

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOSE A. LOZANO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2905121

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-2905121. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.003 and 253.094 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 made an illegal political contribution to a candidate using corporate funds and accepted a political contribution from a corporation.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for El Paso city council in the May 2009 election.
2. The respondent filed a campaign treasurer appointment with the city clerk's office on January 13, 2009. He signed the document acknowledging that he was aware of the restrictions in Title 15 of the Election Code on contributions from corporations and labor organizations.
3. The respondent's 30-day pre-election report, filed on April 9, 2009, disclosed a \$1,210 political contribution from the Institute for Culture Learning of El Paso on March 5, 2009.
4. According to records of the Texas Secretary of State, the Institute for Culture Learning of El Paso is a domestic nonprofit corporation. The respondent signed and filed the *Certificate of*

Formation with the Texas Secretary of State on April 17, 2008. The respondent is listed as the corporation's registered agent and board director.

5. The respondent is named on the corporation's business checking account.
6. The respondent swore that he has always known that it is illegal to accept contributions from a corporation but he did not know that nonprofit organizations are corporations. The respondent swore that he formed the corporation and deposited his own funds into the initial account and, because the organization did not prosper, he donated deposited funds to his campaign. Once he discovered that he had erred under the law because the non-profit organization is a corporation, he immediately returned the funds to the non-profit account.
7. On May 1, 2009, the respondent filed a correction to his 30-day pre-election report to indicate that the contribution was returned.

IV. Findings and Conclusions of Law

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

1. A person may not knowingly make a political contribution in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(a).
2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094(a).
3. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
4. In order to show a violation of section 253.003(a) of the Election Code, the evidence must show that the respondent knowingly made a political contribution to a candidate using corporate funds.
5. An officer, director, or other agent of a corporation or labor organization who commits an offense under this subchapter is punishable for the grade of offense applicable to the corporation or labor organization. ELEC. CODE § 253.095.
6. The Institute for Culture Learning of El Paso is a nonprofit corporation. The corporation made a \$1,210 political contribution to the respondent using a check drawn on its corporate account. The respondent is a board director and is named on the corporate account. Thus, the respondent was an officer, director, or agent of the corporation and had the authority to act on behalf of the corporation and issue checks on the corporate account. Additionally, the

respondent admitted that he donated corporate funds to his campaign. Therefore, there is credible evidence that the respondent violated sections 253.003(a) and 253.094(a) of the Election Code by using corporate funds to make a political contribution to a candidate.

7. A person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b).
8. In order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
9. The respondent accepted a political contribution from the Institute for Culture Learning of El Paso, a nonprofit corporation. At the time the respondent accepted the contribution, he knew that it was illegal to accept corporate contributions. The respondent indicated that he did not know that nonprofit organizations are incorporated. However, the respondent signed and filed the *Certificate of Formation* with the Texas Secretary of State, and thus he possessed actual and constructive knowledge that the entity was a corporation. Therefore, there is credible evidence that the respondent violated section 253.003(b) of the Election Code by accepting a political contribution from a corporation.

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 corporation may not make a political contribution or political expenditure that is not authorized by chapter 253 of the Election Code, and that chapter does not authorize a political contribution to a candidate by a corporation. The respondent further acknowledges that a person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. 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 \$500 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$500 civil penalty no later than October 21, 2010, and agrees to waive any right to a hearing related to this sworn complaint. The respondent further agrees that if the full amount is not received by October 21, 2010, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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-2905121.

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

Jose A. Lozano, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director