

TEXAS ETHICS COMMISSION

IN THE MATTER OF
VICTOR PEREZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-32203134

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 15, 2023, to consider sworn complaint SC-32203134. 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 adopted this resolution.

II. Allegation

The complaint alleged that the respondent failed to disclose in-kind political contributions in his 8-day pre-election campaign finance report for the March 1, 2022 primary election, in violation of Sections 254.031(a)(1) and 254.031(a)(6) 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 candidate for State Board of Education, District 2, in the March 1, 2022 primary election and the May 24, 2022 primary runoff election. The respondent was ultimately unsuccessful in the November 8, 2022 general election.
2. The complaint was based on a campaign finance report filed by Charter Schools Now PAC, a general-purpose committee, where the committee disclosed in its 8-day pre-election report for the March 1, 2022 primary election three political expenditures totaling \$18,811.24 that contained descriptions indicating the expenditures were in-kind contributions to the respondent. The relevant portions of the expenditures were disclosed as follows:
 - 2/14/2022, \$2,300, for “Town Hall Teleforum: In-kind to Victor Perez Campaign”

- 2/15/2022, \$15,018, for “Political Advertising: In-kind to Victor Perez Campaign”
 - 2/19/2022, \$1,493.24, for “Message Phone Calls: In-kind to Victor Perez Campaign”
3. The respondent’s 8-day pre-election report for the March 1, 2022 primary election covered the period of January 21, 2022 through February 19, 2022, and disclosed \$0 in total political contributions and \$0 in total political expenditures. The respondent’s subsequent runoff report, covering the period of February 20, 2022 through May 14, 2022 also did not disclose any political contributions from Charter Schools Now PAC.
 4. On May 19, 2022, in response to the complaint, the respondent filed a correction to his runoff report to disclose the activity at issue. However, the respondent erroneously disclosed the in-kind contributions as one, single in-kind contribution for \$22,050, and erroneously disclosed the date of the contribution as May 2, 2022. The in-kind contribution contained a description of “campaign consulting services.” In the correction affidavit, the respondent swore that he overlooked entering the in-kind contribution.
 5. Upon request from the Commission, Charter Schools Now PAC provided documentation showing that the committee provided written notice to the respondent of the in-kind contributions prior to the filing deadline for the 8-day pre-election report. The notices were emailed to the respondent’s campaign on February 19, 2022, and February 21, 2022, and informed the respondent that the committee made in-kind contributions to his campaign that were required to be reported on the next campaign finance report. The notices contained the date, amount, and description of each contribution. The committee also provided to the Commission a statement confirming that all three expenditures were in-kind contributions. Specifically, the committee stated that the \$2,300 expense was for a “tele-townhall that CSN PAC hosted for Mr. Perez to discuss his campaign,” and that the \$15,018 and \$1,493.24 expenses were for mailers, digital ads, and text messages promoting Mr. Perez’s candidacy that were reviewed and approved by his campaign.
 6. Each campaign finance report must include the amount of political contributions, other than political contributions that are made electronically, from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2022) 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. Tex. Elec. Code § 254.031(a)(1); 1 Tex. Admin. Code § 18.31.
 7. Each 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).

8. “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).
9. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
10. “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).
11. “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).
12. For reporting purposes, the value of an in-kind contribution is the fair market value. 1 Tex. Admin. Code § 20.51(a).
13. “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).
14. 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”).
15. 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.
16. 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.*

17. Credible evidence shows the respondent accepted three in-kind political contributions totaling \$18,811.24 during the 8-day pre-election reporting period for the March 1, 2022 primary election. The respondent did not disclose any political contributions in his 8-day pre-election campaign finance report. Therefore, there is credible evidence of violations of Sections 254.031(a)(1) and 254.031(a)(6) 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 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) each campaign finance report must include the amount of political contributions, other than political contributions that are made electronically, from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2022) 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; and 2) each 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. The respondent agrees to comply with these requirements of the law.

V. 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.

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 \$2,500 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 SC-32203134.

AGREED to by the respondent on this _____ day of _____, 2023.

Victor Perez, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director