

TEXAS ETHICS COMMISSION

IN THE MATTER OF

HECTOR ENRIQUEZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-990514

ORDER

and

AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 9, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990514 filed against Hector Enriquez, Respondent. The commission met again on December 10, 1999, to consider Sworn Complaint SC-990514. 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 Sections 254.201, 254.202, and 254.064(c), Election Code, laws 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 failed to report an in-kind contribution from cheerleaders who appeared at a 1998 fundraiser, retained unexpended contributions but failed to file an annual report of unexpended contributions in January 1999, failed to timely file an 8-day before election report which was due April 23, 1999, and posted political advertising on federal property.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate for School District Trustee at Large in the May 1, 1999, election.
2. The filing authority for the school district provided copies of the respondent's reports for the 1998 and 1999 calendar years. The 1998 records show that the respondent filed a 30-day before election report with no reportable activity, an 8-day before election report, and a July semiannual report, none of which disclose any in-kind contributions.

3. The respondent designated the July 1998 semiannual report as a final report and indicated that he was a filer who was not an officeholder, that he had unexpended contributions, and that he was aware of the unexpended contribution filing requirements.
4. The respondent filed a campaign treasurer appointment on March 17, 1999, followed by a 30-day before election report filed on March 30, 1999, and covering the period from March 17 through March 22, 1999.
5. The filing authority provided copies of reports filed by the respondent after the complaint was filed. The first report is marked as the respondent's 8-day before election report and the second report is marked as the respondent's July 1999 semiannual report. Both reports were marked as received by the filing authority on August 26, 1999.

IV. Findings and Conclusions of Law

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

1. A former officeholder or unsuccessful candidate who has unexpended contributions after filing a final report is required to file an annual report of unexpended contributions for each year that those contributions are retained. Section 254.201, Election Code.
2. A person must file an annual report of unexpended contributions not earlier than January 1 or later than January 15 of each year following the year in which the person files a final report. Section 254.202, Election Code.
3. The respondent's July 1998 semiannual report is designated as the respondent's final report and reflects that he is a candidate who does not hold an office, that he has unexpended contributions, and that he is aware that he must file an annual report of unexpended contributions.
4. The respondent owed a report of unexpended contributions, which should have been filed by January 15, 1999. The respondent failed to file that report. Therefore, there is credible evidence that the respondent violated Sections 254.201 and 254.202, Election Code, by failing to file a report of unexpended contributions.
5. A person filing with the Ethics Commission would be subject to a \$100 fine for failing to file this report. Section 18.85, Ethics Commission Rules.
6. A candidate is required to report the amount of contributions received from each person that in the aggregate exceed \$50, the name and address of the person making the contribution and the date of the contribution. Section 254.031, Election Code.

7. The complainant alleges that the respondent received an in-kind contribution from the cheerleaders of the municipal soccer team at a fundraiser in 1998, but provided no further evidence regarding this allegation and no information as to the amount of any contribution. Therefore, there is insufficient credible evidence of a violation of Section 254.031, Election Code, for failing to report a contribution.
8. Under the normal reporting schedule, a person is required to file reports due 30 days and 8 days before each election in which the person is a candidate and has an opponent whose name appears on the ballot. Section 254.064, Election Code.
9. The respondent was an opposed candidate and therefore was required to file the 30-day and 8-day before election reports.
10. The due date for the 8-day before election report was April 23, 1999, and it was filed on August 26, 1999. This report shows \$3,000 in total political contributions and \$3,588 in total political expenditures. There is, therefore, credible evidence that the respondent violated Section 254.064(c), Election Code, for filing a late 8-day before election report.
11. A person filing with the commission would be subject to a \$10,000 fine for the late 8-day before election report. Sections 18.87 and 18.91(c), Ethics Commission Rules.
12. The allegation related to posting a political advertising sign on federal property would not constitute a violation of any laws within the commission's enforcement jurisdiction. Therefore, the commission refuses jurisdiction of this allegation.

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 unsuccessful candidate who retains unexpended contributions after filing a final report is required to file annual reports of unexpended contributions by January 15 for every year that the unexpended contributions are retained. Further, the respondent acknowledges that a candidate who has an opponent whose name will appear on the ballot is required to file a report by the 8th day before the election. The respondent agrees to fully and strictly comply with these requirements 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 violations described under Section IV, Paragraphs 4 and 10, 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 violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, 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 violations described under Section IV, Paragraphs 4 and 10.

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-990514;
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 \$300 civil penalty to the

Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than January 7, 2000; and

4. that the executive director shall promptly refer SC-990514 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-990514 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 200___.

Hector Enriquez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director