

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
KELLI MACATEE,  
RESPONDENT

§  
§  
§  
§  
§

BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-3220245

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met on September 28, 2022, to consider sworn complaint SC-3220245 at a preliminary review hearing. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of Section 253.041 of the Election Code, a law administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

### II. Allegation

The complaint alleges that, as a candidate for Highland Park Independent School District (HPISD) Board of Trustees, Place 1, the respondent made a prohibited payment for personal services to her spouse or a company she or her spouse owns, holds a position on the governing body, or serves as an officer, in violation of Section 253.041 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 an unsuccessful opposed candidate for the HPISD Board of Trustees, Place 1, in the May 1, 2021, election.
2. The sworn complaint was filed on February 24, 2022. The complaint alleges that the respondent improperly paid Power 10 Solutions, a business owned by herself and her husband, \$5,760 for “Contract labor/Consulting – Web Data.”
3. The allegation was based on the respondent’s January 2022 semiannual report, in which the respondent listed an expenditure for \$5,760 to Power 10 Solutions. The complaint included evidence of the alleged violation in the form of Power 10 Solutions’ webpage, on which the principals of the business were listed as Kelli and Mark Macatee. Mark Macatee

is the respondent's spouse.

4. In response to the complaint, the respondent swore that Power 10 Solutions was dissolved on July 27, 2012. The respondent admitted Power 10 Solutions has not transacted business after July 27, 2012. The respondent's reasoning for making an invoice out to a dissolved company was because "that's the name of the Chase Business Account and because that's where the invoice came from via QuickBooks." The respondent maintained that Section 253.041 is inapplicable because the services provided by Mark Macatee were "professional services" and not "personal services."
5. In response to written questions and during testimony at the preliminary review hearing, the respondent admitted that Mark Macatee was her husband and was the actual recipient of the funds. The respondent produced an invoice showing \$360 of the funds paid were for webhosting, and \$5,400 were for labor costs.
6. The respondent testified that she paid her husband from political contributions to analyze voter data to help decide whether to contest the election results. She also testified that her husband was able to complete the application at a much cheaper rate than if she hired an outside company to do the same work. The respondent further testified that she believed the payment to her husband was permissible because she believed "professional services" to be different from "personal services."
7. A candidate or officeholder or a specific-purpose committee for supporting, opposing, or assisting the candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is made for personal services rendered by the candidate or officeholder or by the spouse or dependent child of the candidate or officeholder to: (1) a business in which the candidate or officeholder has a participating interest of more than 10 percent, holds a position on the governing body of the business, or serves as an officer of the business; or (2) the candidate or officeholder or the spouse or dependent child of the candidate or officeholder. Tex. Elec. Code § 253.041(a)(1)-(2).
8. An "expenditure" is a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. Tex. Elec. Code § 251.001(6).
9. The respondent contended that the programming and consulting service conducted by her husband was not a "personal service." The respondent testified that her husband was an application developer and database expert with 30 years of experience. Therefore, she contends, when she paid her husband for professional expertise, she was paying for a "professional service." The respondent based this claim on the definition of "professional," which she defined, using an online dictionary, as: "of or relating to the characteristic of a profession; engaged in one of the learned professions; 1) characterized by or conforming to the technical or ethical standards of a profession [...]."

10. The Commission has always understood personal services to refer to a wide array of services within which “professional” services are included. *See, e.g.*, Tex. Ethics Comm’n Op. No. 434 (2001) (holding that a candidate may not use political contributions to pay a spouse or dependent child for campaign work, without limitation as to the nature of the services provided). This interpretation is consistent with dictionary definitions of the term “personal services,” which is not defined in the Election Code. Black’s Law Dictionary defines personal services as “any labor done mentally or intellectually by a provider of services, for a wage.” Black’s Law Dictionary (11th Ed. 2018). Another version of the same dictionary defines “personal service” as “an act done personally by an individual. In this sense, a personal service is an economic service involving either the intellectual or manual personal effort of an individual, as opposed to the salable product of the person’s skill.” Black’s Law Dictionary (3d. Pocket Ed. 2006); *see also* Ballantyne’s Law Dictionary (3rd Ed. 2018) (defining personal services as “the work or labor of a certain person”).
11. The Commission’s interpretation of “personal service” is consistent with the dictionary definitions. In previous sworn complaint orders, available to the respondent on the Commission’s website, the Commission held that paying a spouse or child to install signs, conduct bookkeeping or provide accounting for a campaign are among the many instances of impermissible “personal services.” *E.g.*, *In re Talamo*, SC-3160499 (2018); *In re Herbert*, SC-270118 (2007); *In re Isett*, SC-2705114 (2008).
12. The respondent acknowledged that her husband received the funds paid for his services and labor. The invoice produced by the respondent divided the \$5,760 expenditure the respondent made from her political contributions to her spouse between personal services and other fees. Personal services paid at an hourly rate amounted to \$5,400. The remaining \$360 was for hosting or licensing fees. The fees are not personal services, but the paid labor in creating the website is. Therefore, there is credible evidence that the respondent violated Section 253.041 of the Election Code by making a \$5,400 payment to her spouse for his personal services.

#### **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 maintains that she did not commit an intentional violation of the law and that she reasonably believed it was permissible to use political contributions to pay a spouse

for professional services. The respondent now correctly understands and acknowledges that a candidate or officeholder may not knowingly make or authorize a payment from a political contribution if the payment is for personal services rendered by the spouse of the candidate or officeholder, including professional services. The respondent agrees to fully and strictly comply with the above requirements of law.

#### **VI. Confidentiality**

This order and agreed resolution describes a violation that the Commission has determined is 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 violation described under Section III, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the Commission orders the respondent to either: (1) repay her campaign \$5,400 and then dispose of any campaign funds within 45 days of this order in a manner consistent with Section 254.204(a) of the Election Code; or (2) pay to the Commission a \$5,400 civil penalty from the respondent's personal funds within 45 days of the date of this order. If the respondent does not complete either option within 45 days of the date of this order, then the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

#### **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-3220245.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Kelli Macatee, Respondent

EXECUTED by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
J.R. Johnson, Executive Director