

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARLES CUNNINGHAM,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31804173 AND SC-31808298

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 18, 2020, to consider sworn complaints SC-31804173 and SC-31808298. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 253.035, 254.031, 254.036, 254.061, 254.063, and 254.093 of the Election Code, laws administered and enforced by the Commission. To resolve and settle the complaints without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaints alleged that the respondent: 1) did not disclose the total political contributions maintained on the 30-day pre-election report for the May 6, 2017, election, in violation of Section 254.031(a)(8) of the Election Code; 2) did not disclose the schedule subtotals on cover sheet, Page 3 (used to disclose the subtotal amounts for each applicable schedule) on the 8-day pre-election report prior to the May 6, 2017, election, in violation of Section 254.036(a) of the Election Code; 3) did not disclose certain political contributions from the specific-purpose political committee, Humble ISD Supporters, in multiple campaign finance reports, in violation of Section 254.031 of the Election Code; 4) did not disclose election information (identity and date of the election) on the July 2017 semiannual report, as required by Section 254.061 of the Election Code; 5) did not timely file a January 2018 semiannual report, as required by Section 254.063 or 254.093 of the Election Code; 6) converted political contributions to personal use, in violation of Section 253.035(a) of the Election Code; 7) did not cover the correct reporting periods in the January 2018 and July 2018 semiannual reports, in violation of Section 254.063 of the Election Code; 8) did not disclose political contributions, political expenditures, and/or reimbursements for the rental of a booth, in violation of Section 254.031 of the Election Code; 9) did not properly disclose the reporting period on the 30-day pre-election report prior to the May 6, 2017, election, in violation of Section 254.064 of the Election Code; 10) as an officer or employee of a political subdivision, spent or authorized the spending of

public funds for political advertising in support of a May 5, 2018, Humble ISD school bond, in violation of Section 255.003(a) of the Election Code; and 11) did not disclose political contributions and/or did not disclose receiving notice from Kingwood Tea Party and Kingwood Area Republican Women in connection with the May 6, 2017, election, in violation of Sections 254.031 and 254.061(3) 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 successful candidate for the Humble Independent School District (HISD) Board of Trustees in the May 6, 2017, election, and was a member of the Board of Trustees during the May 2018 bond election and at all other times relevant to the complaints.

Failure to Report Total Political Contributions Maintained in 30-Day Pre-Election Report

2. Sworn complaint SC-31804173 alleges that the respondent failed to include the total political contributions maintained in his 30-day pre-election report for the May 6, 2017, election.
3. The Election Code requires candidates to include in their campaign finance reports the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. Tex. Elec. Code § 254.031(a)(8).
4. The respondent left the field for total political contributions maintained blank on his original 30-day pre-election report. In his response to the sworn complaint, the respondent denied the violation, but filed a “corrected” report to add one previously-missing expenditure. In his “corrected” report, the respondent reported zero dollars in the field for contributions maintained.
5. Because the respondent left the field for total political contributions maintained blank in his original 30-day pre-election report, there is credible evidence that the respondent committed a violation of Section 254.031(a)(8) of the Election Code.

Failure to Include Schedule Subtotals in Cover Sheet

6. Sworn complaint SC-31804173 alleges that the respondent failed to include the subtotal for each schedule completed on Page 3 of the cover sheet portion of his 8-day pre-election report for the May 6, 2017, election.

7. Section 254.036(a) of the Election Code requires that each campaign finance report be filed in a format prescribed by the Commission. Section 20.19 of the Ethics Commission Rules further requires that except for special pre-election reports that are exempt from the electronic filing requirement under Section 254.038 of the Election Code, all campaign finance reports must be filed in a format prescribed by the Commission or on forms approved by the Executive Director.
8. Page 3 of the cover sheet for the campaign finance report form (Form C/OH) requires the filer to include subtotal amounts for each schedule of the form included. The respondent did not include subtotal amounts for Schedule A1 for monetary political contributions or Schedule F1 for political expenditures made from political contributions, despite disclosing activity on both of these schedules. There is therefore credible evidence of violations of Section 254.036(a) of the Election Code.

