

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

DANIEL GARCIA,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2803153

## FINAL ORDER

The Texas Ethics Commission, having heard this case and voting to find a violation of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

### Findings of Fact

1. The respondent is Daniel Garcia, whose last known mailing address is P. O. Box 343, Driscoll, Texas, 78351-0343. A sworn complaint was filed with the Texas Ethics Commission against the respondent on March 19, 2008. The Notice of Hearing was mailed to the respondent on December 19, 2008, by certified mail, return receipt requested, restricted delivery, and by delivery confirmation.
2. The preliminary review hearing was scheduled for February 12, 2009, at 1:00 p.m., by the Texas Ethics Commission in Austin, Texas.
3. The respondent did not file a reply to the Notice of Hearing and did not appear at the hearing.
4. The respondent was a candidate in the May 10, 2008, Driscoll, Texas, city council election.
5. The complaint alleges that the respondent failed to include the required disclosure statement and highway right-of-way notice on political advertising signs.
6. The signs at issue encouraged voters to elect the respondent for city commissioner in an upcoming election. The signs did not include the political advertising disclosure statement or a highway right-of-way notice.
7. On March 27, 2008, and May 2, 2008, notice of the sworn complaint was mailed to the respondent. The notice stated that failure to respond within 10 business days from the date the respondent received the notice would constitute a separate violation for which a separate civil penalty may be assessed. United States Postal Service records indicate that the notice was delivered on May 7, 2008. The deadline for filing a response to the notice was May 21, 2008.

8. To date, the respondent has not filed a written response to the sworn complaint notice.
9. On October 13, 2008, the commission considered the complaint and found that there is credible evidence of violations of sections 255.001 and 255.007 of the Election Code and section 571.1242 of the Government Code. The commission mailed a proposed order and agreed resolution to the respondent on October 20, 2008. The proposed order and agreed resolution included a \$500 civil penalty.
10. The proposed order was mailed by United States Postal Service to the respondent's address. The copy sent by certified mail was returned as unclaimed, however, the copy sent by delivery confirmation was not returned.
11. Two quarterly notices were sent to the respondent's address by first class mail, and neither was returned.
12. On December 19, 2008, the commission sent notice of a preliminary review hearing to the respondent's address.
13. United States Postal Service records indicate that the notice of preliminary review hearing was delivered to the respondent's address on December 22, 2008, by delivery confirmation. The copy sent by certified mail was returned, marked "Refused."

#### **Conclusions of Law**

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. GOV'T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.
3. Political advertising means, in pertinent part, a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. ELEC. CODE § 251.001 (16).
4. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the advertising, or the candidate or specific-purpose committee supporting the candidate, if the advertising is authorized by the candidate. ELEC. CODE § 255.001(a).

5. Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. ELEC. CODE § 255.001(b).
6. The following notice must be written on each political advertising sign: “NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY.” A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the required notice or instructs another person to place a political advertising sign that does not contain the required notice. ELEC. CODE § 255.007.
7. The sworn complaint alleges that the respondent failed to include the required disclosure statement and highway right-of-way notice on political advertising signs. The signs at issue supported a candidate for election to public office by encouraging voters to elect the respondent for city commissioner in an upcoming election. Thus, the signs at issue are political advertising. The signs did not include the required disclosure statement or the highway right-of-way notice. Therefore, there is credible evidence that the respondent violated sections 255.001 and 255.007 of the Election Code.
8. A respondent must respond to the notice of a Category One violation not later than the 10th business day after the date the respondent receives the notice. Failure to respond to a notice of sworn complaint within the time required is a separate Category One violation. GOV'T CODE § 571.1242(a)(c).
9. The response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52.
10. The respondent received the notice of sworn complaint on May 7, 2008. The notice stated that the respondent was required to respond within 10 business days from receipt of the notice. The respondent failed to respond within the 10 business days from receipt of the notice. Therefore, there is credible evidence of a violation of section 571.1242 of the Government Code and section 12.52 of the Ethics Commission Rules.
11. The Texas Ethics Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. GOV'T CODE § 571.173.

**Therefore, the Texas Ethics Commission orders that:**

1. The respondent pay to the Texas Ethics Commission, within 30 days of the date of this order, a civil penalty in the amount of \$500.

Order Date: \_\_\_\_\_

FOR THE COMMISSION

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David A. Reisman  
Executive Director  
Texas Ethics Commission