

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
HENRY SEAY, III,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2705110

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on October 13, 2008, to consider sworn complaint SC-2705110. 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 failed to provide the correct address or the complete address of contributors on his campaign finance reports, failed to disclose total political expenditures on his campaign finance reports, improperly disclosed an in-kind political contribution on Schedule F instead of on Schedule A, failed to properly disclose an in-kind political contribution for travel outside of Texas, and represented in a campaign communication that he held a public office that he did not hold at the time the representation was made.

### III. Facts Supported by Credible Evidence

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

1. The respondent was a member of the city council, and an unsuccessful candidate for mayor, of Castroville, Texas, in a May 12, 2007, election.
2. The complaint included copies of the first two pages of the respondent's 30-day pre-election report as well as the four pages of Schedule A (Political Contributions Other Than Pledges Or Loans) of that report. The complaint included the second page of a report for the May 12, 2007, election. The complaint also included a copy of a correction affidavit for the 30-day pre-election report. In addition, the complaint included copies of photographs of three signs that state "Elect HANK SEAY MAYOR May 12th Dedicated To Our Community."

3. The filing authority provided the commission copies of the respondent's reports filed in connection with the May 12, 2007, election. Because of the confusing nature of the reports, for purposes of this Order and Agreed Resolution they will be referred to as Report #1, Report #2, and Report #3.
4. Report #1 is marked as a 30-day pre-election report and states the period covered as March 13, 2007, through April 12, 2007. It was notarized on April 12, 2007.
5. Report #2 is also marked as a 30-day pre-election report. It was notarized on May 4, 2007. The report includes a copy of the totals page from the original 30-day pre-election report as well as a new totals page. It discloses additional activity during the period from April 10, 2007, through May 4, 2007. Therefore, the report should have been marked as the 8-day pre-election report. It includes a correction affidavit for the 30-day pre-election report to correct the contributor information for a political contribution of \$100.
6. Report #3 is also marked as a 30-day pre-election report, states the period covered as March 13, 2007, through April 12, 2007. It was notarized on June 20, 2007. The report did not include a correction affidavit. Report #2 disclosed on Schedule F a \$1,247 political expenditure to [an individual] and listed the purpose as "in-kind contribution." Although the respondent did not file a correction affidavit for Report #3, the respondent added an entry to disclose on Schedule A a \$1,247 political contribution from [the individual]. The respondent put the value of the in-kind contribution in the in-kind contribution description box but did not provide a description of the in-kind contribution. His response states that the in-kind contribution was flyers. This report discloses total political expenditures of \$7,178.44. The report includes copies of the totals pages from the previously filed reports. This report discloses two new political contributions on Schedule A totaling \$100, two new political expenditures on Schedule F totaling, approximately \$403, and nine new political expenditures on Schedule G totaling approximately \$622. It discloses additional activity that occurred during the period from April 5, 2006, through April 12, 2006. The report was not marked as the final report, although the respondent signed the final report affidavit.
7. The respondent filed an unsworn response.

### **Failure to Properly Report Political Contributions**

#### Failure to Properly Disclose the Address of Contributors

8. The complaint alleges that for four political contributions the respondent disclosed the address of a mobile home sales lot as the contributors' address, as opposed to the addresses of the contributors' residences. The complaint also alleges that for another six contributions the respondent disclosed the address of an office building as the contributors' addresses, as opposed to the addresses of the contributors' residences. The complaint also alleges that the respondent failed to disclose a complete address for one contributor. The allegations are

based on Report #1, the respondent's 30-day pre-election report for the May 12, 2007, election. The report discloses four contributors with the address of 4210 South Zapata Hwy, Laredo, Texas, six contributors with the address of 19230 Stone Oak Parkway, Suite 301, San Antonio, Texas, 78258, and one contributor of \$100 with the address of Medina Lake. The respondent did not correct the incomplete address.

9. The respondent states that he believes he disclosed the true names and addresses of persons who made political contributions to him. The respondent states that the addresses that he used in his reports were addresses that were given to him by the donors. The evidence does not refute the respondent's assertions.

