

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GABRIEL VASQUEZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2209103

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 11, 2002, and voted to accept jurisdiction of Sworn Complaint SC-2209103 filed against Gabriel Vasquez. The commission met again on July 11, 2003, to consider Sworn Complaint SC-2209103. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent failed to comply with various reporting requirements in connection with campaign finance reports and an amended campaign treasurer appointment. The complainant also alleges that the respondent converted political contributions to personal use and that the respondent accepted political contributions and made political expenditures at a time when he did not have a campaign treasurer appointment on file.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unopposed incumbent candidate for city council on November 6, 2001, in a city with a population of nearly two million.
2. The complainant submitted copies of the following campaign finance documents, which the respondent filed with the local filing authority:
 - a campaign treasurer appointment filed on February 5, 1999;
 - a January 2001 semiannual report filed on January 16, 2001, that listed 125 expenditures totaling \$24,741.69;

- a July 2001 semiannual report filed on July 16, 2001, that listed 150 contributions totaling \$104,835.87 and 90 expenditures totaling \$22,028.04;
 - an amended campaign treasurer appointment filed September 25, 2001, that named a new campaign treasurer;
 - a report marked as a 30-day pre-election report filed on October 9, 2001, that listed 42 contributions totaling \$31,225 and 44 expenditures totaling \$23,808.24;
 - a report marked as an 8-day pre-election report filed on October 29, 2001, that listed 22 contributions totaling \$14,948 and 12 expenditures totaling \$4,957.07;
 - a January 2002 semiannual report filed on January 15, 2002, that listed 20 contributions totaling \$12,150 and 72 expenditures totaling \$51,308.48; and
 - a July 2002 semiannual report filed on July 16, 2002, that listed nine contributions totaling \$6,100 and 69 expenditures totaling \$49,027.46.
3. Because the respondent did not have an opponent on the ballot in the November 2001 election, he was not required to file pre-election reports in connection with that election. Therefore, the information he reported on the reports marked as pre-election reports was not required to be reported until January 15, 2002.
4. The respondent submitted a sworn response to the complaint. In regard to the errors in his reports, he wrote:
- Due diligence was performed before filing to obtain the necessary required information as to contributions and expenditures. At the time of filing, every reasonable effort was again made to obtain information. Where information was unobtainable, all available information was reported.
5. The respondent swore that he was “in the process of submitting correction affidavits for the alleged violations” that he would forward copies to the Ethics Commission. As of June 25, 2003, the respondent had not submitted corrected reports.

Allegation No. 1

6. The complainant alleges that the respondent failed to include complete contributor information on his campaign finance reports. On all six reports submitted with the complaint, the respondent itemized all contributions, including contributions of \$50 or less.
7. On the July 2001 semiannual report, the respondent reported 150 contributions, 148 of which exceeded \$50. Of the 148 contributions exceeding \$50, one was missing both a street

address and zip code, one was missing a street address only, one was missing a zip code only, and one was missing the date of the contribution.

8. On the report filed in October 2001 and marked as an 8-day pre-election report, the respondent reported 22 contributions, 21 exceeding \$50. Of the 21 contributions exceeding \$50, one was missing both a street address and a zip code.
9. On the January 2002 semiannual report, the respondent reported 20 contributions, 19 of which exceeded \$50. All 19 contributions exceeding \$50 were missing zip codes.
10. On the July 2002 semiannual report, the respondent reported nine contributions, all of which exceeded \$50. Four of the nine were missing zip codes.

