

TEXAS ETHICS COMMISSION

IN THE MATTER OF

The 94 Bond Committee,
Ruben Guerra, Treasurer

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-94049

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission ("commission") met on December 9, 1994, to consider sworn complaint SC-94049 filed against *The 94 Bond Committee*, Ruben Guerra, Campaign Treasurer (the "Respondent"). A quorum of the commission was present. Based on the investigation conducted by commission staff to date, the commission determined there was credible evidence of a violation of §§ 254.124 and 253.031 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 agreed resolution to the respondent.

II. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. Respondent is a specific-purpose political committee formed to support a bond measure scheduled for an election on May 7, 1994 by the city of El Paso.
2. An "Amendment: Appointment of a Campaign Treasurer by a Specific-Purpose Committee" form appointing Ruben Guerra as campaign treasurer was filed with the City of El Paso clerk's office on April 14. The appointment listed Susan Patten as the assistant campaign treasurer.
3. Susan Patten filed an incomplete "Specific-Purpose Committee Sworn Report of Contributions and Expenditures" form with the city clerk's office on April 29. This report was designated as the "8th day before election" report.
4. Ruben Guerra filed a "Specific-Purpose Committee Report of Contributions, Expenditures, and Loans" form with the City Clerk's office on July 15. This report was designated as the "July 15" report. This report recapitulated all previously reported contributions in the April 29 report together with some previously unreported contributions.
5. The report filed by Mr. Guerra on July 15 lists contributions that Respondent accepted prior to the filing the campaign treasurer appointment form that in the aggregate exceeded \$500.
6. In an affidavit filed with the commission on October 7, Ruben Guerra stated that as an early committee volunteer, he was persuaded to act as campaign treasurer on behalf of Respondent only after he was assured that all necessary filings had been accomplished. It was only later that he learned that the

campaign treasurer appointment had not been filed timely. He was out of town when the April 29 report was filed and assumed that the filing was properly filed.

III. Conclusions of Law

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

1. Section 252.015 (Assistant Campaign Treasurer) of the Election Code provides in material part:
 - (a) *Each specific-purpose committee for supporting or opposing a candidate for an office specified by Section 252.005(1) or a statewide or district measure and each general-purpose committee may appoint an assistant campaign treasurer by written appointment filed with the commission.*
2. Section 254.124 (Additional Reports of Committee for Supporting or Opposing Candidate or Measure) of the Election Code provides in material part:
 - (c) *The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.*
 - (d) *If a specific-purpose committee supports or opposes a candidate or measure in an election after a reporting period prescribed by Subsection (b) or (c), the committee's campaign treasurer shall file the first report not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.*
3. There is credible evidence that Respondent violated § 254.124 by failing to file the report due April 29 with the city clerk's office. Section 252.015(a) makes it clear that a specific-purpose committee formed to support a city measure election cannot appoint an assistant campaign treasurer. As such, the report filed by Susan Patten was not a proper filing and did not relieve the campaign treasurer, Ruben Guerra, of the responsibility of filing a proper and timely report.
4. Section 253.031 (Contribution and Expenditure Without Campaign Treasurer Prohibited) of the Election code provides in material part:
 - (b) *A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize a political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect.*
5. There is credible evidence that Respondent violated § 253.031(b) by accepting contributions that in the aggregate exceeded \$500 prior to the filing of an "Appointment of a Campaign Treasurer by a Specific-Purpose Committee" form with the city clerk's office.

IV. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. Respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.

2. Respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. Respondent waives any right to a hearing before the commission or an administrative law judge appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. Respondent acknowledges that § 252.015 of the Election Code does not allow for an assistant campaign treasurer for a specific-purpose committee formed to support or oppose a local measure election, and that the campaign treasurer has the legal duty to file all § 254.124 reports. Respondent also acknowledges that § 253.031(b) does not allow a specific-purpose committee to accept contributions exceeding \$500 without first appointing a campaign treasurer. Respondent agrees to fully and strictly comply with these requirements of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, Respondent understands and agrees that the commission will consider the Respondent to have committed the violations detailed in Section III if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the Respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Texas Government Code § 571.140(b), and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violation described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this Respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a \$150.00 civil penalty on *The 94 Bond Committee* for the violation described under Section III.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to Respondent;
2. that Respondent may consent to the proposed AGREED RESOLUTION only by having the campaign treasurer sign an original of this document and mailing the signed original together with payment for the \$150.00 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than January 13, 1995;
3. that if Respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete disposition of SC-94049; and
4. that the executive director shall promptly refer SC-94049 to an administrative law judge to conduct a preliminary review hearing on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if Respondent does not agree to the disposition of SC-94049 as proposed in this ORDER and AGREED RESOLUTION;

AGREED to by Ruben Guerra on _____, 1994.

Ruben Guerra, Respondent

EXECUTED ORIGINAL received by the commission on _____, 1994.

John Steiner, Executive Director
Texas Ethics Commission