

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JUAN M. GARCIA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270453

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 11, 2007, to consider sworn complaint SC-270453. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.032, 254.031, 254.038, 254.0612, and 254.063, of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to timely file semiannual campaign finance reports, failed to report the principal occupation or job title and the full name of the employer for individual contributors on four campaign finance reports, failed to report required information for out-of-state political committees on a campaign finance report, failed to report receiving notice of direct campaign expenditures from a political committee, and failed to disclose political contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent is a state representative.
2. The allegations are based on the respondent's January 2006, July 2006, and January 2007 semiannual reports, and on the respondent's October 10, 2006, 30-day pre-election report, and October 30, 2006, 8-day pre-election report.
3. The January 2006 semiannual report was filed February 27, 2006. The report was subject to an administrative late filing penalty, which was waived because the respondent had no

activity to disclose and had not filed any other reports late (the respondent filed a campaign treasurer appointment on December 31, 2005).

4. The July 2006 semiannual report disclosed five contributions, totaling approximately \$7,400 where the principal occupation or job title and employer of an individual who contributed \$500 or more during the reporting period was not disclosed.
5. The October 10, 2006, 30-day pre-election report disclosed five contributions, totaling \$2,500, where the principal occupation or job title and employer of an individual who contributed \$500 or more during the reporting period was not disclosed.

The report disclosed contributions from two out-of-state political committees but did not include the committees' contributor lists or Federal Election Commission (FEC) identification numbers. The respondent corrected the report on July 13, 2007, to add FEC identification numbers for both of the contributions.

The report disclosed a \$58,670 political contribution from Good Government PAC (GGPAC).

6. The October 30, 2006, 8-day pre-election report disclosed 11 contributions where the principal occupation or job title and employer of an individual who contributed \$500 or more during the reporting period was not disclosed (the complaint alleged 15 but four are entities, not individuals).

The report discloses a \$30,000 political contribution from GGPAC.

7. The January 2007 semiannual report and a correction were filed on January 17, 2007. The filing deadline for the January 2007 semiannual report was extended to January 17, 2007, due to a holiday and inclement weather.

The report included three contributions, totaling \$2,500, where the principal occupation or job title of the contributor was not disclosed, but where the employer was disclosed as "self" for individuals who contributed \$500 or more during the reporting period.

8. The respondent provided information to show the efforts that his campaign took to acquire the principal occupation or job title and name of the employer for certain contributors including his "standard campaign solicitation card" that has a space for employer and occupation information. The card does not specifically ask for the required information or state that the law requires it. The respondent also provided a copy of the contribution page from his website, which states, "Next, please provide your name and, if you are making a \$500 or more contribution, your occupation and employer information." The web page does not state that the law requires the information.

9. The respondent provided a copy of a printed list and some of the handwritten notes that the respondent's staff made in attempting to locate occupation and employer information for contributors.
10. With respect to the political expenditure of \$58,670 that GGPAC made during the reporting period for the 30-day pre-election report, the evidence indicates that the respondent had prior knowledge of the expenditure and accepted it and reported it as a political contribution on his October 10, 2006, 30-day pre-election report.
11. The complaint alleges that the respondent did not disclose four political contributions from GGPAC totaling approximately \$42,500.
12. GGPAC made three expenditures totaling \$30,000 on the same day during the reporting period for the 8-day pre-election report for television advertisements supporting the respondent.
13. The evidence indicates that the respondent was advised of the total \$30,000 amount of the contributions and accepted it and reported it as such on his October 30, 2006, 8-day pre-election report.
14. The fourth expenditure, in the amount of \$12,500, was made on November 1, 2006, during the period for the special pre-election report and January 2007 semiannual report. The respondent failed to disclose it on either a special pre-election (telegram) report or his January 2007 semiannual report. On July 18, 2007, the respondent filed a special pre-election report (that was originally due November 2, 2006) and corrected his January 2007 semiannual report to disclose the \$12,500 in-kind contribution from GGPAC.

IV. Findings and Conclusions of Law

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

Failure to Timely File Semiannual Reports

1. A candidate shall file two reports for each year. The first report shall be filed not later than July 15 covering the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. The second report shall be filed not later than January 15 covering the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. ELEC. CODE § 254.063.

2. The evidence indicates that the respondent filed his original and corrected January 2007 semiannual reports on January 17, 2007. Because the filing deadline had been extended to that date there is credible evidence that the respondent did not violate section 254.063 of the Election Code with respect to the reports.
3. The evidence indicates that the respondent filed his January 2006 semiannual report on February 27, 2006. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code with respect to that report. The commission considered the late filing in the administrative process and waived the penalty because the respondent had no activity to disclose and had not filed any other reports late. (Note that the respondent filed his campaign treasurer appointment on December 31, 2005. If he had filed his campaign treasurer appointment the next day the report would not have been required).

