

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RICARDO ROSALES, SR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31004131

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 21, 2010, to consider sworn complaint SC-31004131. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.064 and 255.001 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 campaign finance reports and failed to include a disclosure statement on political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for mayor of Pharr, Texas in the May 8, 2010, election.

Filing of Campaign Finance Reports

2. The complaint alleged that the respondent failed to file campaign finance reports in connection with his candidacy. On February 26, 2010, the respondent filed an application with the City Secretary to get his name on the ballot. The respondent did not file any other campaign documents with the city secretary's office.

Disclosure Statement on Political Advertising

3. The complaint alleged that the respondent failed to include a disclosure statement on political advertising signs. The complaint included a photograph of a political

advertising sign that includes the words “Vote” and “City of Pharr” and identifies the surname of the respondent as well as three other candidates. The sign did not include a disclosure statement.

IV. Findings and Conclusions of Law

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

Filing of Campaign Finance Reports

1. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office; filing an application for a place on the ballot is an affirmative action for gaining nomination and election to public office. ELEC. CODE § 251.001(1). Each candidate shall appoint a campaign treasurer. ELEC. CODE § 252.001.
2. A candidate is required to file two reports each year. The first report must be filed by July 15. The report covers 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 under this subchapter, as applicable, and continuing through June 30. ELEC. CODE §§ 254.063(a), 254.063(b).
3. The second report shall be filed not later than January 15. The report covers 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 under this subchapter, as applicable, and continuing through December 31. ELEC. CODE § 254.063(c).
4. 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. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers 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. *Id.* § 254.064(b).
5. The respondent became a candidate for mayor no later than February 16, 2010, the date that he filed an application for a place on the ballot. He was required to file a campaign treasurer appointment and campaign finance reports as a candidate. The 30-day pre-election report for the May 8, 2010, election was due April 8, 2010. The 8-day pre-election report for that election was due April 30, 2010. The respondent did not file the 30-day and 8-day pre-election reports for the May 2010 election. Therefore, there is credible evidence that the respondent violated section 254.064 of the Election Code.
6. The respondent lost the election. He did not have a campaign treasurer appointment on file. There is no evidence that he was a candidate for office during the period covered by

a semiannual report. Therefore, there is credible evidence that the respondent did not violate section 254.063 of the Election Code.

Disclosure Statement on Political Advertising

7. Political advertising means, in pertinent part, a communication supporting or opposing a candidate for election to a public office that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. ELEC. CODE. § 251.001(16).
8. 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 political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a). 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. *Id.* § 255.001(b).
9. The respondent failed to include a disclosure statement on political advertising. The signs were removed following the election. However, at the time the signs were originally displayed, no disclosure statement was included. Therefore, there is credible evidence of violations of section 255.001 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 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 must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers 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 must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. The respondent also 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 the full name of the person, candidate, or political committee who paid for it. 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 April 21, 2011, and agrees that if the full amount is not received by April 21, 2011, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas. The respondent further agrees to waive any right to a hearing related to this sworn complaint.

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-31004131.

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

Ricardo Rosales, Sr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director