

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROBERT A. SITTON,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31805222

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 27, 2020, to consider sworn complaint SC-31805222. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031, 254.063, and 254.064 of the Election Code, laws administered and enforced by the Commission. To resolve and settle the complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) spent or authorized the spending of public funds for a communication describing a measure that contained information that the respondent knew was false and sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure, as prohibited by section 255.003(b-1) of the Election Code; 2) converted political contributions to personal use, as prohibited by section 253.035 of the Election Code; 3) did not properly disclose the identity of an election in a campaign finance report, as required by section 254.061 of the Election Code; 4) did not file a 30-day pre-election report for the May 6, 2017, election, as required by section 254.064 of the Election Code; 5) did not properly disclose the reporting period on campaign finance reports, as required by sections 254.063, 254.064, and 254.065 of the Election Code; 6) did not disclose in-kind contributions received from a political committee on campaign finance reports, as required by section 254.031 of the Election Code; 7) did not file the January 2018 semiannual report, as required by section 254.063 of the Election Code; 8) did not properly disclose a political expenditure on a campaign finance report, as required by section 254.031 of the Election Code; and 9) did not disclose political expenditures and political contributions on multiple campaign finance reports, as required by section 254.031 of the Election Code.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent was a successful incumbent candidate for the Humble Independent School District (HISD) Board of Trustees in the May 6, 2017, election, and was a member of the Board of Trustees during the May 2018 bond election and at all other times relevant to the complaint.

Use of Public Funds for Political Advertising

2. The sworn complaint alleges that as a member of the Humble ISD Board of Trustees, the respondent authorized the spending of public funds for a communication describing a measure that contained information that the respondent knew was false and sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure, specifically in a pamphlet promoting HISD's bond measure in the May 2018 election.
3. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003(a). Further, an officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that the officer or employee knows is false, and is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. *Id.* § 255.003(b-1).
4. In advance of a May 2018 bond election, HISD published and mailed a pamphlet to district voters. This pamphlet discusses in some depth the proposed bond. The pamphlet includes a link to an HISD website containing videos and other materials pertaining to the bond election.
5. In response to written questions from Commission staff, the respondent filed a sworn statement concerning his involvement with the pamphlet as a member of the HISD Board of Trustees. In the statement, the respondent admitted that a draft of the brochure was circulated among the trustees prior to its publication. However, the respondent denied that the pamphlet had ever been presented to the trustees as an agenda item for discussion or approval. The sworn responses filed by other members of the Board of Trustees, to whom Commission staff sent the same written questions, confirm the respondent's account, echoing the respondent's assertion that while the trustees were sent a draft of the pamphlet, the Board did not consider or approve the pamphlet prior to its distribution. Further, neither the Board of Trustees' publicly-posted minutes and agendas nor the documents obtained by

Commission staff from HISD through a Texas Public Information Act request reveal any discussion of the bond pamphlet by the Board of Trustees collectively or by the respondent individually. Finally, the evidence available to the Commission does not show that the respondent authorized the bond website. There is therefore credible evidence of no violation of section 255.003 of the Election Code. Because there is credible evidence that the respondent did not spend or authorize the spending of public funds on the pamphlet or website, it is not necessary to address their truth or falsity.

Conversion of Contributions to Personal Use for Meal

6. The sworn complaint alleges that a \$554.19 expenditure to “Chez Nous” on August 9, 2017, was a prohibited conversion of campaign funds to personal use.
7. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). “Personal use” means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d). Expenditures on a victory party are connected to candidate activities; therefore, a candidate may spend political contributions to hold a victory party. *See* Ethics Advisory Opinion No. 314 (1996).
8. According to the respondent’s sworn response to the complaint, the expenditure was made for a “victory celebration and thank you to campaign volunteers” at “local restaurant” Chez Nous. The complainant has adduced no further evidence to contradict the respondent’s sworn explanation of the expenditure’s purpose, nor to indicate that the expenditure was not connected with the respondent’s activities as a candidate for public office. There is therefore credible evidence of no violation of section 253.035 of the Election Code.

