

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GLENN GARCIA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-201071

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 10, 2000, and voted to accept jurisdiction of Sworn Complaint SC-201071 filed against Glenn Garcia, Respondent. The commission met again on October 12, 2001, to consider Sworn Complaint SC-201071. 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 253.031(b), 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 the respondent is the campaign treasurer of a specific-purpose committee that accepted political contributions and made political expenditures in excess of \$500 dollars when the committee had no campaign treasurer appointment on file. The complainant further alleges that the reports required by Chapter 254, Election Code, were not filed, and that a political advertising sign distributed by the committee did not carry the disclosure statements required by Chapter 255, Election Code.

III. Facts Supported by Credible Evidence

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

1. On September 30, 2000, the Marfa Independent School District held a bond election.
2. In the days leading up to the election, political signs and newspaper advertisements appeared advocating passage of the bonds. The newspaper advertisements contained political advertising disclosure statements, including the name and address of a committee and its treasurer. The political signs did not contain any political advertising disclosure statements.

3. A letter from the school board secretary states that the committee named in the political advertising never filed a campaign treasurer appointment or reports of contributions and expenditures.
4. The respondent submitted a letter dated December 11, 2000. The respondent submitted a sworn response dated September 5, 2001, that references the earlier unsworn letter. In the sworn response, the respondent swears that the actions he took were in response to "a large scale anonymous attack on the school bond issue." The respondent swears that he has not been involved in any elections recently, and was not experienced with the current rules and regulations. The respondent swears that his failure to meet any filing requirements was "unintentional and in response to actions that were occurring in a short period of time."

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 principal purpose accepting political contributions or making political expenditures.
2. A political committee may not knowingly accept contributions or make or authorize political expenditures exceeding \$500 unless a campaign treasurer appointment is in effect. Section 253.031(b), Election Code.
3. The campaign treasurer appointment for a specific-purpose committee supporting or opposing a school bond measure must be filed with the secretary of the school board. Section 252.007, Election Code.
4. When a political committee files a campaign treasurer appointment, the campaign treasurer must file certain reports relating to the committee and detailing the political contributions and expenditures of the committee. Sections 254.123 and 254.124, Election Code.
5. The complainant alleges that the political committee of which the respondent is the campaign treasurer paid over \$500 to publish advertising in a local newspaper. Payments for the advertising are campaign expenditures because the expenditures were made in connection with a campaign for a measure. Section 251.001(3), Election Code.
6. In the advertising, the respondent is listed as the committee's campaign treasurer. However, according to a letter from the school district board secretary, the committee never filed a campaign treasurer appointment.
7. The complainant submitted evidence showing the approximate cost of a 1/4 page ad to be \$107.63, a 1/2 page ad to be \$215.26, and a full-page ad to be \$420.52. The complaint included exhibits showing the following advertisements paid for by the committee: a full-page advertisement on September 7, 2000, a full-page advertisement on September 14, 2000,

- two 1/4 page advertisements on September 21, 2000, and three 1/4 page advertisements on September 28, 2000. Based on the evidence of costs submitted by the complainant, the total cost for the advertisements was approximately \$1,380, well over the \$500 expenditure threshold in Section 253.031(b), Election Code. However, the committee of which the respondent is the campaign treasurer never filed a campaign treasurer appointment. Therefore, there is credible evidence of a violation of Section 253.031(b), Election Code.
8. The campaign treasurer of a political committee is responsible for filing the reports required under Chapter 254, Election Code. Sections 254.123 and 254.124, Election Code. The filing requirements do not apply to a political committee that has not filed a campaign treasurer appointment. Since no campaign treasurer was filed, there is credible evidence that the respondent did not violate Sections 254.123 and 254.124, Election Code.
 9. "Political advertising" is defined in relevant part as a communication that supports or opposes a measure and that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. Section 251.001(16), Election Code.
 10. A "measure" is a question or proposal submitted in an election for an expression of the voters' will. Section 251.001(19). Holding an election for voters to approve or disapprove of the issuance of school bonds is a measure election.
 11. The signs at issue in this case are political advertising because they support a measure.
 12. A person may not knowingly enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and that does not contain the full name and address of the individual who entered into the contract or agreement with the printer, or the full name and address of the person the individual represents. Section 255.001, Election Code.
 13. A political advertising sign must also contain a notice provision stating that a violation of state law occurs if the sign is placed in a highway right-of-way. Section 255.007, Election Code. A person may not knowingly enter into a contract to print or make a political advertising sign that does not contain the right-of-way notice. Section 255.007(b), Election Code.
 14. The sign submitted with the complaint does not contain the disclosure statements required by Sections 255.001 and 255.007, Election Code. The complainant swears that he spoke with the school superintendent's office and they verified that the respondent had purchased the signs, and the complainant indicated in a telephone conversation with staff that he had observed the respondent placing the signs in the community. However, there is no direct evidence that the respondent entered into a contract or agreement to have the signs printed or

published. Therefore, the evidence is insufficient to show that the respondent violated Sections 255.001 and 255.007, 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 a political committee may not knowingly make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect.
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, Paragraph 7, 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, Paragraph 7.

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-201071;
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 November 9, 2001; and
4. that the executive director shall promptly refer SC-201071 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-201071 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2001.

Glenn Garcia
Respondent

EXECUTED ORIGINAL received by the commission on: _____
Texas Ethics Commission

By: _____
Tom Harrison, Executive Director