Failure to Disclose In-Kind Contributions from Humble ISD Supporters Political Committee

9. Sworn complaint SC-31804173 alleges that the respondent failed to disclose three in-kind contributions totaling \$8,494.21 from the Humble ISD Supporters political committee on his 8-day pre-election report for the May 2017 election, and failed to disclose 10 more in-kind contributions totaling \$3,555.79 from the Humble ISD Supporters political committee from the period preceding the political committee's dissolution on May 17, 2017.
10. According to their campaign finance reports, the Humble ISD Supporters political committee made a series of expenditures totaling \$12,050 for campaign communications that supported the respondent and other candidates for HISD trustee. The evidence available to the Commission included a signed statement by the treasurer of the Humble ISD Supporters political committee, in which she averred that "the candidates, [including] Charles Cunningham . . . , were all aware that Humble ISD [Supporters] PAC was accepting Political Campaign Contributions for their benefit and had Political Expenditures for their benefit." Commission staff also obtained an affidavit in which Mr. Cunningham swore that he and the other candidates "were aware" that funds were being raised for their benefit, and of how these funds were spent, and an email from Mr. Cunningham's wife to the treasurer of the Humble ISD Supporters political committee with materials to send to the print shop.
11. In his sworn response to this sworn complaint, the respondent denied the allegation, but admitted that "[he] was aware of the PAC." The respondent filed an amended 8-day pre-election report to disclose receiving notice of the expenditures made to support him by the Humble ISD Supporters Political Committee, but did not report the political committee's expenditures as contributions on the amended report.

12. The Election Code requires candidates to include in their campaign finance reports the amount of political contributions from each person that in the aggregate exceed \$50 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). Candidates must further include in each campaign finance report the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031(a)(6). The Election Code defines the term “contribution” as “a direct or indirect transfer of money, goods, services, or any other thing of value.” *Id.* § 251.001(2). “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. *Id.* § 251.001(3). The definition of a political contribution includes a campaign contribution. *Id.* § 251.001(5). “In-kind contribution” means a contribution of goods, services, or any other thing of value, except money. 1 Tex. Admin. Code § 20.1(8).
13. A campaign expenditure is not a contribution if it is made without the prior consent or approval of the candidate on whose behalf the expenditure was made. *Id.* § 20.1(5)(A). 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 the contribution is accepted. Tex. Ethics Comm’n Op. No. 331 (1996). However, if political advertising supporting or opposing two or more candidates is an in-kind contribution, each person benefiting from the contribution shall report the amount determined by dividing the full value of the political advertising by the number of persons benefited by the political advertising. 1 Tex. Admin. Code § 20.51(c).
14. The affidavits provided by the respondent and the treasurer of the Humble ISD Supporters political committee show the respondent had prior knowledge of the political committee’s spending to support the respondent. Crucially, the email from the respondent’s wife shows clear coordination between the respondent and Humble ISD Supporters political committee. The respondent, through his wife, provided the political committee with campaign materials to send to a printer to be printed at the political committee’s expense. The expenditures made by the Humble ISD Supporters political committee for the respondent’s benefit were made with the respondent’s knowledge and prior consent, and were therefore required to be disclosed by the respondent as in-kind political contributions. The respondent did not disclose his proportional share of the expenditures as in-kind contributions on the relevant campaign finance reports. There is therefore credible evidence of the alleged violations of Sections 254.031(a)(1) and 254.031(a)(6) of the Election Code.