Allegation No. 2

11. The complainant alleges that the respondent failed to include complete expenditure information on his campaign finance reports. On all six reports submitted with the complaint, the respondent itemized all expenditures, including expenditures of \$50 or less.
12. On the January 2001 semiannual report, the respondent reported 125 expenditures, 68 of which exceeded \$50. Of those 68 expenditures, 45 were missing zip codes, and four (all to the same payee) were missing street addresses and zip codes.
13. On the July 2001 semiannual report, the respondent reported 90 expenditures, 61 of which exceeded \$50. Of those 61 expenditures, 14 were missing zip codes and 16 were missing street addresses and zip codes.
14. On the report filed in October 2001 and marked as a 30-day pre-election report the respondent reported 44 expenditures, 40 of which exceeded \$50. Of those 40 expenditures, 16 were missing zip codes, 13 were missing street addresses and zip codes, and seven were missing the date of the expenditure.
15. On the report filed in October 2001 and marked as an 8-day pre-election report, the respondent reported 12 expenditures, nine of which exceeded \$50. Of those nine expenditures, all were missing zip codes, and two were missing street addresses and zip codes.
16. On the January 2002 semiannual report, the respondent reported 72 expenditures, 62 of which exceeded \$50. Of those 62 expenditures, 57 were missing zip codes, 14 were missing street addresses and zip codes, and one was missing the date of the expenditure.
17. On the July 2002 semiannual report, the respondent reported 69 expenditures, 61 of which exceeded \$50. Of the 61 expenditures exceeding \$50, 32 were missing zip codes, nine were missing street addresses and zip codes, and 22 were missing the date of the expenditure.

Allegation No. 3

18. The report filed in October 2001 and marked as a 30-day pre-election report lists the following six expenditures:
- \$2,500 to American Express for “reimbursement”
 - \$2,000 to an individual for “services”
 - \$1,900 to an individual for “reimbursement”
 - \$500 to an individual for “reimbursement”
 - \$1,250 to ALF with no purpose given
 - \$185 to an individual for “reimbursement”
19. The January 2002 semiannual report lists the following nine expenditures:
- \$1,735 to an individual for “reimbursement”
 - \$2,000 to American Express for “reimbursement”
 - \$395 to an individual for “services”
 - \$1,000 to an individual for “services”
 - \$2,500 to American Express for “campaign expenses”
 - \$1,000 to an individual for “services”
 - \$250 to an individual for “reimbursement”
 - \$2,500 to American Express for “reimbursement”
 - \$1,000 to an individual for “services”
20. The July 2002 semiannual report lists the following two expenditures:
- \$1,014 to an individual for “services”
 - \$695 to an individual for “services”

Allegation No. 4

21. The complainant alleges that the respondent failed to include the identity and date of the election on the July semiannual report, the July 2002 semiannual report, and the 30-day pre-election report filed in October 2001.

Allegation No. 5

22. The complainant points out that the notary wrote “2000” rather than “2001” in the affidavit section of the January 2001 semiannual report. The report is signed by the respondent and a notary public, and includes a notary stamp.

Allegation No. 6

23. The complainant alleges that the respondent reported the “wrong dates” on the cover sheet for his January 2001 semiannual report and the 30-day pre-election report he filed in October 2001.

24. The cover sheet of the respondent's January 2001 semiannual report states that the period covered is June 3, 2000, through January 1, 2001. The report included two expenditures made on June 28, 2000, and one expenditure made on June 30, 2000. Otherwise all activity reported on the report took place between July 1, 2000, and December 22, 2001.

Allegation No. 7

25. The complainant alleges that the respondent filed a 30-day pre-election report in connection with the November 6, 2001, election after the applicable filing deadline. The copy of the 30-day pre-election report submitted by the complainant shows that the respondent filed the 30-day pre-election report on October 9, 2001.

Allegation No. 8

26. The complainant alleges that the respondent did not file the July 2002 semiannual report by the July 15, 2002, filing deadline.
27. The copy of the July 2002 semiannual report submitted by the complainant shows that the respondent filed the report on July 16, 2002.

Allegation No. 9

28. The complainant alleges that in nine instances the respondent disclosed a credit card company as a payee instead of the actual person or persons to whom the expenditures were made.
29. On the report marked as a 30-day pre-election report, the respondent reported making a payment of \$2,500 to American Express.
30. On the January 2002 semiannual report, the respondent reported making three payments totaling \$7,000 to American Express.
31. On the July 2002 semiannual report, the respondent reported five payments to American Express totaling \$10,325.

Allegation No. 10

32. The complainant alleges that the respondent failed to file the required information in connection with contributions from three out-of-state political committees.
33. On the report marked as a 30-day pre-election report, the respondent reported accepting a \$500 contribution from "Parsons Brinckerhoff, Inc., PAC." Parsons Brinckerhoff is registered with the Federal Election Commission. Ethics Commission records show that no

political committee by that name had a campaign treasurer appointment on file with the commission at any time relevant to this complaint.

