

TEXAS ETHICS COMMISSION

P.O. Box 12070, Capitol Station
Austin, Texas 78711-2070

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October 12, 2015

Mr. Terry Holcomb

**RE: Notice of Reporting Error
SC-3140386**

Dear Mr. Holcomb:

The Texas Ethics Commission (Commission) met on October 5, 2015, to consider SC-3140386. A quorum of the Commission was present. **The Commission determined that there is credible evidence of reporting errors that do not materially defeat the purpose of disclosure.** To resolve and settle this case without further proceedings, the Commission proposed this Notice of Reporting Error Agreement (agreement).

The Commission **found credible evidence** that the respondent:

1. improperly disclosed a monetary political contribution as an in-kind contribution in violation of section 20.219(10)(E) of the Ethics Commission Rules;
2. did not properly disclose staff reimbursements as required by section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules;
3. did not disclose an expenditure for which a personal reimbursement was made in violation of sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules;
4. did not disclose principal occupation or employer information for two contributors as required by section 254.0612 of the Election Code; and
5. did not include on political advertising a complete political advertising disclosure statement as required by section 255.001 of the Election Code.

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The Texas Ethics Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

The Commission **did not find credible evidence** that the respondent:

1. did not disclose certain political expenditures as required by section 254.031(a)(3) of the Election Code; and
2. accepted a contribution from a corporation and made expenditures as prohibited by sections 253.003, 253.005, and 253.094 of the Election Code.

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

Disclosure of Political Contribution

1. It was contended that the respondent did not properly describe an in-kind political contribution that was disclosed on Schedule A (used to disclose political contributions) of his 30-day pre-election report for the March 4, 2014, primary election. The report disclosed that the in-kind contribution was accepted from Bluewave Audio Video (a professional corporation) on January 15, 2014, for “audio video” valued at \$1,200. In response to the complaint, the respondent swore that the in-kind description was a clerical error and that the contribution was a monetary contribution. The respondent filed a correction to the 30-day pre-election report at issue to remove the in-kind contribution description.
2. Credible evidence indicates that the respondent improperly characterized a \$1,200 political contribution as an in-kind contribution. Although the respondent improperly characterized the contribution as in-kind, the respondent still included the contribution in the amount of total political contributions accepted and total political contributions maintained. The respondent swore that the reporting error was due to a clerical mistake. The reporting error did not substantially affect disclosure. **Therefore, there is credible evidence of technical or de minimis noncompliance with section 20.219(10) of the Ethics Commission Rules.**

Disclosure of Political Expenditures

3. It was contended that the respondent did not disclose political expenditures for PayPal fees. The allegation was based on the fact that the respondent’s campaign website indicated he was accepting political contributions through PayPal, but the respondent did not disclose any political expenditures for fees associated with the online transactions. In response to the complaint, the respondent swore that the PayPal expenditure was for \$47.96 and was disclosed in his January 2014 semiannual report under total political expenditures of \$100 or less. The respondent disclosed \$269.16 in total political expenditures of \$100 or less in the report at issue.
4. The respondent was not required to itemize the PayPal expenditures at issue because they did not exceed \$100 in the aggregate. Credible evidence indicates that the respondent properly included the expenditures in the unitemized amount of political expenditures of \$100 or less. **Therefore, there is credible evidence of compliance with section 254.031(a)(3) of the Election Code with respect to those expenditures.**

Staff Reimbursements

5. It was contended that the respondent did not properly disclose in the January 2014 semiannual report and the 30-day pre-election report for the March 4, 2014, primary election five political expenditures totaling approximately \$1,420 that appear to have been made as staff reimbursements. In response to the complaint, the respondent stated that the expenditures were made as staff reimbursements and filed corrections to the reports at issue to disclose the original expenditures for which the reimbursements were made. The corrected reports identify the actual vendor payees for the political expenditures at issue.
6. Credible evidence indicates that the political expenditures at issue were made as staff reimbursements. The respondent did not disclose the actual vendor payees in the original reports at issue. **Therefore, there is credible evidence of noncompliance with section 254.031(a)(3) of the Election Code and section 20.62 of the Ethics Commission Rules.**

Reimbursement of Political Expenditures from Personal Funds

7. It was contended that the respondent did not properly disclose a political expenditure from personal funds and then improperly reimbursed himself for the expenditure. The respondent disclosed on Schedule F (used to disclose political expenditures from political contributions) of his January 2014 semiannual report a \$333.74 political expenditure to himself on November 1, 2013, under the category of “Advertising Expense” with a description of “signs.” The respondent did not disclose any personal loans or political expenditures from his personal funds to account for the payment to himself.
8. In response to the complaint, the respondent swore that the expenditure was actually for robocalls and that he did not understand how to report political expenditures from personal funds. The respondent filed a correction to the January 2014 semiannual report at issue to disclose the expenditure on Schedule G (used to disclose political expenditures from personal funds). The respondent disclosed that the expenditure was made to Campaign Marketing Strategies, Inc. on October 18, 2013, for “robo calls.”
9. Credible evidence indicates that the respondent did not disclose a political expenditure from his personal funds in the original January 2014 semiannual report. Credible evidence also shows that the respondent reimbursed himself for that expenditure. Since the respondent did not disclose the original expenditure from personal funds, the expenditure was not eligible for reimbursement. **Therefore, there is credible evidence of noncompliance with sections 253.035(h) and 254.031(a)(3) of the Election Code and section 20.63 of the Ethics Commission Rules.**

