

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARLIE ORTEGA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-270564

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2008, to consider sworn complaint SC-270564. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.064 of the Election Code, a law 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 file a campaign treasurer appointment and failed to file campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful opposed candidate for Horizon City Alderman, Place 5, in the May 12, 2007, general election.
2. The city clerk has on file a campaign treasurer appointment signed by the respondent and dated March 12, 2007. The document is not date stamped. The respondent submitted an affidavit swearing that he filed a campaign treasurer appointment on or about March 12, 2007.
3. The respondent and the city clerk each provided copies of modified reporting declarations for the respondent. The modified reporting declaration that the city clerk provided to the commission does not match the modified reporting declaration that the respondent provided to the commission. The information on the declarations are reversed. On the declaration that the city clerk provided, the respondent signed his name on the line marked "Year of election(s) or election cycle to which declaration applies." The date "May 9, 2007" appears

on the line marked "Signature of Candidate." On the declaration that the respondent provided, the respondent's signature appears on the correct line, and "May 9 '07" appears on the declaration of election line. Neither of these documents is date stamped.

4. The city clerk does not have on file any pre-election reports for the respondent for the period at issue.
5. The respondent filed a campaign finance report marked as a final report (which included another campaign treasurer appointment dated May 9, 2007) with the city clerk. These documents are not date stamped.
6. The respondent provided to the commission a letter he wrote to the city clerk dated May 24, 2007, that indicated the respondent's intent to amend "the report I filed on May 9, 2007." The respondent included with the letter page two ("Page Two") of a campaign finance report, which lists \$44 as total unitemized contributions and \$44 as total unitemized expenditures. Page Two is signed by the respondent and dated May 24, 2007. The city clerk also provided Page Two to the commission.

IV. Findings and Conclusions of Law

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

1. A candidate must file an appointment of a campaign treasurer. ELEC. CODE § 252.001. A candidate who files the campaign treasurer appointment must file semiannual reports due twice a year in January and July. ELEC. CODE § 254.063. An opposed candidate must also file pre-election reports due 30 days and 8 days before an election. ELEC. CODE § 254.064.
2. A modified reporting declaration excuses an opposed candidate from filing pre-election reports if the candidate does not exceed the \$500 limits on political contributions or political expenditures in connection with the election. ELEC. CODE § 254.181.
3. To select modified reporting, a candidate must file a declaration of intent not to accept more than \$500 in political contributions or make more than \$500 in political expenditures (excluding filing fees) in connection with the election. Ethics Commission Rules § 20.217(c). To file under the modified schedule, a candidate must file the declaration no later than the 30th day before the first election to which the declaration applies. Ethics Commission Rules § 20.217(e).
4. If a candidate expects no reportable activity in connection with the candidacy to occur after the period covered by a report, the candidate may designate the report as a final report, which relieves the candidate of the duty to file additional reports as a candidate and terminates the candidate's campaign treasurer appointment. ELEC. CODE § 254.065.

5. There is credible evidence that the respondent filed his campaign treasurer appointment with the city clerk on or about March 12, 2007. Therefore, there is credible evidence that the respondent did not violate section 252.001 of the Election Code.
6. There is credible evidence that the respondent filed a final report with the city clerk on or about May 9, 2007. Because the respondent filed a final report, the respondent was not required to file semiannual reports as a candidate during the period at issue. Therefore, there is credible evidence that the respondent did not violate section 254.063 of the Election Code.
7. There is credible evidence that the respondent did not timely file his modified reporting declaration. The evidence indicates that the respondent filed his modified reporting declaration on or about May 9, 2007.
8. Because the modified reporting declaration was filed later than the 30th day before the election at issue, the respondent was not entitled to modified reporting. The filing authority did not have on file any pre-election reports filed by the respondent. The evidence indicates that the respondent did not timely file the 30-day or 8-day pre-election reports before the May 12, 2007, election. Therefore, there is credible evidence that the respondent violated section 254.064 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 an opposed candidate must file two reports. The first report is required to be filed not later than the 30th day before election day. The second report must be filed no later than the eighth day before election day. 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 \$200 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-270564.

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

Charlie Ortega, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director