

TEXAS ETHICS COMMISSION

IN THE MATTER OF

THOMAS A. "TOM" HARRISON,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31812377

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 27, 2020, to consider sworn complaint SC-31812377. 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 the complaint without further proceedings, the Commission proposed this resolution.

II. Allegation

The complaint alleged that the respondent did not disclose political contributions and/or political expenditures on the July 2018 semiannual report as required by section 254.031 of the Election Code.

III. Findings of Fact and Conclusions of Law

1. At all times relevant to this complaint the respondent was the place 7 councilmember for the City of Plano. He did not run for reelection in the May 2019 election.
2. The respondent was the subject of a recall election that was to be held in November 2018. The city ordered the recall election after citizens submitted a petition in response to comments the respondent made on social media.
3. Under the Plano City Charter, the only grounds for recall and removal from office are "incompetency, misconduct or malfeasance in office." Plano City Charter Art. 6 § 6.01. The city certified the petition for recall and the city council voted on April 9, 2018, to order the recall election to take place on November 6, 2018.
4. On June 18, 2018, the respondent filed a petition for a writ of mandamus in the Fifth Court of Appeals seeking an order to invalidate the recall petition and to rescind the November recall election. In the mandamus petition, the respondent asserted that the mayor and other signatories to the recall petition targeted him because of his outspoken resistance to the

development plan adopted by Plano. The respondent asserted that the city charter only allowed for a recall for incompetency, misconduct or malfeasance in office and the statement that triggered the recall petition “was not made in the course and scope of his position as Council Member.”

5. While the mandamus action was pending, the City of Plano, on July 5, 2018, filed a lawsuit naming the respondent as a defendant that sought declaratory judgment to determine the correct meaning of the city charter governing the number of signatures needed for a valid recall petition.
6. Following a bench trial, the district court entered a judgement on August 14, 2018, which found that the city erred in certifying the recall petition and ordered the city to cancel the recall election. The city subsequently voted to cancel the recall election.
7. The respondent received \$12,353 to fund his legal effort against the recall petition through the online fundraising site GoFundMe. The respondent’s GoFundMe campaign was titled “Tom Harrison Legal Expense Trust” and it solicited contributions to help finance the respondent’s legal challenge of the recall petition. The solicitation stated:

Tom Harrison is the most dedicated and committed public servant in Plano city government. He is the victim of malicious distortions, character assassination and outright lies. Democrats, special interest and fanatics have conspired to break the law in an attempt to force him off the City Council to make way for Harry LaRosiliere’s political and social agenda. Time and time again Tom has been the champion of the citizens of Plano. We must now stand up for him and defend him against this illegal recall effort. Please donate to his legal trust and ensure his continued efforts to protect Plano from developers, social leftists and political radicals. Together our support for Tom will keep Plano a wonderful suburban community. Your donations will be used immediately to challenge this illegal petition.

8. The fundraising solicitation specifically linked donations for the respondent’s “legal challenge” to the respondent remaining on the city council to fulfill officeholder activities, specifically, to “ensure his continued efforts to protect Plano from developers”
9. The GoFundMe fundraising page, which was first posted in April 2018, indicates that the respondent received 105 donations, almost all of which were from anonymous sources. Those donations were not reported on the respondent’s campaign finance reports. Instead, the respondent reported accepting \$650 in political contributions on his July 2018 semiannual report, which covered a reporting period of January 1, 2018, through June 30, 2018. He reported accepting \$500 in political contributions on his January 2018 semiannual report, which covered a reporting period of July 1, 2018, through

December 31, 2018. He filed a final report on July 12, 2019, in which he disclosed that he retained no political contributions.

10. The complaint alleges that the donations accepted through GoFundMe were political contributions and the money spent fighting the recall petition in court were political expenditures that the respondent failed to report on his campaign finance reports.
11. The respondent denies that he was required to report on his campaign finance reports the money raised and spent in connection with the recall petition lawsuit. He also denies that he set up the GoFundMe fundraising page. But he admits that the law firm representing him received the money raised through GoFundMe with the specific purpose that it be used for his legal defense and was actually used to defray his legal expenses.
12. The respondent was both an officeholder, as an incumbent city council member, and a candidate, because he had a campaign treasurer appointment in effect. ELEC. CODE § 251.001(1); *Id.* § 252.011(b) (“A campaign treasurer appointment continues in effect until terminated).
13. Each report filed by an officeholder or candidate must include, among other things, 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 contribution and the dates of the contributions. *Id.* § 254.031(a)(1).
14. Each report filed by an officeholder or candidate must also 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 expenditure. *Id.* § 254.031(a)(3).
15. Each report filed by an officeholder or candidate must also include 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).
16. Whether the respondent was required to report the donations to his legal fund and the expenditures for his legal defense turns on the definitions of “political contribution” and “political expenditure.”
17. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). “Political expenditure” means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).

