

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARIO GARCIA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3130344

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on February 12, 2015, to consider sworn complaint SC-3130344. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001, 254.064, and 254.063 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: 1) did not timely file a campaign treasurer appointment; 2) did not timely file pre-election campaign finance reports; 3) did not timely file a semiannual report; and 4) did not disclose information about political contributions and political expenditures.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to the complaint, the respondent was a candidate for Mercedes Independent School District board of trustees, Place 5. He was elected to the position in the November 2012 election.
2. The respondent announced his candidacy on Facebook on July 9, 2012. He filed his application for a place on the ballot on July 24, 2012. The respondent was opposed by two candidates whose names appeared on the November 2012 ballot.

Campaign Treasurer Appointment

3. The complaint alleged that the respondent did not timely file a campaign treasurer appointment.

4. The complaint allegations were based on the fact that at the time the complaint was filed in March 2013, the respondent had not filed his campaign treasurer appointment or any campaign finance reports with the school district secretary.
5. In his April 1, 2013, response to the complaint, the respondent swore that he thought he had already filed his campaign treasurer appointment.
6. On April 10, 2014, Commission staff submitted an open records request to the Mercedes ISD superintendent's office. In response to the open records request, the Mercedes ISD superintendent provided the Commission with a copy of the respondent's campaign treasurer appointment that was filed on April 14, 2014. The response from the school district also stated that the respondent had not filed any campaign finance reports as of the April 10, 2014, open records request.

Filing of Campaign Finance Reports

7. The complaint alleged that the respondent did not file any campaign finance reports in advance of the November 2012 uniform election in which the respondent was an opposed candidate.
8. The complaint included a letter from the Mercedes Independent School District superintendent that indicated as of January 14, 2013, the respondent had not filed any campaign finance reports.
9. On May 13, 2014, Commission staff sent its second open records request to Mercedes ISD asking for all campaign finance reports and campaign treasurer appointments on file for the respondent. In response to that request, Commission staff received one report covering July 6, 2012, to July 15, 2013. That report disclosed \$12,070 in political contributions and \$15,478.05 in political expenditures.
10. The respondent submitted a corrected report on August 29, 2014, to correctly reflect expenditures from personal funds on Schedule G (used to report expenditures from personal funds) and reimbursements from political funds on Schedule F (used to disclose political expenditures). That report covered July 6, 2012, through July 15, 2013. In the report the respondent disclosed \$16,579.56 in total political expenditures and \$12,070 in total political contributions.

Contents of Reports

11. The complaint also alleged the "candidate failed to file campaign financial reports as required by §254.031 Texas Elections Code [sic]."

12. The respondent did not file any campaign finance reports until after the sworn complaint was filed. However, subsequently filed reports indicated the respondent did engage in reportable campaign activity during the time in question.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
2. A “candidate” is 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). Filing an application for a place on the ballot is an example of such an affirmative action. *Id.* § 251.001(1)(B).
3. The respondent filed his application for a place the ballot on July 24, 2012, which made him a candidate in the November 2012 uniform election. The respondent did not file his campaign treasurer appointment until April 14, 2014, more than 18 months after becoming a candidate. Therefore, there is credible evidence of a violation of section 252.001 of the Election Code.

Untimely Filed Campaign Finance Reports

Semiannual Reports

4. A candidate is required to file two reports each year under section 254.063 of the Election Code. The first report shall be filed not later than 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. *Id.* § 254.063(b). 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. *Id.* § 254.063(c).
5. Based on the reports the respondent filed after receiving notice of the complaint, the respondent made campaign expenditures as late as November 6, 2012. Those expenditures fell in the reporting period for the January 2013 semiannual report. The respondent was

required to file that report by January 15, 2013. He filed a report covering the January 2013 semiannual period on April 17, 2014, more than a year late. He filed a substantial correction to that report on August 29, 2014.

6. Therefore, with respect to the January 2013 semiannual report, there is credible evidence of a violation of section 254.063 of the Election Code.

Pre-election Reports

7. 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. 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). 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. *Id.* § 254.064(c).
8. The respondent had two opponents on the ballot in the November 2012 uniform election and did not file a campaign treasurer appointment, and therefore did not elect to file on the modified reporting schedule. Accordingly, the respondent was required to file a 30-day pre-election report by October 9, 2012, and an 8-day pre-election report by October 29, 2012.
9. The respondent did not file his first report covering the pre-election reporting period until April 17, 2014. The respondent then filed a substantial correction to that report on August 29, 2014. Therefore, there is credible evidence of a violation of sections 254.064(b) and 254.064(c) of the Election Code.

Contents of Reports

10. Section 254.031(a) of the Election Code requires "each report filed" under Chapter 254 of the Election Code to include, among other things: "(1) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period . . . , the full name and address of the person making the contributions, and the dates of the contributions; (2) the amount of loans that are made during the reporting period for campaign purposes to the person or committee required to file the report and that in the aggregate exceed \$50 . . . ; and (3) the amount of political expenditures that in the aggregate

exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures.”

11. Sections 254.063 and 254.064 of the Election Code state the reports candidates must file and when they must file those reports. Section 254.031 of the Election Code lists the information that is required to be disclosed in each report filed.
12. At the time of the complaint, the respondent had not filed any campaign finance reports. Based on the subsequently filed report, it is clear the respondent had activity required to be reported under section 254.031 of the Election Code. However, it cannot then be said that the respondent did not disclose information required to be included in *each filed report* because, at the time the complaint was filed, the respondent had not filed the report in question. As such, with respect to this complaint, there is credible evidence of no violation of section 254.031 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. The respondent further acknowledges that a candidate shall file two reports for each year. The first report shall be filed not later than July 15. The second report shall be filed not later than January 15. The respondent also 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 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 nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$750 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-3130344.

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

Mario Garcia, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director