

TEXAS ETHICS COMMISSION

IN THE MATTER OF

CARRIE ISAAC,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32010237

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (“Commission”) met on August 31, 2021, to consider sworn complaint SC-32010237. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of Section 254.031(a)(1) of the Election Code, a law administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The sworn complaint alleges that the respondent: 1) did not disclose two in-kind political contributions on the 30-day pre-election report filed on October 5, 2020, in violation of Section 254.031 of the Election Code; and 2) did not report political expenditures for the broadcast of television ads on the 30-day pre-election report filed on October 5, 2020, in violation of 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 an unsuccessful candidate for Texas House of Representatives, District 45, in the November 2020 general election.
2. The complaint alleges that the respondent failed to report as either in-kind political contributions or political expenditure payments to broadcast a television advertisement for her campaign. The television advertisement contained a disclosure statement that read: “POLITICAL AD PAID FOR BY CARRIE ISAAC FOR TEXAS.”
3. Television broadcasters are required by federal law to keep a public political file that includes details regarding the purchase of airtime for political advertisements. The complaint included documents obtained from television stations’ public political files that

- indicate the respondent or someone working with the respondent paid at least \$115,550 more to broadcast the advertisement than was reported by the respondent as in-kind contributions or political expenditures.
4. The respondent did not report accepting any contributions from RSLC PAC, a general-purpose committee, on her 30-day pre-election report filed on October 5, 2020. However, the respondent did report accepting a total of \$165,000 in in-kind contributions from RSLC PAC for the broadcast of television ads on her subsequent 8-day pre-election report.
 5. The RSLC PAC is a general-purpose committee that files reports with the Commission. On its 30-day pre-election report, RSLC PAC reported making two political expenditures it described as in-kind contributions to the respondent. The first expenditure was for \$105,000 made on September 17, 2020, for “TV Advertising Placement; In-kind to Carrie Isaac for Texas.” The second expenditure was for \$6,000 made on September 22, 2020, for a “Polling Expense” for “Surveys, In-kind to Carrie Isaac for Texas.”
 6. The respondent reported accepting the in-kind polling information as an in-kind political contribution on the 8-day pre-election report. However, the respondent did not report a \$105,000 in-kind political contribution from RSLC PAC for the payment to broadcast her political advertisement on the 30-day or the 8-day pre-election reports.
 7. In response to the complaint, the respondent swore she created a campaign television advertisement, but did not have the necessary funds to pay to air it. The respondent’s campaign provided RSLC PAC with a copy of the television advertisement and allowed RSLC PAC to pay television stations for its broadcast.
 8. RSLC PAC reported paying nearly \$300,000 to broadcast the respondent’s television ad, \$105,000 of which took place during the 30-day pre-election reporting period. The respondent reported a total of \$165,000 in in-kind contributions for the broadcast of the television ad on her 8-day pre-election report. The respondent reported accepting an additional \$31,135 in in-kind contributions from RSLC PAC for polling and direct mail on her 8-day pre-election report.
 9. The reporting period for the 30-day pre-election report for the November 3, 2020 election covered from July 1, 2020, through September 24, 2020. The reporting period for the 8-day pre-election report for the November 3, 2020 election covered from September 25, 2020, through October 24, 2020.
 10. The respondent provided the Commission with notices that RSLC PAC sent to the respondent’s campaign consultant by email, who then forwarded the notices to the respondent and her campaign treasurer. RSLC PAC emailed the consultant on September 22, 2020, informing him about the \$105,000 in-kind contribution to the respondent’s campaign. However, unlike the other notices received by the campaign consultant, the campaign consultant did not forward the notice of the \$105,000 in-kind

- contribution to the respondent or the respondent's campaign treasurer. The respondent did not actually receive notice from her consultant of the \$105,000 in-kind contribution until after the sworn complaint was filed on October 28, 2020.
11. The respondent also provided the Commission with notice she received for the \$6,000 in-kind contribution for polling from RSLC PAC. The respondent's campaign consultant received an email from RSLC PAC on October 2, 2020, and he forwarded it to the respondent the same day.
 12. The respondent filed a correction to the 30-day pre-election report to include the \$105,000 in-kind contribution from RSLC PAC.
 13. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$90 and that are accepted during the reporting period by the person or committee required to file the report, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1); 1 Tex. Admin. Code § 18.31(a) (adjusting the reporting threshold for inflation).
 14. A campaign finance report must also include the amount of political expenditures that in the aggregate exceed \$180 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. *Id.* § 254.031(a)(3); 1 Tex. Admin. Code § 18.31(a) (adjusting the reporting threshold for inflation).
 15. A campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. Tex. Elec. Code § 254.031(a)(6).
 16. "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).
 17. "Political contribution" means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
 18. "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).
 19. "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.* § 251.001(21). For reporting purposes, the value of an in-kind contribution is the fair market value. 1 Tex. Admin. Code § 20.51(a).

