

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
BENITO FLORES-MEATH,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-990404

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on May 14, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990404 filed against Benito Flores-Meath, Respondent. The commission met again on July 9, 1999, to consider Sworn Complaint SC-990404. 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 253.062, 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 respondent is a member of a political action committee which failed to file a campaign treasurer appointment before accepting contributions or making expenditures in excess of \$500, and failed to file required campaign finance reports.

### III. Facts Supported by Credible Evidence

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

1. The respondent was a member of a group of five persons who were attempting to obtain signatures on a petition for a recall election regarding several city council members and the mayor. The complainant was one of the city council members whom the petition sought to remove.
2. For recall petitions, the city charter provides: "There shall appear on each petition the names and addresses of five electors, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition."
3. The complainant submitted copies of two advertisements published in the local newspaper regarding the recall petition. The first advertisement summarizes the reasons for supporting a recall election and states that it is a political ad paid for by the group members, all of whom

- are listed individually. The advertisement provides the respondent's address as well as a web page address for further information and comments.
4. The second advertisement lists various locations where citizens may sign the recall petition, states that it is a political advertisement paid for by the "Recall Committee," again lists the respondent's address, and provides the same web page address.
  5. The complainant also submitted a copy of a flier that lists locations for signing the recall petition and lists the five group members as petitioners.
  6. The complainant alleges that the price of the first newspaper advertisement was \$740. The complainant supplied no evidence of the costs.
  7. The complainant also submitted a print-out of an e-mail message from another council member which lists the group members and references them as a committee. The e-mail also encourages recipients to assist the group's cause by contributing money or contacting them. The e-mail shows that it was carbon copied to the respondent and all but one of the other group members.
  8. A sworn letter from the city secretary states that no campaign finance reports or campaign treasurer appointments for the "Recall Committee" have been filed with her office.
  9. In a written response, the respondent stated that he does not believe that he was required to file campaign disclosure statements for the activity made the subject of the complaint. The respondent asserts that the purpose of the group was not to accept contributions and make expenditures but rather to seek signatures on a recall petition.
  10. The respondent states that he started the recall petition because of his concern about the actions of the city council.
  11. The respondent states that he consulted the city secretary regarding the procedures for initiating the recall petition and learned that a petition would require the signatures of five other local voters to initiate it. The respondent and the other group members met on February 19, 1999, in the city secretary's office for this purpose. The city secretary gave the group the necessary forms and a copy of the city charter.
  12. The respondent states that the group never adopted the name "Recall Committee" but that it was informally used to describe the group because of the language in the city charter.
  13. During the February 19<sup>th</sup> meeting, the respondent asserts that both the city secretary and the city attorney were present and provided instructions regarding the filing of the recall petition. The respondent states that neither the city attorney nor the city secretary mentioned any requirements to file election disclosures with the city or state.

14. The respondent states that the petition was never submitted for verification because the required number of signatures was never obtained.
15. The respondent asserts that he paid for both newspaper advertisements himself to inform the citizens that a petition was circulating and to give the reasons for the petition, not to solicit funds.
16. The respondent states that he did not place the disclosure statement on the second advertisement and that it was placed there by the newspaper's staff.
17. The respondent states that he had nothing to do with the e-mail message from the council member. He states that it was not done at his request nor, to the best of his knowledge, at the request of any other members of the recall petition drive.
18. The respondent states that the flier was used to inform the public of the petition locations.
19. The respondent states that he mentioned the first advertisement to the group members who came to city hall to sign the petition. The respondent added that he could not recall if he told the group members before that time, but states that he intended to run the advertisement by himself at the time of the filing of the recall petition.
20. The respondent states that he would have pursued the petition drive alone, if necessary, and that he is willing to file any forms that the commission deems necessary.

#### **IV. Findings and Conclusions of Law**

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

1. A political committee is defined as a group of persons that has as a principle purpose accepting political contributions or making political expenditures. Section 251.001(12), Election Code.
2. A specific-purpose political committee is a committee that has among its principal purposes supporting or opposing identified measures. Section 251.001(13), Election Code.
3. An identified measure includes the circulation of a petition to determine if a question or proposal is required to be submitted in an election for an expression of the voters' will. Section 251.001(10), Election Code; Section 20.1, Ethics Commission Rules.
4. The respondent is a member of a group of persons who circulated a petition to call a recall election for the removal of the mayor and certain city council members. This activity is covered by the definition of "measure." Therefore, there is evidence that the group supports an identified measure.