34. On the January 2002 semiannual report, the respondent reported accepting a \$250 contribution from "Waste Management." A committee named "Waste Management Employees' Better Government Fund" is registered with the Federal Election Commission. Ethics Commission records show that no political committee by that name had a campaign treasurer appointment on file with the commission at any time relevant to this complaint.
35. On the July 2002 semiannual report, the respondent reported accepting a contribution of \$1,000 from "Parsons PAC." A committee named "Parsons Corporation Political Action Committee" is registered with the Federal Election Commission. Ethics Commission records show that no political committee by that name had a campaign treasurer appointment on file with the commission at any time relevant to this complaint.
36. The respondent did not file any documentation regarding these three federal committees with his campaign finance reports.

Allegation No. 11

37. The complainant alleges that the respondent converted political funds to personal use by making payments from political contributions to Cindy Vasquez, the respondent's wife; to Rose Vasquez, the respondent's mother; and to Laura Vasquez, the respondent's sister.
38. On the July 2001 semiannual report, the respondent reported three expenditures to Cindy Vasquez for \$709.42 for "reimbursement volunteer events," \$1,209.26 for "reimbursement supplies," and \$1,710 for "reimbursement special events." The respondent also reported one expenditure to Rosie Vasquez for "data entry."
39. On the 30-day pre-election report, the respondent reported a \$2,000 expenditure to Laura Vasquez for "services" and a \$1,900 expenditure to Cindy Vasquez for "reimbursement."
40. On the January 2002 semiannual report, the respondent reported a \$1,000 expenditure to Laura Vasquez for "services."
41. The respondent swears that the expenditures in question were for campaign purposes, not for personal use.

Allegation No. 12

42. The complainant alleges that the respondent accepted political contributions and made political expenditures without a campaign treasurer appointment on file.
43. The respondent filed a campaign treasurer appointment with the city secretary on February 5, 1999. The respondent submitted a copy of a letter dated August 24, 2001, to the respondent

from the respondent's campaign treasurer stating that she no longer wished to serve as the respondent's campaign treasurer. The letter indicates that the campaign treasurer sent a copy to the city secretary. The respondent acknowledges having received the letter.

44. On September 25, 2001, the respondent filed with the city secretary an amended campaign treasurer appointment, naming a campaign treasurer.
45. On the report filed on October 9, 2001, the respondent reported 42 political contributions totaling \$31,225 and 12 political expenditures totaling more than \$6,000 during the period that began on September 1, 2001, and ended on September 21, 2001.¹
46. In his response, the respondent swears:

I consulted an attorney in the City Attorney's Office responsible for election matters and requested to know when the termination of a Treasurer becomes official—upon a letter submitted by the resigning Treasurer or upon designation of a new Treasurer by the office holder or candidate. I was told that the termination of a Treasurer becomes official when an office holder or candidate submits the appointment of a new Treasurer. Thus, I firmly believed [the former treasurer] would officially remain my Treasurer until I could identify and officially submit the name of a new Treasurer.

Allegation No. 13

47. The complainant alleges that the respondent listed a post office box rather than a street address on an amended campaign treasurer appointment.
48. On September 25, 2001, the respondent filed an amended campaign treasurer appointment with the city secretary. The respondent provided a post office box in the box for "Campaign Treasurer Address." The form states, "Street Address (No PO Box PLEASE)."

IV. Findings and Conclusions of Law

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

Allegation No. 1

1. In connection with a contribution that exceeds \$50, a filer must report the full name and address of the person making the contributions, and the dates of the contributions." Elec. Code § 254.031(1).

¹ Furthermore, the report listed eight undated expenditures totaling more than \$2,000.

2. There is credible evidence that the respondent violated section 254.031(1) of the Election Code by failing to provide complete contributor information in connection with the contributions described above in Section III, paragraphs 7, 8, 9, and 10.

Allegation No. 2

3. Each campaign finance report must include “the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures.” Elec. Code § 254.031(3). There is credible evidence that the respondent violated section 254.031(3) of the Election Code in connection with the expenditures described above in Section III, paragraphs 12, 13, 14, 15, 16, and 17.

