

TEXAS ETHICS COMMISSION

IN THE MATTER OF
EMMA ACOSTA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2905118

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 Emma Acosta, whose last known mailing address is 8904 W.H. Burges St., El Paso, Texas 79925. A sworn complaint was filed with the Texas Ethics Commission (commission) against the respondent on May 11, 2009. The Notice of Hearing was mailed to the respondent on September 1, 2010, by certified mail, return receipt requested, restricted delivery.
2. The preliminary review hearing was held on October 21, 2010, by the Texas Ethics Commission in Austin, Texas.
3. The respondent did not appear at the hearing.
4. The respondent was an incumbent candidate for El Paso City Representative, District #3, in the May 9, 2009, election.
5. The respondent's 30-day pre-election report was comprised of Form C/OH cover sheet pages one and two, a Schedule A (used to disclose political contributions) and a Schedule F (used to disclose political expenditures). These two schedules disclosed only the respondent's name and the words "see attached" written at the top of both pages. The report also included a two-page spreadsheet titled, "Emma Acosta Campaign Contributions from Jan 16 to 30 Days before Election of May 9, 2009," and a four-page spreadsheet titled, "Emma Acosta Campaign Expenses Report Due 30 Days Prior to Election of May 9, 2009." The spreadsheets do not disclose the dates for political contributions. (The spreadsheets for the respondent's January 2009 semiannual report did not include dates for political contributions or political expenditures.
6. Cover sheet page two of the report disclosed a "-" in the space provided to disclose total political contributions of \$50 or less, \$8,605.00 in total political contributions, a "-" in the space provided to disclose total political expenditures of \$50 or less, \$7,755.48 in total political expenditures, \$849.52 in total political contributions maintained, and \$4,280.00

- in total principal amount of all outstanding loans. The contributions spreadsheet disclosed 43 contributions, the contributors' names and addresses, and the amount of each contribution. The contributions totaled \$8,605. Twelve of the contributors contributed \$50 or less during the reporting period. The expenses spreadsheet disclosed 69 expenditures, the dates, payees, amounts, and purposes for all but one of those political expenditures totaling \$7,733.48. Twenty of the payees received \$50 or less during the reporting period.
7. The spreadsheet format used for the report was not pre-approved by the executive director of the commission. The report was filed with the City of El Paso. The contribution spreadsheet included a \$500 "cash" contribution from "G. Holguin," with the address disclosed as "Unknown."
 8. On June 9, 2009, the respondent submitted a sworn response in which she explained that she had received the cash contribution on Thursday, February 26, 2009, at a fundraiser held for her at a public restaurant. She swore that over 100 individuals attended and that the organizers of the event had a large container at the entrance for contributions. The respondent explained that she did not inspect the envelopes until the following day, whereupon she discovered an envelope with "G. Holguin" handwritten on the outside, containing \$500 in cash. She swore that she asked several of the hosts if they knew who G. Holguin was, but was unable to determine any further information about the donor. The respondent swore that the contribution is maintained in her campaign account.
 9. The respondent also swore that she had filed her campaign finance reports with "see attached" spreadsheets instead of schedules in order to "reduce paper and provide the City Municipal clerk an efficient method of scanning these reports" and that the city always accepted reports in this format.
 10. The respondent stated that she would correct the report at issue, disclosing all information on the appropriate schedules, and that she would remit the cash contribution to a recognized tax-exempt charitable organization by the first week in January 2010.
 11. On April 21, 2010, the commission considered the complaint and found there was credible evidence that the respondent violated section 253.033(a) of the Election Code by accepting a cash contribution exceeding \$100 from a single donor during the reporting period at issue and also violated section 254.036(a) of the Election Code by failing to file her 30-day pre-election report filed in connection with the May 2009 election in a format prescribed by the commission. On April 28, 2010, the commission mailed a proposed order and agreed resolution to the respondent that imposed a \$500 civil penalty. The respondent did not sign the proposed order and agreed resolution.
 12. On October 19, 2010, the respondent provided two statements to the commission indicating that she had remitted \$400 of the contribution from G. Holguin to a charitable organization and filed a corrected 30-day pre-election report, disclosing political contributions and expenditures in the format prescribed by the commission. The respondent included a copy of the corrected report, which was stamped as received by the

filing authority on October 18, 2010, and a copy of a check dated October 19, 2010, to “Center Against Family Violence” in the amount of \$400, signed by the respondent.

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. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. ELEC. CODE § 253.033.
4. The respondent admitted that she accepted \$500 in cash from a contributor. Because the respondent accepted a \$500 cash contribution, there is credible evidence of a violation of section 253.033 of the Election Code.
5. Each campaign finance report filed with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a).
6. The executive director shall prescribe forms for campaign finance reports. Ethics Commission Rules §§ 18.1, 20.19.
7. 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). A campaign finance report is considered to be under oath by the person required to file the report, and the person is subject to prosecution under chapter 37 of the Penal Code regardless of the absence of or a defect in the affidavit. ELEC. CODE § 254.036(h).
8. Campaign finance reports are required to be filed in a format prescribed by the commission. The respondent's 30-day report disclosed political contributions and expenditures in a spreadsheet format, which the respondent attached to the report. The format was not pre-approved by the executive director of the commission. Although the spreadsheet included the majority of required information for political contributions and political expenditures, it did not include all of the required information and the spreadsheet format used by the respondent was not prescribed by the commission. Therefore, there is credible evidence of a violation of section 254.036(a) of the Election Code.
9. 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

David A. Reisman
Executive Director
Texas Ethics Commission