18. “Contribution” means, in relevant part, 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).
19. “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). A “campaign expenditure” is an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
20. “Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that: (A) are **incurred by the officeholder** in performing a duty or **engaging in an activity in connection with the office**; and (B) are not reimbursable with public money. *Id.* § 251.001(4) (emphasis added). An “officeholder expenditure” is an expenditure made by any person to defray expenses that: (A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money. *Id.* § 251.001(9).
21. “Measure” means a question or proposal submitted in an election for an expression of the voters’ will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters’ will. *Id.* § 251.001(19). A recall election is a type of a measure. *See Cook v. Tom Brown Ministries*, 385 S.W.3d 592, 607 (Tex. App.—El Paso 2012).
22. The respondent asserts that the contributions cannot have been made in connection with an election because no election took place, and there were never any legal grounds to call an election. But this argument only addresses half of the definition of a “political contribution,” which is either a campaign contribution or, crucially, an “officeholder contribution.”
23. The principal question is whether the contributions received by the respondent for the lawsuit against the city regarding the recall election were given with the intent to be used to defray expenses that were “incurred by the officeholder in performing a duty or engaging in an activity in connection with the office.” ELEC. CODE. § 251.001(4).
24. Section 253.035 of the Election Code prohibits a person who accepts a political contribution as a candidate or officeholder from converting the contribution to personal use. *Id.* § 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). “Personal use” does not include the use of contributions for defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person’s status as a candidate or officeholder; or participating in an election contest or participating in a civil action to determine a person’s eligibility to be a candidate for, or elected or apportioned to, a public office in this state. *Id.* § 253.035(i)(1).

25. By definition, if an expenditure is not a conversion to personal use, it will not be a personal expense; it will be either a campaign or officeholder expenditure (provided the officeholder expenditure is not reimbursable with public funds). Contributions made with the intent to fund such expenditures are political contributions, either campaign or officeholder.
26. The Commission’s advisory opinions have broadly found that expenditures for legal fees to prosecute or defend claims relating to a public office are officeholder expenditures. Expenditures for legal fees to prosecute or defend claims relating to a campaign for public office are campaign expenditures. *See, e.g.*, Ethics Advisory Opinion Nos. 433 (2001) (statutory court judge may use surplus contributions to defend against charges of judicial misconduct); 310 (1996) (officeholder may use contributions for legal expenses in connection with federal and state investigations of the officeholder for public corruption); 276 (1995) (district judge may use contributions to defend against lawsuit filed solely because of status as judge); 222 (1994) (individual may use contributions to respond to grievance filed before the state bar if the grievance is in regard to conduct as a candidate); 219 (1994) (individual may use contributions to defend against sworn complaint brought against the individual as a candidate); 105 (1992) (“a candidate may use campaign contributions to pay legal expenses incurred in defending a collection suit brought by the holder of a note signed by the candidate in consideration for a campaign loan”).
27. In Advisory Opinion No. 270 (1995) the Commission held that a group that accepts contributions and makes expenditures to assist members of the legislature acting in their capacity as legislators in filing a lawsuit is a political committee for purposes of title 15 of the Election Code. According to the facts presented in EAO 270, the members of the legislature only had standing to sue by virtue of their official positions. Therefore, the money raised by the group to support the legislature’s lawsuit were officeholder contributions.
28. Whether a contribution qualifies as an “officeholder contribution” depends on whether it is “offered or given with the intent that it be used to defray expenses that . . . are incurred by the officeholder . . . engaging in an activity in connection with the office.” Here, the respondent’s status as an officeholder is a but-for cause of his involvement in the lawsuit:

But for his status as an officeholder, he could not be the subject of a recall petition. Moreover, under the Plano City Charter, section 6.01, the grounds for recall are “incompetency, misconduct or malfeasance **in office.**” Therefore, the genesis of the petition had to relate to action “in office.” In his mandamus petition, the respondent disputed that the social media post was an act “in office.” But when the principal question of a lawsuit is whether an action was taken “in office” the nexus to an officeholder activity is manifest. The solicitation for the legal defense funds clearly evinced the donors’ intent to fight the petition that would remove the respondent from office.

29. Therefore, contributions made to fund an officeholder’s legal defense against a recall petition are officeholder contributions. Expenditures for the lawsuit are officeholder expenditures (assuming the expenses are not reimbursable with public funds as is the case here). The respondent’s attorney accepted the contributions for the respondent’s benefit and the respondent consented to using the contributions to defray the costs associated with the lawsuits involving the petition that sought to remove him from office. Therefore, the respondent accepted the contributions even if he did not create the fundraising webpage himself. Officeholder contributions, and officeholder expenditures made from political contributions, must be disclosed on a campaign finance report. ELEC. CODE § 254.031(a)(1), (a)(3), and (a)(6). The respondent failed to disclose at least \$12,353 in political contributions and/or expenditures. The Commission finds the respondent failed to report the political contributions due to a good-faith misunderstanding about the reporting requirements relating the money received to defray his legal expenses. Regardless, there is credible evidence of violations of sections 254.031(a)(1) and 254.031(a)(3) 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 each report filed by an officeholder or candidate must include: 1) 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 contribution and the dates of the contributions; 2) 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 expenditure; and 3) 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 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 \$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-31812377.

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

Thomas A. "Tom" Harrison

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director