

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HUBERT VO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2803154

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2803154. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent accepted a political contribution from a corporation and failed to properly disclose political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative.
2. The allegations concern a political fundraising event held on December 13, 2007, at Lot 8 Boutique (“the boutique”), a business located in Houston. The complaint is based primarily on an invitation to the event that was distributed in e-mail messages by Lone Star Strategies (LSS), which provides various services to candidates and officeholders, including political fundraising. The invitation stated, “Help Us Keep State Representative Hubert Vo” and provided the date and time (December 13, 2007, from 5:30 to 7:00 P.M.) for a “Re-elect Hubert Vo Fundraiser” at “Lot 8 Boutique.” The invitation included a statement from the respondent regarding the election and requested replies to the business. A section of the invitation stated:

Special Discounts for Friends of Hubert Vo

- Free Lot 8 tee with purchase of \$100 or more
- 20% off Chloe's Pacific Design electronic cases
- 20% off all shoes and handbags
- All attendees will receive 20% off discount card good towards all services at Lot 8 Salon

*valid only during the fundraiser

3. The invitation solicited contributions to "Friends of Hubert Vo" and stated, "No corporate checks please." The header of the invitation also included a "Lot 8" logo and an image from the boutique's website depicting two mannequins wearing "Lot 8" t-shirts.
4. The complaint alleges that the event was hosted at Lot 8 Salon, Inc. ("the salon") and that the salon provided political contributions to the respondent in the form of the use of the business's facility for the event, food and drinks served at the event, and coupons offered by the business to individuals in exchange for the individuals making political contributions to the respondent. The complaint also alleges that the respondent failed to disclose the contributions from the salon, including the value of food or drinks served at the event, or any expenditures associated with the event.
5. According to records of the Harris County Clerk and the Texas Secretary of State, "Lot 8" is an assumed name of Ethnochics LLC, a limited liability company in Houston, Texas. The records also indicate that Lot 8 Salon, Inc. is a for-profit corporation that is separate from Ethnochics LLC.
6. The fundraising event was held at Lot 8 Boutique, a business owned and operated by Ethnochics LLC.
7. In response to the allegations, the respondent swears that he was not aware that the Lot 8 Salon was a corporation until the complaint was filed and that he never knowingly accepted any in-kind corporate contribution with regard to the fundraising event. He also swears, in pertinent part:

I engaged the public affairs consulting firm Lone Star Strategies, LLC ... to organize and execute the Fundraiser. I was not directly involved in the organization of the Fundraiser. I entrusted Lone Star with ensuring compliance with all applicable regulations, including the regulation regarding acceptance of contributions from corporations.

Prior to the Fundraiser, I never personally conferred with any Lot 8 employee about the Fundraiser.

8. LSS staff swears that LSS provided food and drinks at the event and sent out the advertisement at issue, that the respondent provided tables and tablecloths at the event, and that the boutique did not provide food or drinks at the fundraiser.
9. The evidence indicates that neither the boutique nor the salon incurred expenses in connection with the event.
10. The evidence indicates that the discounts made available by the boutique and the salon were routinely distributed to customers to promote the salon and there is no evidence that the respondent was aware of the discounts or that the salon was a corporation.
11. In an article published by the *Houston Chronicle* on March 19, 2008, an owner and operator of the boutique stated, “We were just supporting a fellow Vietnamese person, and we’re Democrats.”
12. According to an invoice submitted by the respondent, LSS billed the respondent’s campaign on January 25, 2008, for the fees and costs associated with the fundraiser. The invoice indicates that the respondent’s campaign was billed \$2,064.57, including \$1,000 for “Professional Fee,” \$441.45 for “Event Expenses (food & drink),” \$495.06 for “Larry Veselka Letters (446 letters),” and “\$128.06 for “Blast Faxes & Emails.”
13. The respondent also submitted a copy of a check dated April 15, 2008, from “Friends of Hubert Vo” to LSS for \$2,064.57. The respondent’s January 2008 semiannual campaign finance report disclosed a political expenditure of \$2,064.57 to LSS for “consulting” on April 15, 2008.
14. The respondent did not disclose any political contributions from the boutique, the salon, or its owners or disclose any political expenditures to the boutique, the salon, or its owners. The respondent also did not disclose any political contributions or political expenditures related to the use of the boutique for the fundraiser.