#### Failure to Properly Disclose In-kind Political Contributions

10. The complaint alleges that the respondent failed to properly disclose an in-kind contribution in the amount of \$1,247 on Report #2.
11. Report #2 disclosed a political expenditure in the amount of \$1,247 on Schedule F (Political Expenditures). The report states that the purpose of the payment was "In-kind contribution."
12. On Report #3 the respondent disclosed the same amount as a contribution on Schedule A and the same person as the contributor. The respondent did not provide a description of the in-kind contribution.

#### Failure to Disclose the True Name and Address of Contributor

13. The complaint alleges that the respondent failed to disclose the true name and address of a contributor. The complaint states that the respondent disclosed an in-kind political contribution from [an individual] and disclosed her address to be [an address in San Antonio]. The complaint states that this is not the contributor's address but is the contributor's parent's address. The complaint states that [the individual] told a reporter that she does not know the respondent or how her name came to be on one of his reports.
14. The respondent states that he believes he disclosed the true name and address of each person who made political contributions to him. The respondent states that the addresses that he used in his reports were addresses that were given to him by the donors.

#### **Failure to Properly Disclose Total Political Expenditures**

15. The complaint alleges that the respondent failed to properly disclose total political expenditures on Report #1 and Report #2.
16. On Report #1 the box for total political expenditures of \$50 or less, unless itemized, had the amount \$2,813.90 written in the box that was scratched out and then the same amount,

\$2,813.90, was written above it. The first political expenditure disclosed on Schedule F (Political Expenditures) is \$2,813.90. There is one more political expenditure of \$143.81 disclosed on Schedule F for a total of \$2,957.71. The amount of political expenditures disclosed on Schedule G (Political Expenditures Made From Personal Funds) is \$140. The box for the amount of total political expenditures appears to have had an amount written in the box that was scratched out but no new amount was written in the box. The total political expenditures disclosed on Schedules F and G is approximately \$3,097.

17. On Report #2 the box for total political expenditures of \$50 or less, unless itemized, contains the amount of \$5,832.92. The amount of political expenditures disclosed on Schedule F for Report #2 totals approximately \$7,080. The amount of political expenditures disclosed on Schedule G for Report #2 is approximately \$348. The total political expenditures disclosed on Schedules F and G for Report #2 is approximately \$7,428. The box for the amount of total political expenditures is blank. However, as noted, the box for total political expenditures of \$50 or less, unless itemized discloses \$5,832.92. It appears that this amount is meant to represent the cumulative total for political expenditures in Report #1 and Report #2, less the amount of \$1,247 originally reported as a political expenditure on Report #1.
18. The respondent did not file corrections for these errors.

#### **Failure to Properly Report an In-Kind Political Contribution for Travel Outside Of Texas**

19. The complaint alleges that the respondent failed to properly report an in-kind political contribution for travel outside of Texas on Report #2.
20. Report #2 discloses an April 15, 2007, political expenditure on Schedule F, to [an individual]. The amount is \$1,247 and the purpose of payment states "in-kind contribution." The report includes a Schedule T (In-kind Contribution Or Political Expenditure For Travel Outside Of Texas). The Schedule T names [an individual] as the "Contributor/Corporation or Labor Organization/Pledgor/Payee", states that the contribution or expenditure is reported on Schedule T and then has "N/A" filled in all the following boxes.
21. The respondent states that he thinks there is a mistake, that he did not travel outside of Texas at any time during the campaign, and that he did not receive any contribution relating to a trip outside of Texas. The respondent states that the way he read the directions, it indicated that he should use Schedule T to report an in-kind contribution. The respondent states that the in-kind contribution was for flyers and that it was reported on Schedule F as a political expenditure.

#### **Represented That He Held a Public Office He Did Not Hold**

22. The complaint alleges that the respondent represented in a campaign communication that he held an elective public office that he did not hold at the time the representation was made.

