

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MATT MASDEN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2810363

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2810363. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 253.035(h) of the Election Code and sections 20.61, 20.62, and 20.63 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 accepted a political contribution from a corporation, failed to properly report political expenditures made with personal funds, failed to properly report political expenditures made as reimbursements, and failed to properly disclose political contributions maintained on his January 2007, July 2007, January 2008, and July 2008 semiannual campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent has held the position of Montgomery County Justice of the Peace, Precinct 5, since 2007.
2. The respondent's original January 2007 semiannual report disclosed the following:
 - \$2,890 in total political contributions.
 - \$2,122.83 in total political expenditures.
 - \$767.17 in total political contributions maintained.

3. A corrected January 2007 semiannual report disclosed \$5,775.04 in total political contributions maintained and an explanation that the balance from the July 2006 semiannual report was not carried over correctly on the original report.
4. The respondent's original July 2007 semiannual report disclosed the following:
 - \$24,416 in total political contributions.
 - \$7,314.15 in total political expenditures.
 - \$19,702.13 in total political contributions maintained.
 - a political contribution from "Magnolia Sign Source" dated May 30, 2007 for \$100.
 - a political expenditure to payee Matt Masden dated June 4, 2007 for \$5,000 for the purpose of, "Payment on loan and supplies for fundraiser."
 - a political expenditure to payee Deanna Hartman dated June 29, 2007, for \$72.58, with no street address disclosed, for the purpose of, "Reimbursement for fundraiser items."
5. A corrected July 2007 semiannual report disclosed a zero in the space for total political contributions maintained and an explanation that the correct balance from the January 2007 semiannual report was not carried over on the original report. The corrected report also contained a correction affidavit in which the respondent states that the original check accepted from "Sign Source" did not indicate that the contributor company was a corporation and that the respondent had made a reimbursement to that company for the \$100 contribution. The correction affidavit further disclosed that the purpose of the \$5,000 expenditure was \$3,289.95 for reimbursement for part of a loan which the respondent had made to the campaign on April 20, 2006, and \$1,710.05 for "misc. supplies and rentals for a fundraiser." (The respondent's July 2006 semiannual report disclosed two loans with the respondent as the lender, a \$700 loan on January 14, 2005, and a \$12,000 loan on April 20, 2006). The corrected report also contains address information for payee Deanna Hartman. The corrected July 2007 semiannual report disclosed a blank for total principal amount of all outstanding loans, where the original report disclosed "zero."
6. On the corrected July 2007 semiannual report, the respondent disclosed vendor payees for purchases originally made by staffers and included a Schedule G disclosing expenditures to vendors made from his personal funds.
7. The original January 2008 semiannual report disclosed three political expenditures where the payee address information did not include a street address, and disclosed only the city as the address. Two of those expenditures also disclosed the zip code.
8. A corrected January 2008 semiannual report disclosed complete address information for each of these payees, including street numbers and names.

9. The original July 2008 semiannual report disclosed the following:
 - two political expenditures to payee Matt Masden dated May 28, 2008, and June 5, 2008, totaling \$3,301.38 for the purposes of, “Payment for Fundraiser Supplies” and “Reimbursement for Printing at Country Tyme Trophies.”
 - three political expenditures to payee Peggy Countryman dated January 8, 2008, March 12, 2008, and June 4, 2008, totaling \$174, for the purpose of, “Fundraiser items.”
 - four political expenditures to payee Deanna Hartman dated February 1, 2008, February 4, 2008, March 13, 2008, and May 28, 2008, totaling approximately \$210, for the purposes of “fundraiser items” and “Easter Candy-Friendship Center.”
 - a political expenditure to payee Diane Mendez dated April 17, 2008, in the amount of \$42.19, for the purpose of “Fundraiser items.”
 - a political expenditure to payee McKensey Smith dated June 12, 2008, for \$50, for the purpose of “Donation.”
 - six political contributions where the contributor address information contained only “Magnolia, Texas” and the zip code as the address.
 - seven political expenditures where the contributor address information contained only “Magnolia, Texas” or “New Caney, Texas” and the zip code as the address. One of the expenditures was for \$50.

