

TEXAS ETHICS COMMISSION

IN THE MATTER OF
THOMAS A. SCHOOLCRAFT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2709202

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 14, 2008, to consider sworn complaint SC-2709202. 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, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to report expenditures or in the alternative, in-kind contributions.

III. Facts Supported by Credible Evidence

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

1. The complaint arises from the May 12, 2007, election for the mayor of Helotes, Texas.
2. The respondent was a successful candidate for mayor.
3. The complaint alleges that the respondent failed to report contributions or expenditures related to the design and creation of a website.
4. In addition, the complaint alleges that the respondent failed to report contributions or expenditures related to hosting the website.

5. The complaint also alleges that the respondent failed to report contributions or expenditures for a newspaper advertisement placed in the Helotes Echo on May 9, 2007.
6. The complaint further alleges that the respondent failed to report contributions or expenditures related to two solar-powered electric signs used by a slate of three candidates, including the respondent. Near each sign was a smaller sign that stated “Pol. Adv. By Tom Schoolcraft, [and two other candidates].”
7. The respondent’s 30-day and 8-day pre-election campaign finance reports for the May 2007 election, and July 2007 semiannual campaign finance report do not disclose contributions or expenditures related to the allegations.
8. The complaint also included a copy of the newspaper advertisement at issue. The advertisement indicates that it was paid for by “Support[er]s for Tom Schoolcraft for Mayor.”
9. The evidence indicates that the respondent’s daughter designed the website at issue as a personal service to the respondent at no cost, and that the respondent’s web hosting plan allows him to add additional websites at no additional cost.
10. In response to the allegation regarding the newspaper advertisement, the respondent swears that at the time it was placed, he did not know who placed the advertisement and still does not know who placed the advertisement.
11. In response to the allegations regarding the two electric signs, the respondent swears that the signs belonged to an acquaintance who is a highway contractor.
12. The respondent swears that the signs were trailer-mounted, solar powered highway signs that were not being used by the contractor at the time.
13. The respondent swears that since there was no expense incurred or compensation received by anyone, he understood that this was not an in-kind contribution.
14. The respondent swears, “Your guide on political advertising indicates that a disclosure statement is required any time a candidate authorizes political advertising and the cautious thing is to include the disclosure statement. That is the reason the statement was placed at the location of the sign.”
15. The respondent swears that he used the signs for four days.

16. The respondent swears that the person who provided the signs charges a daily rate of \$50 - \$75 per day when submitting construction bids.
17. The respondent also provided a copy of a TxDot report that indicates the average low bid for a portable changeable message sign is \$69 per day.

IV. Findings and Conclusions of Law

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

1. Each campaign finance 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.
2. A political contribution consisting of an individual's personal service is not required to be reported if the individual receives no compensation for the service. ELEC. CODE § 254.033.
3. A contribution means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. ELEC. CODE § 251.01(2).
4. An in-kind contribution means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure. Ethics Commission Rules § 20.1(8).
5. A direct campaign expenditure is a campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made. Ethics Commission Rules § 20.1(5).
6. The complaint alleges that the respondent failed to report several in-kind contributions, or in the alternative, failed to report political expenditures.
7. Regarding the website, the evidence indicates that a person, who was not in the business of creating websites at the time and was not compensated, contributed her personal services to create the respondent's website.

8. Thus, the evidence indicates that this contribution was a non-reportable personal service. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code regarding the alleged failure to report political contributions or political expenditures for the design and creation of the website at issue.
9. Regarding the hosting of the website, the evidence indicates that the respondent had a preexisting contract that allowed for the addition of unlimited websites at no additional cost.
10. The evidence indicates that the respondent did not incur additional costs related to his campaign website.
11. In Ethics Advisory Opinion No. 116 (1993), the commission determined that “The use of a [candidate’s] personal asset for political purposes is not required to be reported under title 15.”
12. Here, the personal asset was the preexisting contract for website and hosting services and there was no additional expenditure related to the respondent’s campaign. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code regarding the alleged failure to report political contributions or political expenditures for the hosting of the website at issue.
13. Regarding the newspaper advertisement, the evidence indicates that the expenditure for the advertisement was made by a third party without the prior approval or consent of the respondent. Thus, the political expenditure was by definition a direct expenditure and not an in-kind contribution. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code regarding that political advertisement.
14. Regarding the electric signs, the evidence indicates that an individual offered the respondent the use of two electric signs for political advertising.
15. Although the respondent was not required to pay for the use of the signs, it does not automatically follow that no contribution was made. The mere use of an electric sign has value. Thus, the use of the signs for political advertising was a direct transfer of something of value to the respondent.
16. The evidence indicates that the respondent accepted in-kind contributions in the form of the use of two electric signs. The evidence indicates that the value of the use of the signs was \$50 - \$75 per day.

17. The evidence indicates that the respondent did not and has not reported these in-kind contributions. Therefore, there is credible evidence of a violation of section 254.031 of the Election Code regarding the use of the electric signs.

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 campaign finance 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. The respondent acknowledges that an in-kind contribution means a contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 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-2709202.

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

Thomas A. Schoolcraft, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director