Principal Occupation and Employer of Contributors

10. It was contended that the respondent did not include required principal occupation and employer information for two contributors who were disclosed in the respondent’s 30-day and 8-day pre-election reports for the March 4, 2014, primary election. In the 30-day pre-election report, the respondent disclosed two political contributions totaling \$700 from one of the contributors, and one political contribution totaling \$500 from the other contributor. In the 8-day pre-election report, the respondent disclosed two political contributions totaling

\$1,060 from one of the contributors. The respondent did not provide principal occupation or employer information for either of the contributors in the reports at issue. In response to the complaint, the respondent corrected the reports to disclose “Retired” for both contributors under the space for listing employer information.

11. In the 30-day pre-election report at issue, the respondent accepted two political contributions totaling \$700 from one contributor, and one political contribution totaling \$500 from another contributor. In the 8-day pre-election report at issue, the respondent accepted two political contributions totaling \$1,060 from one of the contributors. The respondent was required to provide principal occupation and employer information for both of the contributors because the contributions from each contributor in the aggregate equaled or exceeded \$500 during each reporting period. The respondent did not provide principal occupation or employer information for either of the contributors in the original reports at issue. **Therefore, there is credible evidence of noncompliance with section 254.0612 of the Election Code.**

Political Contribution from a Corporation and Expenditure from Corporate Contribution

12. It was contended that the respondent accepted a political contribution from a corporation. It was also contended that the respondent subsequently used the unlawful contribution to make a political expenditure. The respondent disclosed on Schedule A of his January 2014 semiannual report accepting a \$100 political contribution from VSL Enterprises on December 6, 2013. According to records on file with the Texas Secretary of State (SOS), VSL Enterprises, Inc., is a domestic for-profit corporation located in Coldspring, Texas. The address for VSL Enterprises, Inc., is the same as the address that was disclosed by the respondent.
13. In response to the complaint, the respondent swore that it was his first time being a candidate and, at the time the contribution was accepted, he was not aware that the entity was considered a prohibited source. The respondent swore that he returned the contribution to VSL Enterprises.
14. Regarding the contribution at issue, there is insufficient evidence to show that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a prohibited corporation. **Therefore, there is insufficient evidence of noncompliance with sections 253.003, 253.005, and 253.094 of the Election Code.**

Political Advertising Disclosure Statement

15. It was contended that the respondent did not include on political advertising a complete political advertising disclosure statement. The complaint included a picture of the respondent’s campaign website. The disclosure on the website stated “Paid for by Terry Holcomb Campaign.”
16. In response to the complaint, the respondent swore that he thought the disclosure statement he provided on the website was all that the law required. The respondent swore that he corrected the website to include the phrase “Pol. Adv.” Credible evidence indicates that the

respondent did in fact correct the website to include the full political advertising disclosure statement.

17. The website at issue contained communications supporting the respondent as a candidate for public office and appeared on the Internet. It is clear that the website was created to support the respondent as a candidate for state representative. Accordingly, the website constitutes political advertising and was required to contain a complete political advertising disclosure statement. Although the respondent did not initially include the phrase “political advertising” or a recognizable abbreviation of the phrase on the website, the political nature of the website was clear and the omission was not misleading and did not substantially affect disclosure. **Therefore, there is credible evidence of technical or *de minimis* noncompliance with section 255.001 of the Election Code.**

By signing this agreement and returning it to the Commission:

1. You consent to this agreement.
2. You accept the determinations made by the Commission in this agreement.
3. You waive any right to further proceedings in this matter.
4. You understand and agree that the Commission will consider this agreement in any future proceedings against you regarding similar allegations.
5. You acknowledge that:

Semiannual reports, pre-election reports, and runoff reports must cover reportable activity during the reporting period and must include for each person from whom the candidate accepted a political contribution (other than a pledge, loan, or a guarantee of a loan) of more than \$50 in value or political contributions (other than pledges, loans, or guarantees of loans) that total more than \$50 in value the full name of the person making the contribution; the address of the person making the contribution; the total amount of contributions; the date each contribution was accepted; and a description of any in-kind contribution.

A campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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.

Staff reimbursements must be disclosed in accordance with Ethics Commission Rules § 20.62.

A candidate is required to report a campaign expenditure from his or her personal funds.

A candidate or officeholder who makes political expenditures from the candidate’s or officeholder’s personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and

amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made, and the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

A campaign finance report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period the individual's principal occupation or job title, and the full name of the individual's employer.

A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate.

You agree to comply with these requirements of the law.

This agreement describes certain reporting errors that the Commission has determined are neither technical nor *de minimis*. Accordingly, this agreement is not confidential under section 571.140 of the Government Code.

The respondent agrees to tender a \$250 assessment fee to the Commission.

This agreement is a final and complete resolution of SC-3140386.

Terry Holcomb, Respondent

Date signed by Respondent

Executed original agreement received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director