5. The term “political contribution” includes a campaign contribution, which is defined as a transfer of a thing of value to a political committee with the intent that it be used in connection with a campaign on a measure. Sections 251.001(2), (3), and (12), Election Code.
6. The e-mail printout indicates that the group members were accepting assistance in the form of money. The respondent stated, however, that the e-mail was not done at his request or with his knowledge. He stated that the purpose of the group was not to accept contributions, and there is no evidence that the group members solicited or accepted contributions. Therefore, there is credible evidence that the group did not solicit or accept political contributions.
7. The term “political expenditure” includes a campaign expenditure, which is defined as a payment of money or other thing of value by any person in connection with a campaign on a measure. Sections 251.001(6), (7), and (10), Election Code.
8. The complainant alleges that at least \$740 was spent for the first newspaper advertisement.
9. In Ethics Advisory Opinion 74 (1992), the commission found that “even if individual committee members make the payments...the payments are attributable to the committee since the committee members are acting in concert.”
10. The respondent states that he paid for both advertisements himself and that he would have pursued the petition drive alone, if necessary.
11. Although the second advertisement contains a disclosure statement stating that the “Recall Committee” paid for the advertisement, the respondent stated that the disclosure statement was added by the local newspaper.
12. The statements of the respondent and the other group members support the conclusion that the group members were not acting in concert when the expenditures for the advertisements were made, and support the conclusion that the respondent was acting alone when he made those expenditures.
13. An individual not acting in concert with another person may make direct campaign expenditures from the individual’s own property that exceed \$100 if the individual receives no reimbursement for the expenditures and files campaign finance reports as if the individual were the campaign treasurer of a specific-purpose committee. Section 253.062, Election Code.
14. From the respondent’s statement and from the statements of other members of the group, there is credible evidence that the respondent spent more than \$100 on the advertisements, and that the respondent was not acting in concert with the other group members when he made those expenditures.

15. The respondent did not file any campaign finance reports as if he were the campaign treasurer of a specific-purpose political committee. Thus, there is credible evidence that the respondent violated Section 253.062, Election Code.
16. As to the expenditure for the flier, there is insufficient evidence to determine whether the expenditure was made by the group acting in concert, and thus, there is insufficient evidence to determine whether the group had as a primary purpose the making of political expenditures. Therefore, there is insufficient evidence to determine whether the group was a political committee.
17. A group that constitutes a specific-purpose committee may not knowingly make or authorize political expenditures exceeding \$500 at a time when a campaign treasurer appointment is not in effect. Section 253.031(b), Election Code.
18. As there is insufficient evidence to establish that the group is a political committee or acted in concert to make expenditures in excess of \$500, there is insufficient evidence that the group violated Sections 252.001 and 253.031(b), Election Code, by failing to file a campaign treasurer appointment.
19. Once a group files a campaign treasurer appointment as a political committee, the campaign treasurer must maintain a record of reportable activity and file periodic campaign finance reports. Sections 254.123 and 254.124, Election Code.
20. Since a campaign treasurer appointment was not in effect, campaign finance reports were not required to be filed. Thus, there is credible evidence of no violation of Section 254.123 or 254.124, Election Code.

### **V. 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 facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The 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. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.

3. The respondent acknowledges that an individual not acting in concert with another person may make direct campaign expenditures from the individual's own property that exceed \$100 if the individual receives no reimbursement for the expenditures and files campaign finance reports as if the individual were the campaign treasurer of a specific-purpose committee. Section 253.062, Election Code. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraphs 13, 14, and 15, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

### **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 \$100 civil penalty for the violation described under Section IV, Paragraphs 13, 14, and 15.

### **VIII. Order**

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-990404;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 6, 1999; and
4. that the executive director shall promptly refer SC-990404 to either 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 respondent does not agree to the resolution of SC-990404 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Benito Flores-Meath, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director