

TEXAS ETHICS COMMISSION

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| IN THE MATTER OF | § | BEFORE THE |
| HARLINGEN POLICE OFFICERS | § | |
| ASSOCIATION AND JOE RUBIO, JR., | § | TEXAS ETHICS COMMISSION |
| | § | |
| RESPONDENTS | § | SC-9812101 |

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 1999, and voted to accept jurisdiction of Sworn Complaint SC-9812101 filed against Harlingen Police Officers Association and Joe Rubio, Jr., Respondents. The commission met again on October 8, 1999, to consider Sworn Complaint SC-9812101. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 253.094, 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. Allegations

The complainant alleges that the respondents made prohibited corporate contributions to a candidate for mayor.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondents are a municipal police officers association and its immediate past president.
2. The association is a Texas nonprofit corporation. It was organized to improve the quality of police protection within the municipality served by its members, the working conditions under which its members perform their duties for the municipality, and the public relations between the municipality's police department and its citizens. It was also organized to raise funds to support both its own activities and, through donations, the activities of other charitable, nonprofit organizations.

3. In March and April 1998, the municipal police officers association made in-kind political contributions to an unsuccessful candidate for mayor in the May 2, 1998, election.
4. The candidate's campaign finance reports filed with the city secretary disclose two contributions from the association: one valued at \$918.77, described as "wood for signs[,] signs, ads," and accepted on March 4, 1998; and the other valued at \$699.14, described as "BBQ/ad," and accepted on April 20, 1998.

IV. Findings and Conclusions of Law

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

1. Corporations are prohibited from making political contributions to a candidate for elective public office under Subchapter D, Chapter 253, Election Code. Section 253.094, Election Code. The prohibition applies to domestic and foreign corporations, profit and nonprofit, and to the officers, directors, and other agents of those corporations. Sections 253.091 and 253.095, Election Code. Both respondents are subject to the prohibition: the association because it is a Texas nonprofit corporation, and the association's immediate past president because he was an officer or agent of the corporation.
2. The office of mayor is an elective public office. The respondents admit to having made political contributions to the mayoral candidate but state that "[t]he contributions were made in good faith belief that they were legal and not in violations [*sic*] of any laws." They admit, however, that they contributed \$527.14 for political signs on March 23, 1998; \$141.30 for a newspaper advertisement announcing a barbecue on March 31, 1998; \$243.28 for a barbecue on an undisclosed date; \$258.30 for a newspaper advertisement on April 14, 1998; and \$267.75 for a newspaper advertisement on April 17, 1998. Therefore, there is credible evidence that the respondents violated Section 253.094, Election Code.

V. Representations and Agreement by Respondent

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

1. The respondents neither admit nor deny the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consent to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondents consent 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. The respondents waive any right to a hearing before the commission or an administrative law judge, and further waive any right to a post-hearing procedure established or provided by law.

3. The respondents acknowledge that a corporation and its officers, directors, and other agents are prohibited from making a political contribution to a candidate for elective public office. The respondents agree to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondents, Harlingen Police Officers Association and Joe Rubio, Jr., understand and agree that the commission will consider the respondents to have committed the violation described under Section IV, Paragraph 2, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondents.

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 Sections III and IV, 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 imposes a \$300 civil penalty for the violation described under Section IV, Paragraph 2.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondents, Harlingen Police Officers Association and Joe Rubio, Jr.;
2. that if the respondents, Harlingen Police Officers Association and Joe Rubio, Jr., consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-9812101;
3. that the respondents, Harlingen Police Officers Association and Joe Rubio, Jr., may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 5, 1999; and
4. that the executive director shall promptly refer SC-9812101 either to the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the

respondents do not agree to the resolution of SC-9812101 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondents on this _____ day of _____, 1999.

Joe Rubio, Jr.

Harlingen Police Officers Association

By: _____
Daniel Cortez, President

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director