

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MARIO A. GARCIA IN HIS CAPACITY
AS CAMPAIGN TREASURER FOR THE
MCALLEN COALITION FOR PUBLIC
SAFETY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-210542

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 8, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210542 filed against Mario A. Garcia in his capacity as the campaign treasurer for the McAllen Coalition for Public Safety, Respondent. The commission met again on February 8, 2002, to consider Sworn Complaint SC-210542. 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 that the respondent violated Section 254.123, 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, in his capacity as the campaign treasurer for a specific-purpose committee formed to support a ballot proposition, failed to file semiannual reports due after the election.

III. Facts Supported by Credible Evidence

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

1. The required number of the qualified voters of the City of McAllen petitioned the City to hold an election for the purpose of adopting the collective bargaining provisions of the Fire and Police Employee Relations Act (Chapter 174, Local Government Code) as the method for determining the compensation and other conditions of employment for the city's police

officers. On March 13, 2000, the City's board of commissioners ordered an election as requested in the petition.

2. The special election was scheduled for and held on May 6, 2000. The following proposition was submitted at the election:

For _____ or Against _____ "Adoption of the state law applicable to police officers that establishes collective bargaining if a majority of the affected employees favor representation by an employees association, preserves the prohibition against strikes and lockouts, and provides penalties for strikes and lockouts."

The voters passed the proposition, 5,371 to 2,920.

3. The McAllen Coalition for Public Safety was formed to support the proposition. The committee filed its campaign treasurer appointment with the city secretary on March 17, 2000, and the respondent was named as its campaign treasurer. The respondent timely filed the committee's campaign finance reports due 30 and 8 days before the election. On July 13, 2001, approximately two months after this complaint was filed with the Ethics Commission, the treasurer filed the following reports with the city secretary: the July 2000 semiannual report due by July 17, 2000, which disclosed total political contributions in the amount of \$2,500 and total political expenditures in the amount of \$5,383; the January 2001 semiannual report due by January 16, 2001, which disclosed total political contributions in the amount of \$0 and total political expenditures in the amount of \$500; and the July 2001 semiannual report due by July 16, 2001, which disclosed no reportable activity. The July 2001 semiannual report was also marked as a dissolution report.
4. The respondent filed an affidavit in response to the complaint in which he swore as follows:

I am presently a police officer for the City of McAllen, Texas, serving in the rank of sergeant. I also served as campaign treasurer for the specific purpose committee formed in the spring of 2000 to acquire collective bargaining rights with the City of McAllen, Texas, for McAllen police officers. Part of my duties as campaign treasurer were to file all required campaign finance reports.

We timely filed the thirty (30) and eight (8) day before election reports.

The semi-annual report due to be filed July 15, 2000; the semi-annual report due to be filed January 15, 2001; and the semi-annual report due to be filed July 16, 2001; plus the notation of dissolution (on the July 16, 2001 report) are attached to this response.

Please note the only activity of the committee reflected in the attached filings is the payment of necessary campaign expenditures. To complete payment of these necessary campaign expenditures, the two police officer associations had to contribute \$1,025 each, in payments of \$400 each on 5/16/00 and \$625 each on 5/26/00.

Finally, on the January 15, 2001 campaign finance report the Commission will note the payment of two campaign workers . . . who could not be located by our committee until November, 2000.

The McAllen Coalition for Public Safety has been dissolved with my filing of dissolution affidavit, dated July 13, 2001.

IV. Findings and Conclusions of Law

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

1. The campaign treasurer for a specific-purpose committee must file semiannual reports due twice a year in January and July. Section 254.123, Election Code.
2. The respondent did not timely file the specific-purpose committee's July 2000 and January 2001 semiannual reports, but did timely file the committee's July 2001 semiannual report. A person filing with the commission would initially be subject to a \$100 administrative penalty for each of the two late semiannual reports.
3. Accordingly, the Commission finds that there is credible evidence that the respondent violated Section 254.123, Election Code, as to the committee's July 2000 and January 2001 semiannual reports and imposes a \$100 late penalty for each of those reports.

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 the campaign treasurer for a specific-purpose committee must file semiannual reports due twice a year in January and July. 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, Paragraph 3, 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 \$200 civil penalty for the violation described under Section IV, Paragraph 3.

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-210542;
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 \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than March 8, 2002; and

4. that the executive director shall promptly refer SC-210542 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 respondent does not agree to the resolution of SC-210542 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2002.

Mario A. Garcia, Respondent
Campaign Treasurer for
McAllen Coalition for Public Safety

EXECUTED ORIGINAL received by the commission on: _____

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director