

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LUPITA FUENTES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31009288

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 6, 2011, to consider sworn complaint SC-31009288. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001 and 254.064 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 did not timely file an appointment of a campaign treasurer and did not timely file pre-election campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed incumbent candidate for Eagle Pass ISD school board trustee in elections held on May 9, 2009, and November 2, 2010.
2. The complaint was filed on September 22, 2010.

Filing of a Campaign Treasurer Appointment

3. The complaint alleged that the respondent did not file a campaign treasurer appointment in connection with both elections. The complaint also alleged that the respondent did not file 30-day and 8-day pre-election reports for the May 9, 2009, election.
4. In response to the complaint, the respondent claimed that she had a campaign treasurer appointment on file for many years since first running for school board trustee in May of 2003.

5. Records of the Eagle Pass ISD show that a campaign treasurer appointment was not filed by the respondent until October 4, 2010.

Timely Filing of Campaign Finance Reports

6. The complaint also alleged that the respondent did not timely file 30-day and 8-day pre-election reports for the May 9, 2009, election.
7. In response to the complaint, the respondent acknowledged that she did not timely file the 30-day and 8-day pre-election reports due to an oversight on her part.
8. Eagle Pass ISD records show that the respondent did not file any reports in connection with the May 9, 2009, election until October 15, 2010.

IV. Findings and Conclusions of Law

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

1. Each candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001. A campaign treasurer appointment must be in writing and include the campaign treasurer's name, residence or business street address, and telephone number. *Id.* §§ 252.002(a)(1), (2), (3).
2. "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. Examples of affirmative action include: (1) the filing of an application for a place on the ballot; (2) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement; and (3) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure. *Id.* § 251.001(1).
3. 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. *Id.* § 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 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. *Id.* § 254.064(c).

Filing of a Campaign Treasurer Appointment

4. For the May 9, 2009, election, the respondent completed her application for a place on the Eagle Pass ISD election ballot on February 9, 2009, thereby making her a candidate no later than that date. Credible evidence indicates that the respondent did not file a campaign

treasurer appointment until October 4, 2010. Thus, the respondent did not timely file an appointment of a campaign treasurer. Therefore, there is credible evidence of a violation of section 252.001 of the Election Code.

5. For the November 2, 2010, election, the respondent completed her application for a place on the Eagle Pass ISD election ballot on July 26, 2010, thereby making her a candidate no later than that date. Credible evidence indicates that the respondent did not file a campaign treasurer appointment until October 4, 2010. Thus, the respondent did not timely file an appointment of a campaign treasurer. Therefore, there is credible evidence of a violation of section 252.001 of the Election Code.

Timely Filing of Campaign Finance Reports

6. The respondent was a candidate for Eagle Pass ISD school board trustee in a May 9, 2009, election. The respondent was opposed in the election and did not choose to follow a modified reporting schedule. Thus, the respondent was required to file a 30-day pre-election report by April 9, 2009, and an 8-day pre-election report by May 1, 2009. According to Eagle Pass ISD records, the reports were not filed until October 15, 2010. Therefore, there is credible evidence that the respondent violated sections 254.064(b) and 254.064(c) 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 each candidate shall appoint a campaign treasurer as provided by chapter 252 of the Election Code and that a campaign treasurer appointment must be in writing and include the campaign treasurer's name, residence or business street address, and telephone number. The respondent also acknowledges that 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 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 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 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 \$1,000 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-31009288.

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

Lupita Fuentes, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director