IV. Findings and Conclusions of Law

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

1. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D of title 15 of the Election Code. ELEC. CODE § 253.094(a). This subchapter applies only to corporations that are organized under

- the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. *Id.* § 253.091.
2. In Ethics Advisory Opinion No. 383, the commission determined that if a limited liability company is organized under a different statutory scheme than a corporation, the limited liability company is not subject to the restrictions under section 253.094 of the Election Code. Ethics Advisory Opinion No. 383 (1997).
 3. A person may not knowingly accept a political contribution the person knows to have been made in violation of this chapter. ELEC. CODE § 253.003(b).
 4. The evidence indicates that the respondent hired LSS to organize a campaign fundraiser that was held at a location owned by a limited liability company, Ethnochics LLC, otherwise known as “Lot 8 Boutique.” Furthermore, the evidence indicates that LSS arranged for the service of the food and drinks at the event and that the respondent paid LSS for those goods and services. There is no other evidence that the salon or any other corporation provided food, drinks, or a venue for the fundraiser or that the respondent received anything of value in the form of goods, services, or a discount at the fundraiser. Furthermore, the evidence indicates that the respondent was not aware that Lot 8 Salon was a corporation or that it had offered discounts related to the Lot 8 Boutique fundraiser. Therefore, there is credible evidence that the respondent did not violate sections 253.003(b) or 253.094(a) of the Election Code.
 5. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
 6. A report must also include the amount of 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 the expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3).
 7. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by subsection (b), chapter 254, Election Code. *Id.* § 254.035(a).
 8. If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b).

9. If under normal business practices, the amount of an expenditure is not known or readily ascertainable until receipt of a periodic bill, the date of the expenditure is the date the bill is received. Ethics Commission Rules § 20.57(b). Examples of expenditures to which this subsection is applicable are expenditures for use of electricity or for long-distance telephone calls. *Id.*
10. In Ethics Advisory Opinion No. 136 (EAO 136), the commission addressed whether a registered lobbyist was required to report the value of the use of his home on a lobby activity report when he invites members of the legislature to his home for dinner. Ethics Advisory Opinion No. 136 (1993). The commission stated that if a registrant rented space to provide a meal or made any specific expenditures to prepare his home for the meal to communicate with legislators, the rental or the other expenditures must be reported. *Id.* However, a registrant who provides a meal in his home is not required to report the value of the use of his home. *Id.*
11. The evidence indicates that the respondent hired LSS to organize and execute the fundraiser and that LSS provided the respondent with an invoice of \$2,064.57 on or about January 25, 2008, for various goods and services, including professional services, food and drinks, and other goods or services that may or may not be related. In these particular circumstances, there is no indication that LSS provided services for the respondent that were billed on a periodic basis and it appears that LSS was aware of the amount due for the fundraiser around the time of the fundraiser. Thus, it appears that the total amount spent for the fundraiser was readily determinable within the two-week period following the fundraiser that ended on December 31, 2007, the last day covered by the January 2008 semiannual report. Thus, the respondent was required to disclose the expenditures for the fundraiser in his January 2008 semiannual report. The expenditures were not disclosed until the respondent filed his July 2008 semiannual report. In addition, the respondent received the invoice for the expenditures on or about January 25, 2008, and disclosed the date of the expenditures as April 15, 2008. Thus, even if the expenditures were disclosed in the correct report, the respondent disclosed the incorrect date for the expenditures. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code.
12. The evidence indicates that the respondent received the use of the boutique as a venue for the fundraising event without providing payment. The invitation for the event and the restriction of the validity of the discounts and merchandise to the duration of the event indicate that the owners provided the use of the boutique with the intent to support the respondent as a candidate. Thus, there is credible evidence that the respondent accepted an in-kind political contribution in the form of the use of the boutique.
13. The respondent did not disclose the contribution of the use of the boutique. However, it appears the boutique did not incur any expenditures by permitting the respondent to use its facilities for the fundraiser. Under the circumstances, there is credible evidence that the

respondent committed a technical or *de minimis* violation of section 254.031(a)(1) of the Election Code in connection with the use of the boutique for the fundraiser.

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 campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that a report must also include the amount of 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 the expenditures are made, and the dates and purposes of the expenditures and that, for purposes of reporting, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure. 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 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.

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 \$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-2803154.

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

Hubert Vo, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director