expenditures.

27. There is credible evidence of violations of section 254.031(a)(3) of the Election Code as to the reporting of the expenditure to PBR totaling \$160.
28. The respondent failed to disclose the full address of the hotel payee of approximately \$880. The error is minor in context. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.031(a)(3) of the Election Code as to the reporting of this expenditure.

Purpose of Expenditure

29. 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. ELEC. CODE § 254.031(a)(3).
30. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61.
31. The disclosures of the purposes of the expenditures were adequate. Therefore, there is credible evidence of no violation of section 254.031(a)(3) of the Election Code or section 20.61 of the Ethics Commission Rules.

Political Expenditures for Travel Outside of the State of Texas

32. The description of a political expenditure for travel outside of the state of Texas must provide the following:
 - (1) The name of the person or persons traveling on whose behalf the expenditure was made;
 - (2) The means of transportation;
 - (3) The name of the departure city or the name of each departure location;
 - (4) The name of the destination city or the name of each destination location;
 - (5) The dates on which the travel occurred; and
 - (6) The campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event.

Ethics Commission Rules § 20.61(b).

33. The respondent made an expenditure of \$315 To Southwest Airlines for “Travel to NCSL in New Orleans.” This was an expenditure for travel outside the State of Texas. The respondent failed to complete Schedule T (used for reporting in-kind contributions or political expenditures for travel outside the state of Texas) regarding this expenditure. Therefore, there is credible evidence of a violation of section 20.61(b) of the Ethics Commission Rules. The respondent has not corrected the error.
34. The other alleged expenditures were not for travel. Therefore, the expenditures were not required to be disclosed on Schedule T. There is credible evidence of no violation of section 20.61(b) of the Ethics Commission Rules as to those expenditures.

Timely Filing of Report

35. A candidate shall file two reports for each year as provided by this section. The first report shall be filed not later than July 15 and the second report shall be filed not later than January 15. ELEC. CODE § 254.063.
36. There is credible evidence of a violation of section 254.063 of the Election Code. The respondent previously paid an administrative penalty related to this report and no additional penalty is assessed.

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 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; 2) 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 during the reporting period, the individual’s principal occupation or job title and the full name of the individual’s employer; 3) 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, 4) in a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee a written statement, certified by an officeholder of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee, 5) a candidate, officeholder, or political committee shall include the statement or copy required by subsection (a) of section 253.032(a) of the Election Code as a part of the report filed under Chapter 254 that covers the reporting period to which Subsection (a) applies, 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, 7) 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, 8) the description of a political expenditure for travel outside of the state of Texas must provide the following: the name of the person or persons traveling on whose behalf the expenditure was made; the means of transportation; the name of the departure city or the name of each departure location; the name of the destination city or the name of each destination location; the dates on which the travel occurred; and the campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event, and 9) a candidate shall file two reports for each year, the first report shall be filed not later than July 15 and the second report shall be filed not later than January 15. 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 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 \$1,300 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-3100252.

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

Harold V. Dutton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director