Failure to Include Identity and Date of Election for Which Report Was Filed

15. Sworn complaint SC-31804173 alleges that the respondent's July 2017 semiannual campaign finance report did not disclose the identity and date of the election for which the report was filed, as required by Section 254.061(1) of the Election Code.
16. Each report by a candidate must include the identity and date of the election for which the report is filed. Tex. Elec. Code § 254.061(1).
17. At the time the respondent filed his July 2017 semiannual report, his campaign treasurer appointment for the May 6, 2017, election remained on file. Three of the four expenditures reported on the respondent's July 2017 semiannual report were for campaign events for the May 6, 2017, election. Further, according to the dates listed by the respondent on the report's cover sheet, the report covers the period from April 29, 2017, through June 30, 2017. The report therefore covers the eight-day period immediately prior to and including the May 6, 2017, election. The respondent left the fields for the identity and date of the election on the cover sheet for his July 2017 semiannual report blank. Because the report was filed for the May 6, 2017, election but did not include the identity and date of this election, there is credible evidence of a violation of Section 254.061(1) of the Election Code.

Failure to Timely File January 2018 Semiannual Report

18. Sworn complaint SC-31804173 alleges that the respondent failed to timely file the January 2018 semiannual campaign finance report.
19. The respondent's January 2018 semiannual report on file with HISD does not bear a filing stamp, but was notarized on April 16, 2018. It discloses a \$20,000 loan from the respondent to his campaign and no further activity.
20. In addition to other reports, each candidate shall file two reports for each year as provided by the Election Code. Tex. Elec. Code § 254.063(a). The second report shall be filed not later than January 15. *Id.* § 254.063(c). The second report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. *Id.*
21. If the deadline for filing a campaign finance report other than a special pre-election report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. *See* 1 Tex. Admin. Code § 20.21.

22. Because Monday, January 15, 2018, was a state holiday, the January 2018 semiannual campaign finance report was due by Tuesday, January 16, 2018. The respondent did not file a final report before the January 2018 semiannual report was due, so he was therefore required to file the report. The respondent did not file the January 2018 semiannual report until at least April 16, 2018, the date the report was notarized. There is therefore credible evidence of a violation of Section 254.063(c) of the Election Code.

Conversion of Political Contributions to Personal Use

23. Sworn complaint SC-31804173 alleges that the respondent's \$628.85 expenditure to National Tire and Battery on May 20, 2017, was a conversion of political contributions to personal use, in violation of Section 253.035(a) of the Election Code.
24. In his sworn response to the complaint, the respondent stated that the expenditure was to repair the damages to his vehicle after his tires were slashed at a campaign event. He alleged that he used the vehicle routinely for district and campaign purposes and that the damage was a direct result of his participation in the campaign event. The respondent asserted that this was an ordinary and necessary expense incurred in connection with his activities as a candidate and officeholder.
25. In response to Commission staff's written questions, the respondent clarified that two tires were slashed, one at each of two campaign events. The respondent included the receipt for the tires, which indicated that the respondent had four new tires fitted to the car. The respondent indicated that the car in question was his wife's primary vehicle, and that she was working on his campaign. He further responded that the old tires were in good condition at the time that two of them were slashed.
26. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. Tex. Elec. Code § 253.035(a). "Personal use" means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. *Id.* § 253.035(d). The term "personal use" does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder. *Id.*
27. According to the respondent's sworn response and answers to Commission staff's written questions, two of the tires on the respondent's wife's car were slashed at the respondent's campaign events. These tires were in good condition before they were slashed. The circumstances – namely, that the respondent described the tires as having been "slashed" rather than punctured or otherwise damaged in a more typical way, and that one tire was "slashed" at each of two separate political events – implies vandalism motivated by political

enmity. The tires were damaged while in the course of actively campaigning. Replacing these two tires was therefore a payment made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or officeholder. There is therefore no credible evidence of a violation as to the respondent's replacement of the two tires that were slashed. However, the respondent's replacement of the other two tires, which were not slashed and remained in good condition, was not connected to his campaign. The respondent reported that both before and after the election, the vehicle was his wife's primary vehicle, and that even during the relatively brief campaign, campaign activity only accounted for half of the vehicle's use. The tires were on a personal vehicle and were not damaged or substantially worn as a result of campaign activity. The replacement of the two tires that were not slashed therefore primarily furthered individual or family purposes and was not a purchase made to defray ordinary and necessary expenses incurred in connection with the respondent's activities as a candidate. Therefore, there is credible evidence of a violation of Section 253.035 of the Election Code as to the respondent's use of political funds to replace the two tires that were not slashed.