10. The respondent filed corrections to his July 2008 semiannual report disclosing additional information about the reimbursed expenditures, including numerous expenditures for which his staff members were reimbursed and a Schedule G disclosing expenditures to vendors made from his personal funds. The corrected reports disclosed complete address information for each of the contributors and payees, including street numbers and names.

11. The complaint alleged that the respondent accepted a contribution from a corporation. The respondent’s July 2007 semiannual report disclosed a political contribution of \$100 from Magnolia Sign Source on May 30, 2007.

12. According to the Texas Secretary of State’s records, Magnolia Sign Source, Inc. is a domestic for-profit corporation. The Texas Secretary of State’s records provide the following address for this corporation:

Magnolia Sign Source, Inc.
 18252 FM 1488 STE 100
 Magnolia, Texas 77354

13. In his correction affidavit for his July 2007 semiannual report, the respondent swore that the “check accepted from Sign Source did not indicate the company was a corporation on the check itself at the time of being deposited. A reimbursement for the \$100 was issued.” A copy of the original check received from Magnolia Sign Source and the reimbursement check were included with the corrected report. The check from Magnolia Sign Source

disclosed “Magnolia Sign Source” with its address and phone number and “Fundraiser” in the memo field. The respondent indicated in a telephone conversation with commission staff that he was not aware that Magnolia Sign Source was incorporated at the time he received the contribution and was not aware until he received notice of this sworn complaint.

14. In an affidavit to the commission, the respondent swore:

[On] May 30, 2007, I accepted a check from Magnolia Sign Source and I was not aware they were a corporation. The check did not indicate a corporation was involved. When this was brought to my attention, campaign check #1354, dated November 5, 2008, in the amount of \$100 was immediately issued from my campaign funds and mailed to Magnolia Sign Source to return the contribution.

15. The respondent’s January 2009 semiannual report disclosed an expenditure in the amount of \$100 to “Magnolia Sign Source” on November 5, 2008, for the purpose of, “05.30.07 which was a corporation check.”
16. The complaint alleged that the respondent failed to properly disclose, in his July 2007, January 2008, and July 2008 semiannual reports, political expenditures made to reimburse himself, or his campaign or office staff. The respondent’s reports disclosed approximately \$550 in political expenditures from political contributions as reimbursements to individuals without disclosing the actual payees of the expenditures. In most cases, the purpose of each expenditure was disclosed as a reimbursement for multiple goods or services, such as reimbursements for fundraiser supplies and printing.
17. In response to the complaint, the respondent submitted receipts from specific vendors corresponding with the expenditures at issue, and filed corrections to the reports at issue disclosing the actual payee information for those expenditures.
18. The complaint alleged that the respondent failed to properly disclose political expenditures made with personal funds. The respondent’s reports disclosed approximately \$8,300 in political expenditures made from political contributions to the respondent for reimbursements. In most cases, the purpose of each expenditure was disclosed as a reimbursement for multiple goods or services, such as “reimbursement for fundraiser supplies.” In instances where multiple goods or services were listed, the amounts attributable to the listed goods or services were not disclosed.
19. In response to the allegation, the respondent included receipts and explained that the amounts were reimbursements for expenditures from his personal funds. The respondent filed corrected reports, with additional information disclosed as to the purpose of these expenditures.

20. The complaint alleged that the respondent failed to correctly disclose the total political contributions maintained on his January 2007 and July 2007 semiannual reports.
21. The respondent admitted that he incorrectly reported these totals, due to not carrying totals over correctly. The respondent filed corrections to both of these reports disclosing \$5,775.04 for the January 2007 semiannual report and zero for the July 2007 semiannual report in total political contributions maintained. The respondent's original July 2007 semiannual report disclosed \$19,702.13 in contributions maintained. The corrected report disclosed a zero in the space provided to disclose total political contributions maintained, and left blank the space to disclose total principal amount of all outstanding loans.