Failure to Correctly Identify Election for Which Report Was Filed

9. The sworn complaint alleges that the respondent’s report filed under section 254.183(b) for exceeding \$500 in contributions or expenditures, filed on March 9, 2017, incorrectly identifies the election for which it was filed as a primary election rather than a general election, in violation of section 254.061(1) of the Election Code.
10. Each report by a candidate must include the identity and date of the election for which the report is filed. ELEC. CODE § 254.061(1). “Primary election” means an election held by a political party to select its nominees for public office. *Id.* § 1.005(14). “General election” means an election, other than a primary election, that regularly recurs at fixed dates. *Id.* § 1.005(6).
11. The May 6, 2017, election for the HISD Board of Trustees was a general election, not a party primary election.

12. The respondent indicated that the election was a primary election, not a general election, on the cover sheet of the pre-election report at issue. However, the respondent disclosed the correct election date, so the error did not substantially affect disclosure. The respondent filed a corrected report in response to the complaint. There is therefore credible evidence of a technical or *de minimis* violation of section 254.061(1) of the Election Code.

Failure to File a 30-day Pre-election Report

13. The sworn complaint alleges that the respondent failed to file a 30-day pre-election report for the May 6, 2017, election.
14. 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. *Id.* § 254.064(b). 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 under chapter 254 of the Election Code, as applicable, and continuing through the 40th day before election day. *Id.*
15. The respondent's 30-day pre-election report was due by April 6, 2017. *See id.* § 254.064(b).
16. The respondent contends in his sworn response to the complaint that he swore to the contents of his 30-day pre-election report and filed the report on April 6, 2017, the day the report was due. The respondent attached a copy of the report to his sworn response. The report provided by the respondent bears no filing stamp, but was notarized by the then-secretary of the Board of Trustees on April 6, 2017.
17. HISD's secretary to the Board of Trustees is the authority with whom candidates for the HISD Board of Trustees file their campaign finance reports. Commission staff contacted the current secretary to the Board of Trustees, who stated that it was her predecessor's practice to notarize campaign finance reports at the time they were filed. An examination of campaign finance reports filed during the prior secretary's tenure reveals many reports lacking filing stamps but bearing her notary stamp and signature, dated on or around the reports' respective due dates, presumably on the dates the reports were filed. Because the current secretary's testimony indicates that the absent filing stamp and the affidavit are consistent with the respondent's sworn testimony that he timely filed the report, there is credible evidence of no violation of section 254.064(b) of the Election Code.

Failure to Timely File January 2018 Semiannual Report and Failure to Cover Correct Dates in Reports

18. The sworn complaint alleges that the respondent failed to timely file the January 2018 semiannual report and that the respondent's January 2018 semiannual report and his 8-day pre-election report for the May 6, 2017, election covered the wrong reporting periods.
19. A candidate shall file two reports for each year as provided by the Election Code. ELEC. CODE § 254.063(a). The second report shall be filed not later than January 15. *Id.* § 254.063(c). The second report covers the period beginning July 1, 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 December 31. *Id.*
20. 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. *Id.* § 254.064(a). 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. *Id.* § 254.064(c). The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.*
21. If the deadline for filing a campaign finance report other than a special pre-election report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. *See* ETHICS COMMISSION RULES § 20.21.
22. The respondent did not file a final report after the May 2017 election and was therefore required to file a January 2018 semiannual report. Because Monday, January 15, 2018, was a state holiday, the respondent's January 2018 semiannual campaign finance report was due by Tuesday, January 16, 2018.
23. The filing stamp and the respondent's sworn admission both confirm that the respondent did not file his January 2018 semiannual report until April 12, 2018. There is therefore credible evidence of a violation of section 254.063(c) of the Election Code.
24. Furthermore, the respondent's January 2018 semiannual report covers the dates July 15, 2017, through January 15, 2018. As noted above, section 254.063(c) of the Election Code requires that a January semiannual campaign finance report cover from July 1 through December 31 of the preceding year. There is therefore credible evidence of a further violation of section 254.063(c) of the Election Code for the respondent's failure to cover the correct reporting dates in his January 2018 semiannual report.
25. The complaint further alleges that the respondent's 8-day pre-election report for the May 6, 2017, election covers the incorrect dates. Section 254.064(c) of the Election Code

