

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TORIBIO "T.D." DAVILA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2809330

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 6, 2009, to consider sworn complaint SC-2809330. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.063, 255.001(a), and 255.006(b) of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to file a January 2008 semiannual campaign finance report, 30-day and 8-day pre-election campaign finance reports in connection with the March 4, 2008, primary election, and a July 2008 semiannual campaign finance report. The complaint also alleged that the respondent posted political advertising signs that did not include a political advertising disclosure statement and that represented that he held an elective public office that he did not hold at the time the representation was made.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unopposed candidate in the March 2008 primary election and an unsuccessful candidate in the November 2008 general election for constable of Castro County.
2. The respondent did not hold the office of county constable during the time at issue.
3. Signs were posted by the respondent that read:

“VOTE FOR Toribio (T.D.) Davila CONSTABLE November 10, 2008 Vote for Someone Who Been Around Dimmitt For 55 Years And Ready To Help You.” The signs contained no political advertising disclosure statement.

4. The complaint also alleged that the respondent distributed “Hello” style name badges that contained the statement, “Vote for T.D. Davila For Constable” and that did not include a political advertising disclosure statement. The complaint did not include copies of the name badges.
5. Records on file with the local filing authority show that the respondent filed a campaign treasurer appointment on December 31, 2007, and was unopposed in the March 4, 2008, primary election. The only campaign finance report on file at the time of the complaint was a report marked as a July 15, 2008, semiannual report, with a period covered of January 1, 2008, through July 15, 2008. The report was filed on September 23, 2008. The report disclosed \$230 in total political contributions, \$610 in total political expenditures, and \$0 in total political contributions maintained and total principal of all outstanding loans. The spaces on the report for total political contributions of \$50 or less and total political expenditures of \$50 or less were left blank.
6. In response to the allegations, on May 4, 2009, the respondent filed several campaign finance reports with the local filing authority. A report marked as an 8-day pre-election report, with a period covered of October 7, 2008, through October 27, 2008, disclosed zero activity for the period. A report marked as the 30-day pre-election report, with a period covered of July 16, 2008, through October 6, 2008, disclosed zero activity for the period. A January 2009 semiannual report, with a period covered of September 24, 2008, through November 4, 2008, which is also marked as a final report, disclosed \$230 in political contributions, \$610 in political expenditures, and \$0 in total political contributions maintained and total principal of all outstanding loans. The spaces on the report for total political contributions under \$50, and total political expenditures under \$50 were left blank.

IV. Findings and Conclusions of Law

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

Failure to File Campaign Finance Reports

1. A candidate shall file two reports for each year, the first report shall be filed not later than July 15, and cover 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, as applicable, and continuing through June 30. The second report shall be filed not later than January 15, and cover 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, as applicable, and continuing through December 31. ELEC. CODE § 254.063.

2. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports, the first report shall be filed not later than the 30th day before election day, and cover the period beginning 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 chapter, as applicable, and continuing through the 40th day before election day. The second report shall be filed not later than the eighth day before election day, and cover the period beginning the 39th day before the election and continuing through the 10th day before election day. ELEC. CODE § 254.064.
3. The complaint alleged that the respondent failed to file campaign finance reports due between January 2008 through September 2008. This period covers semiannual reports due on January 15, 2008, and July 15, 2008, and the 30-day and 8-day pre-election reports for the March 2008 primary election for opposed candidates. The respondent filed a campaign treasurer appointment form with the local filing authority on December 31, 2007. Therefore, for the semiannual report due on January 15, 2008, the period covered would have been one day, December 31. The respondent was unopposed in the March 2009 primary and, thus, was not required to file pre-election reports for the primary election.
4. The respondent filed additional reports including pre-election reports in connection with the November general election after the sworn complaint was filed (the complaint did not include allegations relating to the pre-election reports for the November 2008 general election because those reports were not due at the time the complaint was filed). The respondent failed to file a January 2008 semiannual report and failed to file the July 2008 semiannual report in a timely manner. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

Political Advertising

5. 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, in pertinent part, the full name of the person who paid for the political advertising. ELEC. CODE § 255.001(a).
6. "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. *Id.* § 251.001(16)(B).
7. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying

financial obligations incurred by the person in connection with the campaign for nomination or election. *Id.* § 251.001(1).

8. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b). For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
9. A political advertising disclosure statement is not required on campaign buttons, pins, hats, or similar campaign materials. *Id.* § 255.001.
10. The complaint alleged that the respondent distributed self-adhesive name badges containing political advertising. The complaint did not include a copy of the alleged advertisement. However, adhesive name badges are quite similar to campaign buttons, which are not required to contain the political advertising disclosure statement. Therefore, there is credible evidence that the respondent did not violate section 255.001 of the Election Code with regard to the names badges.
11. The respondent posted signs that expressly advocated support for him as a candidate for public office and that did not include a political advertising disclosure statement. Therefore, there is credible evidence that the respondent violated section 255.001(a) of the Election Code with regard to the signs at issue.
12. During the period at issue, the respondent did not hold the office of constable. The signs at issue included the respondent’s name followed by the name of the office sought, but did not include the word “for” to clarify that he did not hold the office of county constable. The signs constituted campaign communications because they were written communications relating to a campaign for nomination or election to public office. Therefore, there is credible evidence that the respondent violated section 255.006(b) of the Election Code because the word “for” was not properly included on the signs.

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 a candidate must file a semiannual report by January 15 and July 15 of each year. The respondent acknowledges that 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, in pertinent part, the full name of the person who paid for the political advertising, and that a person may not represent in political advertising that a candidate holds a public office that the candidate does not hold at the time the representation is made. 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 \$100 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-2809330.

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

Toribio "T.D." Davila, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director