

TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
	§	
TEXAS RIGHT TO LIFE	§	TEXAS ETHICS COMMISSION
COMMITTEE, INC.,	§	
	§	
RESPONDENT	§	SC-3180255

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on November 20, 2019, to consider sworn complaint SC-3180255. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 253.003 and 253.094 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegation

The complaint alleges that the respondent, Texas Right to Life Committee, Inc., made prohibited corporate political contributions to a candidate/officeholder.

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, Texas Right to Life Committee, Inc. (“the corporation”) is a domestic nonprofit corporation located in Houston, Texas. The corporation files direct campaign expenditure reports with the Commission (used by a non-PAC entity to disclose expenditures made without the prior consent or approval of a candidate).
2. The corporation operates and controls Texas Right to Life PAC (“the PAC”), a general-purpose committee that also files with the Commission.
3. The complaint alleged that the corporation made in-kind political contributions in the form of three payments totaling \$37,915 for the broadcast of a radio ad that supported Texas State

- Senator Bob Hall's ("Hall") re-election campaign to Senate District 2 in the March 6, 2018, primary election.
4. The radio ad was broadcast by three Dallas, Texas radio stations starting in December 2017. Hall voiced the radio ad, asking listeners to vote for him in the March 2018 primary election. Hall also voiced the disclosure statement at the end of the ad, stating: "Paid for by Texas Right to Life Committee, the oldest and largest pro-life organization in Texas."
 5. The Commission obtained records from each of the three radio stations, including contracts, invoices, and a copy of the radio ad. The records show that one political expenditure for \$21,915 was paid with a check from the corporation dated December 7, 2017, and the remaining two political expenditures of \$8,000 each were charged to a credit card in the name of the corporation's finance manager and with the billing address of the corporation. The credit card authorization forms were dated December 7, 2017. In addition, the records confirm that the corporation entered into the contracts directly with each of the three radio stations on December 7, 2017.
 6. The corporation initially disclosed the three expenditures for the radio ad in a January 2018 direct campaign expenditure report. However, on February 6, 2018, before the sworn complaint was filed, the corporation corrected the report to remove the political expenditures. The corporation explained in the correction affidavit that "[I]n the course of a routine audit we realized that the C4 report inadvertently reflected an expense that belonged to Texas Right to Life's Political Action Committee. This report corrects to reflect that the PAC did pay for the expense." On the same day, the PAC corrected its January 2018 semiannual report to disclose the three political expenditures at issue totaling \$37,915.
 7. In response to the complaint, the respondent provided documentation to show that the PAC reimbursed the corporation \$37,915 for the political expenditures on March 15, 2018.
 8. A person may not knowingly make a political contribution in violation of Chapter 253, Election Code. ELEC. CODE § 253.003(a).
 9. A corporation or labor organization may not make a political contribution that is not authorized by Subchapter D, Chapter 253, Election Code. *Id.* § 253.094.
 10. "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. *Id.* § 251.001(2).
 11. "Political contribution" means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).

12. “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. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).
13. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8).
14. 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)(A).
15. “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. *Id.* § 20.1(8). For reporting purposes, the value of an in-kind contribution is the fair market value. *Id.* § 20.51(a).
16. If a candidate gives prior consent or approval to a third party to make political expenditures on behalf of the candidate, such expenditures by the third party are in-kind contributions to the candidate, and the candidate has accepted the in-kind contributions and must report the contributions on a campaign finance report covering the period in which the contributions were accepted. *See* Ethics Advisory Opinion No. 331 (1996).
17. In an open order from 2011 (*In re Roy Santoscoy*, SC-3110483), the Commission considered a case where a candidate was verbally notified that a political committee was going to endorse his campaign. The candidate and committee had prior discussions about the various ways in which the committee would assist the campaign, and the committee ultimately provided assistance by posting signs, distributing fliers, and calling voters. The Commission held that since the candidate had prior knowledge that the committee was going to support his campaign, and since the candidate approved the activities of the committee, there was a verbal agreement between the parties that constituted an in-kind contribution to the candidate. The Commission further stated that because the activities and expenditures made on behalf of the candidate by the committee were in-kind political contributions, the candidate had the burden of determining the fair market value and reporting those contributions.
18. The documents obtained from the radio stations show that in December 2017 the corporation entered into contracts with three Dallas, Texas radio stations and made three expenditures totaling \$37,915 for the ad to be broadcast. The recording and broadcast of the ad were direct or indirect transfers of things of value that were provided by the corporation to a candidate/officeholder. Credible evidence, including the fact that Hall voiced the radio ad,

indicates that Hall gave his prior consent or approval for both the recording of the ad and its subsequent broadcast, regardless of whether he knew it was being funded by the corporation or the PAC.

19. Credible evidence shows that the corporation made three in-kind political contributions totaling \$37,915 to a candidate/officeholder. Therefore, there is credible evidence of violations of sections 253.003(a) and 253.094 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 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: 1) a person may not knowingly make a political contribution in violation of Chapter 253 of the Election Code; and 2) a corporation or labor organization may not make a political contribution that is not authorized by Subchapter D, Chapter 253, Election Code. 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 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 \$7,500 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-3180255.

AGREED to by the respondent on this _____ day of _____, 2019.

Texas Right to Life Committee, Inc., Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director