IV. Findings and Conclusions of Law

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

Acceptance of Corporate Contributions

1. 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.
2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094. 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. ELEC. CODE § 253.091.
3. In order to show 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.
4. Magnolia Sign Source is a corporation. However, the business name and address on the check from Magnolia Sign Source did not indicate that it was a corporation. The respondent swore that he was not aware that Magnolia Sign Source was incorporated when he accepted the contribution. The respondent swore that he returned the contribution upon receiving notice of that fact. The respondent filed a correction affidavit for the July 2007 semiannual report and attached a copy of the contribution check, and a check to indicate that he had returned the contribution. The contribution was returned during the reporting period for the January 2009 semiannual report. That report disclosed the return of the contribution. There is insufficient evidence that the respondent violated sections 253.003 and 253.094 of the Election Code.

Failure to Properly Disclose Political Expenditures for Reimbursements

5. 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).

6. Section 20.62 of the Ethics Commission Rules,¹ which sets forth the proper method for reporting reimbursements to staff, currently states that 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, that in the aggregate do not exceed \$5,000 (\$500 until October 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:
 - (1) 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
 - (2) Included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period.

7. Ethics Commission Rule § 20.62 also states, in relevant part, that if the staff member is not reimbursed during the same reporting period, or is reimbursed more than \$5,000 in the aggregate during the reporting period, then a political expenditure made out of personal funds by the staff member of an officeholder or candidate with the intent to seek reimbursement from the officeholder or candidate must be reported as follows:
 - (1) The aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder or candidate;
 - (2) The expenditure made by the staff member is reported as a political expenditure by the officeholder or candidate; and
 - (3) The reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder or candidate.

¹ Ethics Commission Rule § 20.62 originally became effective on February 25, 2007. 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.

8. 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(a).
9. The total amount of expenditures at issue was approximately \$550 to individuals to reimburse purchases made on behalf of the respondent. All of the expenditures were made from political contributions. The respondent's original reports disclosed the names and addresses of the individuals who were reimbursed by the respondent without disclosing the names and addresses of those vendors who were actually paid by the individuals.
10. The respondent failed to properly disclose the names or addresses of the actual payees of the expenditures. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules by failing to properly disclose approximately \$550 in political expenditures.

Failure to Properly Disclose Political Expenditures Made with Personal Funds

11. A candidate is required to report a campaign expenditure from personal funds. ELEC. CODE § 20.63(a).
12. A candidate or officeholder who makes political expenditures from his or her personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report that covers the period during which the expenditures from personal funds were made and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. ELEC. CODE § 253.035(h); Ethics Commission Rules § 20.63(d).
13. The respondent made approximately \$8,300 in expenditures to himself from political contributions as reimbursements for political expenditures made from personal funds. To properly reimburse himself for the expenditures made from personal funds, the respondent was required to disclose the expenditures and indicate that reimbursement was intended. None of the expenditures made from personal funds were disclosed as such when the reports were originally filed. Therefore, there is credible evidence that the respondent violated sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules by failing to properly disclose approximately \$8,300 in political expenditures made from personal funds.

Failure to Properly Disclose Total Political Contributions Maintained

14. 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).
15. The respondent incorrectly reported political contributions maintained on his January and July 2007 semiannual reports. Therefore, there is credible evidence that the respondent violated section 254.031(a)(8) 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 a candidate who makes political expenditures from the candidate’s personal funds may reimburse those personal funds from political contributions only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, and the report clearly designates those expenditures as having been made from the person’s personal funds and that the expenditures are subject to reimbursement. In the alternative, a candidate who makes political expenditures from the candidate’s personal funds may report the amount expended as a loan and may reimburse personal funds from political contributions in the amount of the reported loan. The respondent acknowledges that the report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. The respondent acknowledges that the proper way to report reimbursements to staff is in accordance with section 20.62 of the Ethics Commission Rules. The respondent further acknowledges that each campaign finance 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. 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 \$900 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-2810363.

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

Matt Masden, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director