Allegation No 3

4. A filer must report the purpose of an expenditure that exceeds \$50. Elec. Code § 254.031(3).
5. Ethics Commission rules clarify that requirement by providing that a report of a political expenditure for goods and services must describe the categories of goods or services received in exchange for the expenditure. Ethics Commission Rules § 20.61. The purpose given for the 17 expenditures listed above in Section III, paragraphs 18, 19, and 20, does not satisfy that requirement. Therefore, there is credible evidence that the respondent violated section 254.031(3) of the Election Code in connection with those expenditures.

Allegation No. 4

6. The Election Code provides that each report by a candidate must include the identity and date of the election for which the report is filed. Elec. Code § 254.061(1). Ethics Commission rules clarify that this information is required “if known.” Ethics Commission Rules § 20.219(3).
7. The respondent was a candidate in the November 2001 city election. According to city ordinances, the deadline for applying for a position on the November 2001 ballot was in September 2001.
8. The complainant provided no evidence that the respondent knew in July 2001 that he would seek re-election in November. Similarly, the complainant provided no evidence that the respondent knew in July 2002 that he would participate in a future election. Therefore, there is insufficient evidence that the respondent violated section 254.061(1) of the Election Code in regard to the July 2001 and July 2002 semiannual reports.
9. Although the respondent filed a 30-day pre-election report on October 9, 2001, he was not required to do so because he did not have an opponent whose name was on the ballot. Because he was not required to file the report, he was not required to provide information about the election date and type. Therefore, there is credible evidence that the respondent

did not violate section 254.061(1) of the Election Code in regard to the 30-day pre-election report.

Allegation No. 5

10. A campaign finance report filed on paper must be accompanied by an affidavit executed by the person required to file the report. Elec. Code § 254.036(h). The respondent's report complied with this requirement. The respondent is not responsible for the notary's clerical error. Therefore, there is credible evidence that the respondent did not violate section 254.036(h) of the Election Code in regard to the January 2001 semiannual report.

Allegation No. 6

11. The period covered by the January semiannual report should have been from July 1, 2000, through December 31, 2001. Elec. Code § 254.063.
12. The respondent's report included two expenditures that were made outside of that period. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.
13. The period covered by a candidate's pre-election reports is set out in section 254.064 of the Election Code. Because the respondent was not required to file a 30-day pre-election report in October 2001, there is credible evidence of no violation of section 254.064 of the Election Code in connection with that report.

Allegation No. 7

14. Because the respondent did not have an opponent on the ballot in the November 6, 2001, election, he was not required to file a 30-day pre-election report in connection with that election.² Elec. Code § 254.064(b). Therefore, there is credible evidence that the respondent did not violate section 25.064(b) of the Election Code in connection with the report filed on October 9, 2001.

Allegation No. 8

15. An individual who has a campaign treasurer appointment on file is a candidate for purposes of title 15 of the Election Code. Elec. Code § 251.001(1). Each candidate is required to file a July semiannual report. *Id.* § 254.063.
16. The respondent was required to file a July 2002 semiannual report because he had a campaign treasurer appointment on file during the period covered by the report. The evidence shows that the respondent filed the report one day after the filing deadline. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code in connection with his July 2002 semiannual report.

² In any case, the respondent filed the report by the deadline, which had been extended to October 9, 2001, because the regular deadline fell on a Sunday and because Monday, October 8, 2001, was a national holiday. Elec. Code § 1.006.

Allegation No. 9

17. Each report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made. Elec. Code § 254.031(3). Ethics Commission rules clarify that requirement by providing that a report of a political expenditure by credit card must identify the vendor who receives payment from the card company. Ethics Commission Rules § 20.59.
18. In his response, the respondent swears, “Expenditures reported to American Express were for campaign related expenses as identified on the report and not for personal use as alleged. I have since become educated that expenditures are to identify the ultimate recipient of funds.”
19. The nine separate entries of expenditures to American Express do not disclose correct payee information. Therefore, there is credible evidence that the respondent violated section 254.031(3) of the Election Code in connection with those expenditures.

