

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JOSEPH PHILIPP,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31105127

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 6, 2011, to consider sworn complaint SC-31105127. 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 and section 20.219(11) of the Ethics Commission Rules, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent did not timely report in-kind political contributions made by the Irving Fire Fighters Committee for Responsible Government (IFFCRG), a general-purpose political committee, in his July 2009 semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful candidate for Irving City Council, Place 8, in an election held on May 9, 2009.

Reporting In-Kind Political Contributions

2. The complaint alleged that the respondent did not timely report in-kind political contributions made by the IFFCRG during the May 2009 Irving city council election cycle. The complaint alleged that personnel of the IFFCRG posted political signs, passed out flyers, and made telephone calls asking voters to support the respondent's candidacy for Irving city council during the May 2009 election cycle.

3. In response to the complaint, the respondent swore that on approximately the same date he received the sworn complaint, he received a registered letter from the IFFCRG dated May 10, 2011, wherein the committee stated that they had provided in-kind contributions of \$10,566 for the respondent's 2009 Irving city council campaign. The respondent swore that the May 10, 2011, notice was the first he had received regarding the in-kind contributions. The respondent subsequently corrected his July 2009 semiannual report on June 30, 2011, and reported the \$10,566 as an in-kind contribution with a description of "campaign services."
4. Credible evidence indicated that the respondent was verbally notified that the committee was going to endorse his campaign prior to the time that the contributions were made. The evidence also indicates that the notifications were followed up by additional meetings or phone calls between the respondent and the committee to discuss the different ways in which the IFFCRG could contribute.
5. IFFCRG filed campaign finance reports during the period at issue disclosing expenditures to support candidates.
6. Based on the evidence submitted, it is clear that the respondent had prior knowledge that the IFFCRG was going to endorse and support his campaign, and apparently approved the activities of the committee.

IV. Findings and Conclusions of Law

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

Reporting In-Kind Political Contributions

1. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. "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. ELEC. CODE § 251.001(2).
3. "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. Ethics Commission Rules § 20.1(8). For reporting purposes, the value of an in-kind contribution is the fair market value. *Id.* § 20.51(a).
4. "Direct campaign expenditure" means a campaign expenditure that does not constitute a contribution by the person making the expenditure. 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; or it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure. *Id* § 20.1(5).

5. 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. Ethics Advisory Opinion No. 331 (1996).
6. There is credible evidence that the IFFCRG entered into a verbal agreement with the respondent regarding the endorsement of his campaign, and the respondent was aware that the IFFCRG was going to engage in various activities to support his campaign. Accordingly, there was an agreement between the parties that constituted a contribution that was offered with the intent that it be used in connection with an election. Thus, the contribution at issue was an in-kind political contribution.
7. Because the activities and expenditures made on behalf of the respondent by the IFFCRG were in-kind political contributions, the respondent had the burden of determining the fair market value and reporting those contributions. The fact that the IFFCRG filed campaign finance reports disclosing political expenditures during the periods at issue indicates that the amounts were readily determinable, and the respondent could have learned the value of the in-kind contributions and disclosed them during the proper reporting periods.
8. The respondent did not report the in-kind political contributions until June 30, 2011, after he received written notice from the IFFCRG and over two years after the election. Accordingly, the respondent did not timely report the in-kind political contributions from the IFFCRG. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code and section 20.219(11) of the Ethics Commission Rules.

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 each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50, the full name and address of the person making the contributions, and the dates of the contributions. The respondent further acknowledges that 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. 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 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 \$1,000 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-31105127.

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

Joseph Philipp, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director