Incorrect Reporting Periods Covered in Semiannual Reports

28. Sworn complaint SC-31808298 alleges that the respondent's January 2018 and July 2018 semiannual campaign finance reports did not cover the correct reporting periods.
29. A candidate shall file two reports for each year as provided by the Election Code. The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through June 30. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31. Tex. Elec. Code § 254.063.
30. The respondent's January 2018 semiannual report was required to cover the period beginning on July 1, 2017, and continuing through December 31, 2017. The respondent's July 2018 semiannual report was required to cover the period beginning on January 1, 2018, and continuing through June 30, 2018. *See id.*
31. According to the dates given for the period covered on the cover sheet, the respondent's January 2018 semiannual report covered the period beginning on June 30, 2017, and continuing through January 15, 2018. The respondent's July 2018 semiannual report covered the period beginning on January 15, 2018, and continuing through July 15, 2018. There is therefore credible evidence that the respondent's January 2018 and July 2018 semiannual reports do not cover the correct dates, in violation of Section 254.063 of the Election Code.

Disclosures for Booth Rental at “Good Oil Days” Event

32. Sworn complaint SC-31808298 alleges that the respondent failed to disclose expenditures made and contributions or reimbursement payments accepted for the respondent’s rental of a booth at the Humble “Good Oil Days” public event.
33. The respondent rented booths for himself and a fellow candidate to promote their May 2017 campaigns at the Humble “Good Oil Days,” an annual community event held on April 8, 2017. The respondent paid \$200 total to rent the booths. The other candidate made two payments of fifty dollars each to the respondent to cover the respondent’s payment for her booth.
34. In response to the complaint, the respondent swore that he disclosed the reimbursement received from the other candidate as part of his unitemized contributions on the cover sheet of his 8-day pre-election campaign finance report. The respondent disclosed nothing on Schedule K of the 8-day pre-election report, where any reimbursements received should have been disclosed if above the \$100 disclosure threshold.
35. To clarify whether the respondent had disclosed his own initial payment to rent the booths as an expenditure, Commission staff sent written questions to the respondent. In his sworn response to the written questions, the respondent stated that he paid the event organizers \$200. However, in response to Commission staff’s specific inquiries about whether and how he disclosed the initial payment to the event organizers, the respondent simply directed Commission staff to his disclosure of the other candidate’s reimbursement payment, which he had already mentioned in his initial response.
36. The Election Code requires that candidates report 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. Tex. Elec. Code § 254.031(a)(3). The Election Code further requires that candidates report 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. *Id.* § 254.031(a)(1). Candidates must further report the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. *Id.* § 254.031(a)(6).
37. The respondent did not identify in his campaign finance reports any disclosure of his admitted \$200 payment to the “Good Oil Days” event organizers. The respondent’s 8-day pre-election report, which covered the date of the April 7, 2017, payment to the event organizers, does not include the payment on Schedule F1, on which political expenditures

from political contributions are required to be disclosed. Further, the 8-day pre-election report discloses no unitemized expenditures. Because the respondent was required to disclose the \$200 payment, which exceeds the \$100 itemization threshold, as a political expenditure on his 8-day pre-election campaign finance report, but did not disclose it, there is credible evidence of a violation of Section 254.031(a)(3) of the Election Code.

