

# **TEXAS ETHICS COMMISSION**

**IN THE MATTER OF**  
§  
**JOSEPH MENSLAGE,**  
§  
**RESPONDENT**

**BEFORE THE**  
§  
**TEXAS ETHICS COMMISSION**  
§  
**SC-31804125**

## **FINAL ORDER**

The Texas Ethics Commission (Commission), having heard this case and voting to find a violation of a law under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

### **Findings of Fact**

1. The respondent is Joseph Menslage, the owner and publisher of Houston Christian Magazine d/b/a Katy Christian Magazine (KCM). The sworn complaint was filed against the respondent on April 6, 2018. The first Notice of Hearing was sent to the respondent on May 8, 2019, by United States Postal Service delivery confirmation and email. A second Notice of Hearing was sent to the respondent by the same methods on May 23, 2019.
2. The preliminary review hearing was held on June 27, 2019, by the Commission in Austin, Texas.
3. The respondent did not file a response to the notices of hearing or appear at the hearing.
4. The complainant alleged that the respondent charged him more than his political opponent for an equal-sized political ad, in violation of section 255.002 of the Election Code.
5. The complainant, a candidate for Harris County Court at Law judge, paid \$1,200 for a half-page ad that KCM published in its February-March 2018 issue. The complainant's opponent in the March 2018 primary election paid \$400 for the same-sized ad, which KCM also published in its February-March 2018 issue.
6. The complainant's opponent disclosed in a campaign finance report making the \$400 expenditure to KCM on January 4, 2018. The complainant paid KCM \$1,200 on or about December 17, 2017.
7. The \$1,200 rate that the complainant paid was the rate published by KCM in materials prepared for prospective advertisers.

8. The complainant alleged that he called KCM about receiving an endorsement in his election and learned KCM had already endorsed his opponent, but that the respondent told the complainant that KCM would welcome his ad placement.
9. The complainant swore that “at no time during our telephone discussion did Mr. Menslage mention to me nor did he indicate to me that KCM would entertain any negotiations or offers to pay a lower price for the political ad.”
10. The complainant realized that his opponent was charged a lower rate through reviewing his opponent’s campaign finance report.
11. The complainant, by email dated February 26, 2018, asked the respondent to explain the billing differences. The respondent responded that the complainant’s opponent received a discount because he negotiated for one and “as a business owner, we do have the right to negotiate.” The complainant responded that he would “like now to negotiate for a 2/3 rebate off the advertised rate we both were faced with. If KCM agree[s] to this I’ll let the matter drop.”
12. In response to the complaint, the respondent denied knowingly violating section 255.002 of the Election Code. He stated:

When [the complainant] emailed us, he bought an ad from another person in my organization and never asked for a discount or negotiated at any point. I dealt with [the complainant’s opponent] directly and he negotiated for an ad. This is a common practice in my industry.

As for Section 255.002, [the complainant’s opponent] bought the ad Jan. 4, 2018, which is outside the 45 day and 60 day time frame stated in subsection (a)(1). Therefore, this statute would not apply.

I can’t speak for [the complainant], but if he looks at financial statements from other candidates throughout the years, he would see that I do negotiate for ads. I know he did not have a problem with [his opponent’s] ad prior to the March 6th election and when he lost his race, he decided to file a complaint against me. In my business, some people don’t negotiate and others do. At no point did I knowingly violate this statute and I ask you dismiss this complaint against me.

### **Conclusions of Law**

1. The Commission shall administer and enforce, among other laws, Title 15, Election Code. Gov’t Code § 571.061(a). Disposition of this case is within the jurisdiction of the Commission.
2. After written notice under section 571.123(b) regarding the filing of a sworn complaint has been sent to a person in the manner required by subsection (a), the Commission may send

the person any additional notices regarding the complaint by regular mail unless the person has notified the Commission to send all notices regarding the complaint by registered or certified mail, restricted delivery, return receipt requested. *Id.* § 571.032(b).

3. A notice required to be sent to a respondent under chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. ETHICS COMMISSION RULES § 12.21(b). A respondent may waive the right under section 571.032 of the Government Code to receive written notice related to the complaint by registered or certified mail, restricted delivery, return receipt requested, and may agree to receive written notices related to the complaint by first class mail, electronic mail, or other means. *Id.* § 12.21(d).
4. The respondent received legally sufficient notice of the June 27, 2019, preliminary review hearing in this case.
5. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. *Id.* § 12.23. The June 27, 2019, preliminary review hearing was held in accordance with section 12.23, Ethics Commission Rules.
6. "Political advertising" includes a communication supporting or opposing a candidate for nomination or election to a public office that in return for consideration, is published in a newspaper, magazine, or other periodical. ELEC. CODE § 251.001(16).
7. The rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes. *Id.* § 255.002(b).
8. In determining amounts charged for comparable use, the amount and kind of space or time used, number of times used, frequency of use, type of advertising copy submitted, and any other relevant factors shall be considered. *Id.* § 255.002(c).
9. Despite the respondent's assertion, the prescribed advertising rates for printed or published political advertising are not limited to the period immediately before the election. The time restriction applies only to political advertising broadcast by a radio or television station. *Compare id.* § 252.002(a) (limiting the prescribed ad rates for television and radio to 45 days before a general or runoff primary election and 60 days before a general or special election) and *id.* § 252.002(b) (containing no such temporal limitation for print advertising).
10. The respondent, as the owner and publisher of KCM, offered and accepted \$1,200 from the complainant for political advertising placed in KCM. The respondent offered and accepted \$400 for an identically-sized political ad that was published in the same issue as the ad for which he accepted \$1,200.

11. The respondent stated that he routinely accepts payments below his advertised rate from people who negotiate for a lower price, which indicates the complainant was not offered the lowest charge for comparable use. The respondent cited no other factor besides that the complainant's opponent was savvy enough to negotiate for a lower rate.
12. Under section 255.002(b) of the Election Code, the rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes.
13. There is credible evidence that the respondent charged the complainant a rate greater than the lowest charge made for comparable use of the space. The respondent charged the complainant's opponent \$800 less than an ad of the same size, and in the same edition of KCM. The respondent also admitted it is his practice to offer discounts off the published rates, which was not offered to the complainant. Therefore, there is credible evidence the respondent violated section 255.002(b) of the Election Code.

### **Sanction**

1. The commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the commission, whichever amount is more, for a delay in complying with a commission order or for a violation of a law administered and enforced by the commission. GOV'T CODE § 571.173.
2. Therefore, the Texas Ethics Commission orders that the respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$5,000.

Order Date: \_\_\_\_\_

FOR THE COMMISSION

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Ian Steusloff  
Interim Executive Director  
Texas Ethics Commission