

TEXAS ETHICS COMMISSION

IN THE MATTER OF
THOMAS A. HALEPASKA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31005167

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2011, to consider sworn complaint SC-31005167. A quorum of the commission was present. The commission determined that there is credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code and credible evidence of a violation 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 include a political advertising disclosure statement on political advertising and did not disclose political expenditures on his 8-day pre-election report for the May 2010 election.

III. Facts Supported by Credible Evidence

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

1. The respondent is a city councilmember, District 6, in Victoria, Texas.
2. The allegations relate to an election held on May 8, 2010. At issue are three newspaper advertisements that included a partial political advertising disclosure statement, and expenditures for the three advertisements, signs, and a mail piece.

Political Advertising Disclosure Statement

3. The advertisements appeared in two different newspapers on different dates.
4. The first advertisement appeared in the April 2010 edition of the Revista de Victoria, a local monthly newspaper. The complaint alleged that the advertisement was published on or about April 6, 2010. The exact date of publication is not present on the newspaper, but

based on the newspapers content it is apparent that it was published in late March or early April 2010. The advertisement read "Elect TOM HALEPASKA For CITY COUNCIL Super District 6," with smaller print on the bottom stating "Paid for by Tom Halepaska Campaign."

5. The second advertisement at issue appeared in the April 28, 2010, edition of the Victoria Advocate, a daily local newspaper. The top half of the advertisement read "ELECT TOM HALEPASKA For CITY COUNCIL Super District 6," and included a statement from the respondent, voting dates and a picture of the respondent. The advertisement also listed his qualifications for office. The lower right side of the advertisement stated "Paid for by Tom Halepaska Campaign."
6. The third advertisement at issue appeared in the April 30, 2010, edition of the Victoria Advocate, a daily local newspaper. The top half of the advertisement read "ELECT TOM HALEPASKA For CITY COUNCIL Super District 6," and voting dates, listed the respondent's qualifications and included a statement from the respondent. The lower right side of the advertisement stated "Paid for by Tom Halepaska Campaign."

Reporting Political Expenditures

7. The complaint alleged that the respondent failed to report on his 8-day pre-election report political expenditures for political advertising signs, one mail piece and the three newspaper advertisements at issue, in violation of section 254.031(a)(3) of the Election Code.
8. In response to the allegations concerning the signs and a mail piece, the respondent swore:

The total amount reported in my Eight (8) day report of \$132.00 was for postage stamps that were used in the mail piece referred to in the Complaint.

The stationary [sic] and envelopes for that mail piece were left over from my previous campaign in 2004 and were used for the mail piece without any other expenditure. Likewise, the political signs were left over from the 2004 campaign as well. No new signs were purchased. Stakes and T posts used in the placement of the signs were also leftovers. Because the office being sought was the same as the 2004 campaign, no changes to the political sign were necessary and no new expenditures made.

9. Also at issue are political expenditures to Revista de Victoria and the Victoria Advocate. The complaint alleged that political expenditures for the advertisements published in those newspapers were readily determinable prior to the end of the reporting period covered by the 8-day pre-election report for the May 2010 election and were required to be included in that report. As noted above, the April 2010 edition of the Revista de Victoria was published in late March or early April 2010.

10. On April 30, 2010, the respondent filed an 8-day pre-election report for a May 8, 2010, city election covering from April 9, 2010, through April 28, 2010. The report should have covered from March 30, 2010, to April 28, 2010. The report itemized only one \$132 political expenditure (made from personal funds) to the "US POSTAL SERVICE," on April 2, 2010. The report did not disclose any amount of unitemized political expenditures. The report did not disclose any political expenditures to Revista de Victoria or the Victoria Advocate.
11. In his response to the complaint, the respondent swore that he employed the services of a consultant for this campaign. The respondent also swore that the final and only bill for his services was emailed to him on May 12, 2010. The respondent also swore that all advertising decisions were made by, paid for, and arranged through the consultant.
12. Invoices of the consultant's fees show charges totaling approximately \$11,944, which included:
 - \$3,000 as a "Consulting Fee."
 - \$4,929 for "Direct Mail (2 mailings@4929 pieces each@ .50 cents each)."
 - \$186 for "Grassroots Support (Turnkey including Get Out The Vote and Canvass, Web Site)."
 - \$3,829.38 for "Victoria Advocate/ReVista (Print ads and electronic ad-see order confirmations in separate document).
13. On June 22, 2010, as a result of this complaint, the respondent filed a correction to his 8-day pre-election report for the May 2010 election. The correction included a Schedule F (used for political expenditures) and disclosed two political expenditures that were not previously reported. The description for both expenditures was "Newspaper ad." The first was a \$225 expenditure to the "Revista de Victoria" dated April 5, 2010. The second was an \$853.58 expenditure to "The Victoria Advocate" dated April 27, 2010 (The current information found on the Victoria Advocate website indicates that print advertising would need to be submitted at least two days prior to the publication date, which would put the order date for the advertisement in the period covered by the 8-day pre-election report).
14. On July 13, 2010, the respondent filed a July 2010 semiannual report covering from April 29, 2010, through July 15, 2010. The report left a blank space for total expenditures of \$50 or less, but itemized the following expenditures:
 - A \$666.72 expenditure with a category of "INSTANT COPY & PRINTING" for "PRINTING EXPENSE" and description of "DOOR HANGERS & CARDS," dated May 12, 2010.
 - A \$2,750.80 expenditure to "THE VICTORIA ADVOCATE" with a category of "ADVERTISING EXPENSE" and description of "PRINT ADS & ELECTRONIC ADS," dated May 12, 2010.