38. The complaint further alleges that the respondent failed to disclose the other candidate's repayment of the money that the respondent advanced to the event organizers.
39. Each campaign finance report must include any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100. *Id.* § 254.031(a)(9). Reimbursements reportable under Section 254.031(a)(9) of the Election Code must be disclosed on Schedule K of the campaign finance report form.
40. The other candidate's repayment to the respondent for the booth rental is in the nature of a reimbursement. The respondent did not disclose the payment as a reimbursement received on Schedule K of the 8-day pre-election report. However, reimbursements which do not exceed \$100 during the reporting period for a campaign finance report are not subject to disclosure on the report. *See id.* (mandating disclosure only for reimbursements exceeding \$100 during the reporting period). The evidence available to the Commission indicates that it cost \$100 to rent a table at the event. There is therefore no credible evidence that the respondent violated Section 254.031(a)(9) of the Election Code by failing to disclose the reimbursement.

Incorrect Reporting Period Covered in 30-Day Pre-Election Report

41. Sworn complaint SC-31804173 alleges that the respondent's 30-day pre-election report for the May 6, 2017, election did not cover the correct reporting period. The complaint specifically alleges that the 30-day report should have covered a period beginning on January 1, 2017.
42. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. Tex. Elec. Code § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. *Id.* § 254.064(b). The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under Chapter 254 of the Election Code, as applicable, and continuing through the 40th day before election day. *Id.*

43. The complaint included a campaign treasurer appointment filed by the respondent, which was not stamped by the filing authority, but which bears the respondent's signature, dated February 5, 2013.
44. In his sworn response to the complaint, the respondent averred that he appointed his campaign treasurer for the election at issue on February 14, 2017. The respondent attached a campaign treasurer appointment that, like the 2013 campaign treasurer appointment, was not stamped by the filing authority, but which bore the respondent's signature, dated February 14, 2017.
45. The last day required to be covered by the 30-day pre-election report was the 40th day before the election, March 27, 2017.
46. The respondent's 30-day pre-election report for the May 6, 2017, election covered the correct dates, beginning on February 14, 2017, when the respondent swore he filed his campaign treasurer appointment, and ending on March 27, 2017, the 40th day before the election, judged by the date the respondent signed the report. There is therefore insufficient evidence of a violation of Section 254.064(b) of the Election Code for failure to cover the correct dates.

Use of Public Funds for Political Advertising

47. Sworn complaint SC-31808298 alleges that as a member of the Humble ISD Board of Trustees, the respondent authorized the spending of public funds for political advertising, namely a pamphlet promoting HISD's bond measure in the May 2018 election.
48. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a).
49. In advance of a May 2018 bond election, HISD published and mailed a pamphlet to district voters. This pamphlet discusses in some depth the proposed bond.
50. In response to written questions from Commission staff, the respondent filed sworn answers concerning his involvement with the pamphlet as a member of the HISD Board of Trustees. The respondent denied that he or the board approved the pamphlet for printing or distribution, or voted on its approval. The sworn responses filed by other members of the Board of Trustees, to whom Commission staff sent the same written questions, confirm the respondent's account, uniformly recounting that while the trustees were sent a draft of the pamphlet, the Board did not consider or approve the pamphlet prior to its distribution. Further, neither the Board of Trustees' publicly-posted minutes and agendas nor the documents obtained by Commission staff from HISD through a Texas Public Information

Act request reveal any discussion of the bond pamphlet by the Board of Trustees collectively or by the respondent individually. There is therefore credible evidence of no violation of Section 255.003 of the Election Code. Because there is credible evidence that the respondent did not spend or authorize the spending of public funds on the pamphlet, it is not necessary to address whether it constitutes political advertising.