Failure to Include Occupation/Job Title and Employer

4. Each report by a candidate for statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title, and the full name of the individual's employer. ELEC. CODE § 254.0612.
5. A person required to file a report under chapter 254 of the Election Code is considered to be in compliance with section 254.0612 of the Election Code only if the person shows that the person has used best efforts to obtain, maintain, and report the information required by section 254.0612 of the Election Code. A person is considered to have used best efforts to obtain, maintain, and report that information if the person complies with section 254.0312 of the Election Code. ELEC. CODE § 254.0312(a).
6. Each written solicitation for political contributions from an individual must include a clear request for the individual's full name and address, the individual's principal occupation or job title, and the full name of the individual's employer, and an accurate statement of state law regarding the collection and reporting of individual contributor information, such as "State law requires (certain candidates, officeholders, or political committees, as applicable) must use best efforts to obtain, maintain, and report the name and address, principal occupation or job title, and full name of employer of individuals whose contributions equal or exceed \$500 in a reporting period." ELEC. CODE § 254.0312(b).
7. For each political contribution received from an individual that, when aggregated with all other political contributions received from the individual during the reporting period, equals or exceeds \$500 and for which the information required by section 254.0612 of the Election Code is not provided, the person must make at least one oral or written request for the missing information. A request must be made not later than the 30th day after the date the contribution is received, must include a clear and conspicuous statement that complies with

subsection (b) of section 254.0312 of the Election Code, and if made orally, must be documented in writing and may not be made in conjunction with a solicitation for an additional political contribution. ELEC. CODE § 254.0312(c).

8. The evidence indicates that the respondent failed to provide the principal occupation or job title and the full name of the employer for 24 individuals who contributed \$500 or more during the reporting periods at issue. The failure to provide the required information relating to a contributor's principal occupation or job title and employer may be excused if a filer demonstrates that he made "best efforts," in accordance with section 254.0312 of the Election Code, to acquire the information.
9. The evidence shows that the respondent's contribution solicitation card had a space for the contributor to provide employer and occupation information, but did not include a clear request for the information or include an accurate statement of the law regarding the collection and reporting of the information. The solicitation page from the website specifically asked for the occupation and employer of individuals who were making contributions of \$500 or more, but did not include an accurate statement of the law regarding the collection and reporting of the information (i.e., the \$500 threshold is per reporting period, not per contribution).
10. The evidence indicates that the respondent made some follow-up attempts to acquire the information.
11. The evidence indicates that the respondent failed to include, for 24 individuals from whom he accepted political contributions that in the aggregate equaled or exceeded \$500 during the reporting period, the individual's principal occupation or job title and the full name of the individual's employer. The respondent has not corrected the reports to provide the information.
12. The evidence indicates that the respondent attempted to obtain the required information, but did not fully comply with the best efforts requirements of section 254.0312 of the Election Code. Therefore, there is credible evidence of a violation of section 254.0612 of the Election Code.

Failure to Disclose Out-of-State Committee Information

13. In a reporting period, a candidate that receives a contribution from an out-of-state committee that filed its statement of organization with the Federal Election Commission must include a copy of the statement with the campaign finance report for that period. ELEC. CODE § 253.032. A candidate who files a report with the commission by electronic transfer may comply with that filing requirement by entering the out-of-state committee's federal PAC identification in the appropriate place on the report. Ethics Commission Rules § 20.29.

14. The evidence shows that the respondent failed to include the required information for two contributions on his October 10, 2006, 30-day pre-election report (the respondent has corrected the report to provide the information). Therefore, there is credible evidence that the respondent violated section 253.032 of the Election Code.

Failure to Disclose Notice of Direct Expenditure or Political Contribution

15. Each report by a candidate must include for each political committee from which the candidate receives a notice of direct expenditure, the committee's full name and address, an indication of whether the committee is a general-purpose committee or a specific-purpose committee, and the full name and address of the committee's campaign treasurer. ELEC. CODE § 254.061(3).
16. The complaint alleges that the respondent received a notice of direct expenditure from GGPAC during the reporting period for his October 10, 2006, 30-day pre-election report and failed to disclose receipt of that notice.
17. The evidence shows that the alleged direct expenditure was actually an in-kind political contribution and was properly reported. Therefore, there is credible evidence that the respondent did not violate section 264.061 of the Election Code.

Failure to Report Political Contributions

18. Each campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031.
19. A candidate for state representative who accepts political contributions from a person that in the aggregate exceed \$1,000 during the period beginning the ninth day before election day and ending at 12 noon on the day before election day must file a report with the commission disclosing the contributions no later than 5 p.m. of the first business day after the date the contribution is accepted. ELEC. CODE § 254.038.
20. The complaint alleges that the respondent failed to disclose four in-kind political contributions totaling \$42,500 from GGPAC. Three of the contributions for television advertising totaled \$30,000.
21. The evidence indicates that the respondent accepted a \$30,000 in-kind political contribution and disclosed that amount on his October 30, 2006, pre-election report. Therefore, there is credible evidence that the respondent did not violate section 254.031 of the Election Code with respect to the contribution.

22. With respect to the \$12,500 in-kind political contribution, the respondent failed to disclose that contribution on the special pre-election and January 2007 semiannual reports. Therefore, there is credible evidence that the respondent violated sections 254.031 and 254.038 of the 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 or 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 this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that in a reporting period, a candidate that receives a contribution from an out-of-state committee that filed its statement of organization with the Federal Election Commission must include a copy of the statement with the campaign finance report for that period. The respondent acknowledges that each campaign finance report filed by a candidate must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period, the full name and address of the person making the contributions, and the dates of the contributions. The respondent acknowledges that a candidate for state representative who accepts political contributions from a person that in the aggregate exceed \$1,000 during the period beginning the ninth day before election day and ending at 12 noon on the day before election day must file a report with the commission disclosing the contributions no later than 5 p.m. of the first business day after the date the contribution is accepted. The respondent acknowledges that each report by a candidate for statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title, and the full name of the individual's employer. The respondent further acknowledges that a candidate shall file two reports for each year. The first report shall be filed not later than July 15 covering the period beginning January 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through June 30. The second report shall be filed not later than January 15 covering the period beginning July 1, the day the candidate's campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31.

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

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

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,800 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-270453.

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

Juan M. Garcia, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director