23. As stated above, the complaint included copies of photographs of three signs that state “Elect HANK SEAY MAYOR May 12th Dedicated To Our Community.” The date May 12, 2007, is on each of the photographs.
24. The respondent states that he corrected all his signs that were posted early in the campaign to include the word “for” after he learned that he needed to use the word “for” on his signs. The respondent states that there were a number of signs that were apparently stolen during the election and that he does not know what happened to those signs. The respondent states that the photographs that were included in the complaint do not appear to be signs that he placed in any location that he can recognize and that his only assumption can be that these signs are possibly some of the signs that were stolen early in the campaign. The respondent states that he has in his possession all of the signs that they took down after the election and that they are properly marked. The evidence does not refute the respondent’s assertion.

#### **IV. Findings and Conclusions of Law**

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

##### **Failure to Properly Report Political Contributions**

###### Failure to Properly Disclose the Address of Contributors

1. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(1).
2. With respect to the disclosure of a business address as the address of contributors, there is no evidence that the addresses provided to the respondent were not business addresses of the donors. Therefore, there is insufficient evidence that the respondent violated section 254.031(a)(1) of the Election Code as to the contributors for which he disclosed a complete address. The evidence shows that the respondent failed to disclose the complete address of one contributor of \$100. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code as to this contributor.

###### Failure to Properly Disclose In-kind Political Contributions

3. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(1).

4. The evidence shows that the \$1,247 that the respondent originally described as a political expenditure was actually a political contribution. The evidence shows that the respondent originally disclosed the in-kind contribution as a political expenditure on Schedule F, instead of as a political contribution on Schedule A. On Report #3 the respondent added the contribution but did not provide a description of it. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code in his reporting of the in-kind contribution.

#### Failure to Disclose the True Name and Address of Contributor

5. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(1).
6. With respect to the allegation that the respondent incorrectly disclosed an individual contributor's address, the respondent states that he believed that he disclosed the true name and address of each person who made political contributions to him. There is insufficient evidence to show that the respondent violated section 254.031(a)(1) of the Election Code as to this contributor.

#### **Failure to Properly Disclose Total Political Expenditures**

7. Each report must include the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
8. On Report #1 the evidence indicates that the respondent entered one of his two political expenditures from Schedule F in the box for total political expenditures of \$50 or less, and that there were no political expenditures of \$50 or less. The evidence also indicates that the respondent failed to enter his total political expenditures of approximately \$3,097 in the total political expenditures box.
9. On Report #2 the evidence indicates that the respondent entered his total political expenditures from Schedule F for both the 30-day and 8-day pre-election periods in the box for total political expenditures of \$50 or less, and that there were no political expenditures of \$50 or less. The evidence also indicates that the respondent failed to properly disclose his total political expenditures for each reporting period.
10. There is credible evidence that the respondent violated section 254.031(a)(6) of the Election Code.

**Failure to Properly Report an In-Kind Political Contribution for Travel Outside Of Texas**

11. The description of a political expenditure for travel outside of the state of Texas must provide the name of the person or persons traveling on whose behalf the expenditure was made, the means of transportation; the name of the departure city or the name of each departure location, the name of the destination city or the name of each destination location, the dates on which the travel occurred, and the campaign or officeholder purpose of the travel, including the name of a conference, seminar, or other event. Ethics Commission Rules § 20.61(b).
12. The evidence shows that the respondent did not receive a contribution for or make an expenditure for travel outside of the state of Texas. The respondent mistakenly entered a contributor's name on Schedule T. Therefore, there is credible evidence that the respondent did not violate section 20.61(b) of the Ethics Commission Rules.

**Represented That He Held a Public Office He Did Not Hold**

13. A person may not represent in a campaign communication that a candidate holds a public office that the candidate does not hold, or knowingly enter into a contract or agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold. A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. ELEC. CODE § 255.006.
14. The evidence available to the commission is insufficient evidence to show that the respondent violated section 255.006 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 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 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, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that each report must include the total amount of all political expenditures made during the reporting period. 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 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 an \$800 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-2705110.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Henry Seay III, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director