20. “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. A campaign expenditure does not constitute a contribution by the person making the expenditure to a candidate or officeholder if the expenditure is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure is made. Tex. Elec. Code § 251.001(8).
21. The difference between an in-kind contribution and a direct campaign expenditure depends on whether a candidate gives prior consent or approval to the person making the expenditures. 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 he accepted the contribution. Tex. Ethics Comm’n Op. No. 331 (1996) (“EAO 331”).
22. The definition of a “contribution” includes an agreement to make a transfer of a thing of value, which can include an agreement to make a transfer to a third party for the benefit of a candidate. See Tex. Elec. Code § 251.001(2). Therefore, when a third party coordinates with a candidate to make an expenditure, the resulting “contribution does not necessarily pass into the candidate’s possession.” EAO 331.
23. In the enforcement matter, *In re Roy Santoscoy*, SC-3110483 (2011), a candidate was verbally notified that a political committee was going to endorse his campaign. The candidate and political committee had prior discussions about the various ways in which the political committee could assist the campaign. *Id.* The political committee ultimately provided assistance by posting signs, distributing fliers, and calling voters. *Id.* The Commission held that since the candidate had prior knowledge that the political committee was going to support his campaign, and since the candidate approved the activities of the political committee, there was a verbal agreement between the parties that constituted an in-kind contribution to the candidate. *Id.* The Commission further held that because the activities and expenditures made on behalf of the candidate by the political committee were in-kind political contributions, the candidate had the burden of determining the fair market value and reporting those contributions. *Id.*
24. In this case, the evidence shows the respondent worked with RSLC PAC to disseminate an ad the respondent produced and that contained the disclosure statement indicating she paid for it. Similar to *In re Santoscoy*, the respondent had the burden of determining the fair market value RSLC PAC paid to broadcast the ads. The failure of the respondent’s consultant to inform the rest of the campaign of the notice from RSLC PAC does not excuse the respondent of her reporting obligation.
25. The expenditure by RSLC PAC and the notice to the respondent’s campaign consultant all took place during the 30-day pre-election reporting period. The respondent was required to timely report the \$105,000 expenditure by RSLC PAC as an in-kind contribution on her 30-day pre-election report and did not. Therefore, there is credible evidence of a violation

of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code for failure to timely report the \$105,000 in-kind contribution for the broadcast of her television ad.

26. However, there is no credible evidence that the respondent improperly reported the \$6,000 in-kind contribution for polling by reporting it on the 8-day pre-election report rather than the 30-day pre-election report. Although RSLC PAC made the expenditure for polling in the 30-day pre-election reporting period, there is no evidence to suggest the respondent authorized the expenditure or coordinated with RSLC PAC for the expenditure, or that the respondent was even aware of the polling expenditure during the 30-day pre-election reporting period. The evidence suggests the respondent first became aware of the polling expenditure when she received notice of the expenditure during the 8-day pre-election reporting period. Therefore, the respondent did not accept the in-kind contribution until she became aware of the expenditure and agreed to accept the polling information during the 8-day reporting period. As such, there is no credible evidence of a violation of Section 254.031 of the Election Code with respect to the \$6,000 in-kind contribution for polling.
27. There is also no credible evidence that the respondent failed to report political expenditures for the broadcast of her television ad. The complaint alleged, in the alternative, that if the respondent did not accept in-kind contributions for the broadcast of the radio ad, she made political expenditures for its broadcast in violation of Section 254.031(a)(3) of the Election Code. However, all available evidence shows the respondent made no expenditures to broadcast the ad. Instead, RSLC PAC paid to broadcast the ad, which it reported as political expenditures on its 30-day and 8-day pre-election reports. Therefore, there is credible evidence of no violation of Section 254.031(a)(3) of the Election Code.

IV. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the Commission:

1. The respondent acknowledges 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 a campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$90 and that are accepted during the reporting period by the person or committee required to file the report, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that each campaign finance report must include the total amount of all political contributions accepted during the reporting period, including in-kind contributions. The respondent agrees to fully and strictly comply with these requirements of law.

V. 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.

VI. Sanction

The evidence shows that the respondent did not report the \$105,000 in-kind contribution from RSLC PAC because her campaign consultant failed to forward her notice he received about the contribution. The respondent reported accepting multiple large contributions from RSLC PAC in her 8-day pre-election report further indicating the reporting error was made in good faith without the intent to deceive or hide her association with RSLC PAC. However, the amount of the omitted contribution was large, warranting a civil penalty to deter future mistakes. After considering the nature, circumstances, and consequences of the violation described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,000 civil penalty. The \$1,000 civil penalty increases to \$2,500 and will be referred to the Office of the Attorney General of Texas for collection if not paid within 30 days from the date the respondent receives a copy of this order and agreed resolution executed by the Commission.

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-32010237.

AGREED to by the Respondent on this _____ day of _____, 2021.

Carrie Isaac, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director