Failure to Disclose Contributions or Direct Campaign Expenditures from Political Committees

51. Sworn complaint SC-31808298 alleges that the respondent failed to disclose various in-kind contributions from the Kingwood Tea Party and the Kingwood Area Republican Women, both of which are general-purpose political committees. The alleged in-kind contributions from the Kingwood Tea Party consist of a mailer endorsing the respondent and other HISD trustee candidates, also posted on the Kingwood Tea Party's website, expenditures to host a March 2, 2017, meeting to which the respondent was invited, and various campaigning efforts for the respondent at polling places and the respondent's April 29, 2017, campaign rally. The alleged contributions from the Kingwood Area Republican Women were expenditures made to host an April 26, 2017, "candidate forum." In the alternative, the complaint alleges that the respondent failed to disclose receiving notice from the Kingwood Tea Party and the Kingwood Area Republican Women that they had made direct campaign expenditures on his behalf.
52. As noted above, the Election Code requires candidates to include in their campaign finance reports the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the date of the contributions. Tex. Elec. Code § 254.031(a)(1). Candidates must further include in each campaign finance report the total amount of all political contributions accepted during the reporting period. *Id.* § 254.031(a)(6). Contributions required to be disclosed include "in-kind contributions," defined as any contribution of goods, services, or any other thing of value, except money. *See* 1 Tex. Admin. Code 20.1(8).
53. In response to written questions from Commission staff, the respondent denied that he received notice from the Kingwood Tea Party before the Kingwood Tea Party published the mailer endorsing him. The respondent's denial that he received prior notice is corroborated by the sworn affidavit of a different candidate endorsed in the same mailer, in which the candidate swore that the Kingwood Tea Party did not notify her or ask for her consent before publishing the mailer or posting the mailer on its website. The Ethics Commission Rules provide that 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. *Id.* § 20.1(5)(A). Because the Kingwood Tea Party created and distributed the mailer without the respondent's consent or

approval, there is no credible evidence of a violation of Section 254.031 of the Election Code concerning the mailer.

54. Nor were the Kingwood Tea Party's expenditures to host their March 2, 2017, meeting at which the respondent appeared in-kind contributions from the Kingwood Tea Party. While a meeting intended to promote or raise funds for a candidate would be a reportable in-kind contribution, the purpose of the meeting at issue was not to promote the respondent's candidacy. In response to written questions from Commission staff, the respondent swore that the purpose of the meeting was to provide an "informative" update on the school district. The Kingwood Tea Party did not endorse the respondent, solicit votes for the respondent's campaign, or solicit or accept contributions for the respondent at the meeting. According to the respondent, several board members and candidates were present at the meeting, which was a regularly scheduled meeting of the Kingwood Tea Party. The other candidate in the separate complaint discussed above also provided a sworn statement on the March 2, 2017, Kingwood Tea Party meeting, which corroborates the respondent's statement. Further, contemporaneous news coverage confirms the two candidates' characterization of the event. Because according to the two affiants' testimony and the news coverage the meeting was informational rather than promotional in nature, the Kingwood Tea Party's expenditures for the meeting were not reportable by the respondent as in-kind contributions, and there is no credible evidence of a violation by the respondent for failing to so report them. *See* Tex. Elec. Code §§ 251.001(3), (5), 254.031(a)(1), (6).
55. Sworn complaint SC-31808298 also alleges that the Kingwood Tea Party's representatives spoke in the respondent's favor at the respondent's April 29, 2017, campaign rally and campaigned for the respondent during the voting period at the polls. The sworn complaint supports these allegations with a series of social media posts by a member of the Kingwood Tea Party documenting with photographs his appearance at the April 29, 2017, campaign rally and a visit to the polls on election day. While these photographs depict various political activities, they do not document any activity by the Kingwood Tea Party beyond the social media poster's appearance as a speaker and a visitor to the polls. A political contribution consisting of an individual's personal service is not required to be reported if the individual received no compensation for the service. *Id.* 254.033. Because there is no indication that the Kingwood Tea Party member received compensation for his activities at the polls or at the respondent's campaign rally, the social media posts do not depict any reportable contribution. There is therefore no credible evidence that the respondent's failure to disclose these alleged campaign efforts constitutes a violation of Section 254.031 of the Election Code.