Allegation No. 10

20. A candidate who accepts a contribution from an out-of-state political committee must provide certain documentation about the out-of-state political committee on the report that covers the reporting period in which the contribution is accepted. Elec. Code § 253.032. That requirement does not apply to a contribution from a committee that has a campaign treasurer appointment on file in Texas at the time the contribution is made. *Id.*
21. The evidence shows that three contributions came from out-of-state committees. The respondent was therefore required to provide the documentation described by section 253.032 of the Election Code on the reports that covered the reporting period in which those contributions were accepted. Thus, there is credible evidence that the respondent violated section 253.032 of the Election Code by failing to provide the required documentation from the out-of-state committees with his campaign finance reports.

Allegation No. 11

22. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use, which means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of public office. Elec. Code § 253.035.

23. The respondent swears that the expenditures in question here were for campaign purposes. The complainant has provided no evidence to the contrary. Therefore, there is credible evidence of no violation of section 253.035 of the Election Code.³

Allegation No. 12

24. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. Elec. Code § 253.031(a).
25. The Election Code provision states that if a campaign treasurer resigns, the appointment is terminated at the time the vacancy occurs. Elec. Code § 252.013(a).
26. Ethics Commission rules clarify that provision by providing that if a person terminates his or her own status as campaign treasurer, the termination is effective on the date the candidate receives the notice or on the date the filing authority actually receives the notice, whichever is later. Ethics Commission Rules § 20.207(c). Therefore, the respondent's campaign treasurer appointment was terminated on or soon after August 24, 2001.
27. The respondent swears that he had been advised by the city attorney's office that his previous treasurer appointment remained in effect until he filed a new appointment. That advice was incorrect. Therefore, beginning sometime after August 24 – almost certainly by September 1, 2001 – there was a time period during which the respondent did not have an active treasurer appointment on file with the city secretary. That period ended on September 25, 2001. The respondent reported a significant amount of activity during the period from September 1, 2001, through September 24, 2001. Therefore, there is credible evidence that the respondent violated section 253.031(a) of the Election Code by accepting political contributions and making political expenditures at a time when a campaign treasurer appointment was not in effect.

Allegation No. 13

28. A campaign treasurer appointment must be in writing and include the campaign treasurer's name, residence or business street address, telephone number, and the name of the person making the appointment. Elec. Code § 252.002. Because the respondent listed a post office box for his campaign treasurer, there is credible evidence that the respondent violated section 252.002 of the Election Code by failing to list a street address for his campaign treasurer on his amended campaign treasurer appointment.

³ Section 253.041 of the Election Code prohibits a candidate from making payments from political contributions to the candidate's spouse or dependent child for personal services. The respondent swears that the payments made to his spouse were to reimburse her for expenses she incurred on behalf of the candidate, not in exchange for personal services. The prohibition does not extend to a candidate's parents or siblings.

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 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 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 provided by law.
3. The respondent acknowledges the following:
 - (a) that each campaign finance report must include the full name and address of any person who makes a contribution exceeding \$50, and must include the date of the contribution.
 - (b) that each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures.
 - (c) that the report of a political expenditure by credit card must identify the vendor who receives payment from the card company.
 - (d) that an individual who has a campaign treasurer appointment on file is required to timely file semiannual reports.
 - (e) that a candidate who accepts a contribution from an out-of-state political committee must provide certain documentation about the committee on the report that covers the reporting period in which the contribution is accepted.
 - (f) that a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment is not in effect.
 - (g) that a campaign treasurer appointment must be in writing and include the campaign treasurer's name, residence or business street address, telephone number, and the name of the person making the appointment.

The respondent agrees to comply with these requirements of the law.

4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent agrees that the commission will consider the respondent to have committed the violations described under Section IV, paragraphs 2, 3, 5, 12,16, 19, 21, 27, and 28, 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 violations that the commission has determined are 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

The commission imposes a civil penalty of \$1,550 against the respondent for the violations described under Section IV, paragraphs 2, 3, 5, 12,16, 19, 21, 27, and 28.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final resolution of SC-2209103;
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 a \$1,550 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 8, 2003; and
4. that the executive director will promptly set SC-2209103 for a preliminary review hearing if the respondent does not agree to the resolution of SC-2209103 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 20__.

Gabriel Vasquez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director