- A \$4,928 expenditure to “MAVERICK COMMUNICATIONS” with a category of “ADVERTISING” and description of “MAILOUTS TO VOTERS,” dated May 12, 2010.
- A \$186 expenditure to “MAVERICK COMMUNICATIONS,” with a category of “ADVERTISING,” and description of “GET OUT THE VOTE, CANVAS WEB SITE,” dated May 12, 2010.
- A \$3,000 expenditure to “MAVERICK COMMUNICATIONS,” with a category of “CONSULTING EXPENSE,” and a description of “CAMPAIGN MANAGEMENT,” dated May 12, 2010.

IV. Findings and Conclusions of Law

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

Political Advertising Disclosure Statement

1. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).
2. “Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that, in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication or on an Internet website. *Id.* § 251.001(16).
3. The advertisements at issue were communications that supported the respondent as a candidate for nomination or election to a public office and were published in a newspaper in return for consideration. Therefore, the advertisements constituted political advertising. The political advertising contained express advocacy and were therefore required to include a political advertising disclosure statement. Although the advertisements included a disclosure statement, the disclosure statement did not indicate that the advertisements were political advertising. However, it was clear from the face of the advertisements that they were political advertising. Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code.

Reporting Political Expenditures

4. 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. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed, as applicable, and continuing through the 40th 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. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. ELEC. CODE § 254.064(c).
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. The complaint alleged that the respondent failed to report political expenditures for political advertising signs and one mail piece. The respondent swore that the stationery and envelopes for the mail piece at issue were left over from his previous campaign in 2004, and that he reported the postage for the mail pieces on his 8-day pre-election report for the May 2010 election. The respondent swore that the signs at issue were also left over from his 2004 campaign and that no new expenditures for those signs were made. Although the respondent swore that there were no additional expenditures for the mail piece, the invoice from the political consultant shows a charge of \$4,929 for "2 mailings." Whether this charge included the referenced mailing or not is unclear. With regard to the political advertising signs and one mail piece at issue, there is insufficient evidence of a violation of section 254.031(a)(3) of the Election Code.
7. The complaint also alleged that the respondent failed to report political expenditures for the three newspaper advertisements at issue in the Revista de Victoria and The Victoria Advocate. The respondent swore that he paid a consultant for services that included the purchase of political advertisements. He swore that the consultant made all decisions regarding the advertisements. It does not appear that the respondent made decisions concerning the advertisements at issue, or had specific knowledge of the total amount of the expenditures made by the consultant until he received the bill. If that was the case, the respondent was not required to report the political expenditures for the specific advertisements. However, the respondent was required to report a political expenditure to the consultant when that amount was readily determinable. The respondent asserts that the amount was readily determinable at the time he received the final invoices from the consultant. Those invoices show charges totaling approximately \$11,944, which included:

- \$3,000 as a “Consulting Fee.”
 - \$4,929 for “Direct Mail (2 mailings@4929 pieces each@.50 cents each).”
 - \$186 for “Grassroots Support (Turnkey including Get Out The Vote and Canvass, Web Site).”
 - \$3,829.38 for “Victoria Advocate/ReVista (Print ads and electronic ad-see order confirmations in separate document).
8. It is reasonable to assume that the consulting fee was the amount the respondent agreed upon in exchange for the expertise and services that would be provided by the consultant (i.e. the decisions, the time for ordering and placing the ads . . . etc). It is also reasonable to assume that the respondent and the consultant decided on this amount prior to beginning work on the respondent’s campaign. Therefore, that amount of compensation was readily determinable prior to the ordering and payment of respondent’s newspaper advertisements at issue. Based on the respondent’s corrections to his 8-day pre-election report, the timing of the advertisement in Revista de Victoria and the fact that the consultant had, based on the amounts disclosed in his invoice, placed additional advertisements and engaged in a direct mail campaign on behalf of the respondent, it appears that some, if not all, of the consultants charges were readily determinable before the April 28, 2010, ending date for the 8-day pre-election report. The respondent could have simply inquired as to the charges up to that date. There is credible evidence that the respondent did not disclose political expenditures in his 8-day pre-election report for the May 8, 2010, election as required by section 254.031(a)(3) of the Election Code. Therefore, as to the newspaper advertisements and consulting fee at issue, there is credible evidence of a violation of section 254.031(a)(3) 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 person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

The respondent also acknowledges that 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.

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 \$750 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-31005167.

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

Thomas A. Halepaska, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director