requires that the 8-day pre-election report cover the period beginning the 39th day before the election and continuing through the 10th day before election day. For the May 6, 2017, election, therefore, the respondent's 8-day pre-election report was required to cover the period beginning on March 28, 2017, and continuing through April 26, 2017. *See* ELEC. CODE § 254.064(c). The respondent's 8-day pre-election report covers the dates April 6, 2017, through April 28, 2017. There is therefore credible evidence of a violation of section 254.064(c) of the Election Code.

Failure to Disclose In-Kind Contributions from Humble ISD Supporters Political Committee

26. The sworn complaint alleges that the respondent failed to disclose three in-kind contributions totaling \$8,494.21 from the Humble ISD Supporters political committee on his 8-day pre-election report for the May 2017 election, and failed to disclose 10 more in-kind contributions totaling \$3,555.79 from the Humble ISD Supporters political committee during the reporting period for the July 2017 semiannual report. The respondent did not disclose these expenditures as political contributions on any of his corresponding campaign finance reports.
27. The Humble ISD Supporters political committee made the series of expenditures totaling \$12,050 for campaign communications that supported the respondent and other candidates for HISD trustee. While in his sworn response to the complaint the respondent denies "actively participat[ing] in reviewing, editing, proof reading, approving or any other activities," he admits that he was aware of the political committee's activities. Further, an April 3, 2017, email from the respondent's wife to Christine Parker of the Humble ISD Supporters political committee, obtained by Commission staff in their investigation of sworn complaint SC-31707118 against Christine Parker, tends to confirm that the respondent and his wife knew of the contributions and approved of them by forwarding campaign promotional materials to Ms. Parker for use in the Humble ISD Supporters' political advertisements promoting the respondent's campaign. On May 31, 2018, the respondent filed an amended 8-day pre-election report disclosing that he had received notice of political expenditures on his behalf by the Humble ISD Supporters political committee, but not disclosing the expenditures as political contributions.
28. The Election Code requires candidates to include in their campaign finance reports the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELECTION CODE § 254.031(a)(1). Candidates must further include in each campaign finance report the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031(a)(6). The Election Code defines the term "contribution" as "a direct or indirect transfer of money, goods, services, or any other thing of value." *Id.* § 251.001(2). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the

intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3). The definition of a political contribution includes a campaign contribution. *Id.* § 251.001(5). “In-kind contribution” means a contribution of goods, services, or any other thing of value, except money. ETHICS COMMISSION RULES § 20.1(8). A campaign expenditure is not a contribution if it is made without the prior consent or approval of the candidate on whose behalf the expenditure was made. *Id.* § 20.1(5)(A). If a candidate gives prior consent or approval to a third party to make political expenditures on behalf of the candidate, the third party has made an in-kind contribution to the candidate, and the candidate has accepted the in-kind contribution and must report it on the campaign finance report covering the period in which the contribution is accepted. Ethics Advisory Opinion No. 331 (1996).

29. The respondent’s admission that he was aware of the expenditures made on his behalf and his wife’s email to the Humble ISD Supporters political committee providing the respondent’s campaign materials for use in the political committee’s promotional campaign on the respondent’s behalf indicate that the expenditures by the Humble ISD Supporters political committee were made with the respondent’s knowledge and consent. The expenditures were therefore political contributions to the respondent, who should have reported his proportional share of the expenditures as political contributions on his campaign finance reports. *See* ETHICS COMMISSION RULES § 20.51(c) (“If political advertising supporting or opposing two or more candidates is an in-kind contribution, each person benefiting from the contribution shall report the amount determined by dividing the full value of the political advertising by the number of persons benefited by the political advertising.”). The respondent did not report these in-kind contributions on his corresponding campaign finance reports. There is therefore credible evidence of the alleged violations of sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