56. Sworn complaint SC-31808298 further alleges that the respondent failed to disclose as in-kind contributions or as direct expenditures activities by the Kingwood Area Republican Women political committee pertaining to their April 26, 2017, “candidate forum” event. The complaint alleges based on emails between the respondent and a Kingwood Area Republican Women member that because the respondent’s opponent was “uninvited” from this event, and because the Kingwood Area Republican Women made expenditures to promote the event in their magazine, the Kingwood Area Republican Women made in-kind contributions to the respondent’s campaign.
57. In his sworn response to the complaint, the respondent characterized the April 26, 2017, event as a “candidate forum.” He recounted that he and fifteen other candidates were invited to the event. He noted that due to the number of candidates, none were allowed to make any remarks beyond introducing themselves. A sworn statement filed by the campaign treasurer of Kingwood Area Republican Women explained that while the political committee’s original intent had been to host a candidate forum, the committee ultimately decided not to, and opted instead to host the superintendent of the Humble Independent School District. While the news article provided in the complaint does note that the president of Kingwood Area Republican Women urged support of the candidates who chose to attend, that the primary focus of the meeting was on the school district superintendent and that the candidates only participated by introducing themselves indicate that the expenditures made for the meeting were not intended to support the candidates in attendance. There is therefore no credible evidence that the respondent’s failure to disclose the expenditures made by the Kingwood Area Republican Women to host the event as contributions constitutes a violation. *See id.* § 251.001(3) (defining a campaign contribution as 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”).
58. In the alternative, assuming that the activities of the Kingwood Tea Party and the Kingwood Area Republican Women were direct campaign expenditures, the complaint contends that the respondent failed to disclose notices received from the Kingwood Tea Party and the Kingwood Area Republican Women of these alleged direct expenditures, in violation of Section 254.061 of the Election Code.
59. Sections 254.128 and 254.161 of the Election Code require specific-purpose and general-purpose political committees, respectively, to provide notice to a candidate or officeholder of any contribution accepted or expenditure made for the candidate or officeholder.

60. Section 254.061 of the Election Code requires that each campaign finance report by a candidate include for each political committee from which the candidate received notice under Sections 254.128 or 254.161 the committee's full name and address, an indication of whether the committee is a general-purpose committee or a specific-purpose committee, and the full name and address of the committee's campaign treasurer.
61. The complainant provides no documentation that the Kingwood Tea Party or the Kingwood Area Republican Women provided notice to the respondent under Sections 254.128 or 254.161 of the Election Code. The respondent denies that he received any such notice from the Kingwood Tea Party or the Kingwood Area Republican Women in his sworn response. There is therefore no credible evidence of a violation of Section 254.061 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 Commission's 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 these sworn complaints.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in these matters.
3. The respondent acknowledges that:
 - i. each campaign finance report must include the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period;
 - ii. each campaign finance report must be in a format prescribed by the Commission, including that the cover sheet of each campaign finance report must include the subtotal amounts for each schedule of the report included;
 - iii. each campaign finance report must include the amount of amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, including in-kind contributions;
 - iv. each campaign finance report must include the identity and date of the election for which the report is filed;

- v. each January semiannual campaign finance report shall be filed not later than January 15, unless January 15 falls on a Saturday, Sunday, or a legal state or national holiday, in which case the report is due on the next regular business day;
- vi. a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use, such as a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office;
- vii. each January semiannual campaign finance report shall cover the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and each July semiannual campaign finance report shall cover the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed, as applicable, and continuing through December 31; and
- viii. each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, and 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 fully and strictly comply with these requirements of 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 \$1,250 civil penalty. If the respondent does not pay the \$1,250 civil penalty within 30 days of the date of this Order, then the civil penalty is increased to \$2,500 and the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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 sworn complaints SC-31804173 and SC-31808298.

AGREED to by the respondent on this _____ day of _____, 2020.

Charles Cunningham, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director