Failure to Disclose Date of Political Expenditure

30. The sworn complaint alleges that the respondent failed to disclose the date of the \$554.19 “food and beverage expense” at “Chez Nous” on his January 2018 semiannual report.
31. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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. ELEC. CODE § 254.031(a)(3).
32. The respondent left the date field blank on his disclosure of the expenditure at issue on Schedule F1 (used to disclose political expenditures from political contributions) of his January 2018 semiannual report. The respondent conceded that he left the date field blank in his original disclosure of the expenditure, and filed a corrected January 2018 semiannual report including the date, August 9, 2017. There is therefore credible evidence of a violation

of section 254.031(a)(3) of the Election Code for failure to disclose the date on the original January 2018 semiannual report.

Failure to Disclose Event Expenditures as Political Contributions or Expenditures

33. The sworn complaint alleges that the respondent failed to disclose expenditures made to host two political events that he attended, either his own expenditures or expenditures made by others as in-kind contributions. The events at issue were a “Dinner Conversation with Conservatives,” hosted by the Lake Houston Pachyderm Club and the Kingwood Area Republican Women on March 13, 2017, and a “meet and greet” event for the respondent on March 30, 2017.
34. The Election Code requires candidates to include in their campaign finance reports the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the date of the contributions. ELEC. CODE § 254.031(a)(1). Candidates must further include in each campaign finance report the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031(a)(6). Contributions required to be disclosed include “in-kind contributions,” defined as any contribution of goods, services, or any other thing of value, except money. *See* ETHICS COMMISSION RULES § 20.1(8).
35. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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. ELEC. CODE § 254.031(a)(3).
36. In his sworn response to the complaint, the respondent avers that he received no contributions and made no expenditures relating to the March 30, 2017, meet-and-greet event. According to the respondent’s sworn response, the event was held in a community room reserved at no cost, and neither he nor anyone else made any expenditures relating to the event, such as for food or refreshments. Because according to the respondent’s testimony the respondent did not accept anything of value or make any expenditure relating to the March 30, 2017, meet-and-greet event, there is credible evidence of no violation of section 254.031 of the Election Code relating to the event.
37. The respondent’s sworn response to the complaint further contends concerning the March 13 event hosted by the Lake Houston Pachyderm Club and the Kingwood Area Republican Women that because the event was a “candidate forum,” not a “meet-and-greet” held for his benefit, there is “nothing to report” for the event. A contemporary news article, included with the sworn complaint, confirms the respondent’s characterization of the March 13, 2017, event. According to the article, numerous candidates for the various HISD board positions

were present, including multiple opposing candidates for several of the positions. One of the respondent's opponents was present. Each candidate was given equal time to address the local residents present. The event was not intended to benefit the respondent. Because the event was informational rather than promotional in nature, the organizers' expenditures for the event were not reportable by the respondent as in-kind contributions. Further, credible evidence shows that the respondent did not make any expenditures associated with the event. Therefore, there is credible evidence of no violations of section 254.031 of the Election Code regarding the event.

IV. 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 Commission's findings of fact and conclusions of law described under Section III, 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 by a candidate must include: 1) the correct identity and date of the election for which the report is filed, if applicable; 2) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, including all in-kind contributions; 3) the amount of political expenditures that in the aggregate exceed \$100 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 4) the total amount of all political contributions accepted during the reporting period.
4. The respondent further acknowledges that if a candidate or officeholder gives prior consent or approval to a third party to make political expenditures on behalf of the candidate, the third party has made an in-kind contribution to the candidate, and the candidate has accepted the in-kind contribution and must report it on the campaign finance report covering the period in which the contribution is accepted.
5. The respondent also acknowledges that: 1) a candidate shall file two reports each year as provided by the Election Code. The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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 December 31; and 2) in addition to the other required reports, for each election in which a person is a candidate and has an opponent whose name is on the ballot, the person shall file two reports. 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.

6. The respondent agrees to fully and strictly comply with the above requirements of law.

V. Confidentiality

This order and agreed resolution describes certain 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 civil penalty.

VII. 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 sworn complaint SC-31805222.

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

Robert A. Sitton, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director