

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RICHARD NGUYEN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31310195 AND SC-3140101

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 29, 2014, to consider sworn complaints SC-31310195 and SC-3140101. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 253.003, 253.031, 253.094, 254.031, 254.064, and 255.006 of the Election Code and section 571.1242 of the Government Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent: 1) did not timely file a campaign treasurer appointment; 2) accepted political contributions and made political expenditures without a campaign treasurer appointment on file; 3) accepted political contributions from corporations; 4) did not properly disclose in campaign finance reports political contributions and political expenditures; 5) did not properly disclose in a campaign finance report total political contributions maintained; 6) did not timely file campaign finance reports; and 7) represented in campaign communications that he held an elective public office that he did not hold at the time the representations were made.

III. Facts Supported by Credible Evidence

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

1. The respondent was an opposed candidate for Houston City Council, District F, in the November 5, 2013, general election.

Campaign Treasurer Appointment

2. Sworn complaint SC-31310195 alleged that the respondent did not timely file a campaign treasurer appointment in connection with the November 5, 2013, general election. The

complaint also alleged that the respondent accepted political contributions and made political expenditures at a time when a campaign treasurer appointment was not in effect.

3. On August 23, 2013, the respondent submitted to the City of Houston his application for a place on the ballot in the November 5, 2013, general election. On October 30, 2013, the respondent filed a campaign treasurer appointment with the City of Houston. The campaign treasurer appointment form was signed by the respondent and dated September 10, 2013.
4. In response to the complaint, the respondent swore that he decided to run for public office in late August 2013. The respondent swore that he completed the campaign treasurer appointment form on September 10, 2013, and mailed the treasurer appointment to the address listed on the top of the form, which was the mailing address for the Texas Ethics Commission. The respondent ultimately filed his campaign treasurer appointment with the Houston city secretary on October 30, 2013.
5. The respondent's campaign finance reports disclosed that the respondent accepted political contributions totaling approximately \$2,880 and make political expenditures totaling approximately \$9,610 prior to October 30, 2013.

Accepting Political Contributions from Corporations

6. Sworn complaint SC-3140101 alleged that the respondent accepted two political contributions totaling \$500 from two corporations.
7. One of the contributions at issue for \$200 was from Lanico Healthcare Resources Inc., and was disclosed on Schedule A (used to disclose political contributions) of the respondent's January 2014 semiannual report as being accepted on November 12, 2013. In response to the allegation, the respondent swore that when he realized the error, he refunded the money immediately. The respondent provided a copy of the \$200 refund check and disclosed the payment on the July 2014 semiannual report as a political expenditure on February 17, 2014.
8. The other contribution of \$300 was from SGN-TV, Inc., and was not disclosed by the respondent. The complaint allegation was based on a copy of an invoice from SGN-TV, Inc., dated September 12, 2013, that was billed to the respondent's campaign. The invoice contained charges of \$120 and \$300 for a public service announcement and a talk show appearance. Regarding the \$300 charge, the invoice subtracted the amount from the total and indicated that it was "[c]omplimentary from SGN-TV." In response to the allegation, the respondent swore that he had never seen the invoice prior to the complaint and that his campaign paid SGN-TV for all advertising. The respondent subsequently paid SGN-TV \$300 "just to make certain there were no in-kind services rendered." The respondent provided a copy of the \$300 refund check and disclosed the payment on the July 2014 semiannual report as a political expenditure on March 20, 2014.

9. On October 30, 2013, the respondent filed with the Houston city secretary a campaign treasurer appointment form. The form was signed by the respondent on September 10, 2013, and stated that the respondent was aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.

Contributor Addresses

10. Sworn complaint SC-3140101 alleged that the respondent did not properly disclose complete address information for contributors in the 8-day pre-election report for the November 5, 2013, general election and the January 2014 semiannual report.
11. Regarding the 8-day pre-election report, the respondent did not disclose street addresses for 11 contributors who made political contributions totaling approximately \$2,290. In response to the complaint, the respondent corrected the report.
12. Regarding the January 2014 semiannual report, the complaint allegation was based on an online copy of the report in which the contributor street address information had been redacted by the City of Houston. However, credible evidence indicates that the respondent entered the required contributor address information when the report was originally filed.

Payee Addresses

13. Sworn complaint SC-3140101 alleged that the respondent did not properly disclose complete address information for payees of political expenditures in the 8-day pre-election report for the November 5, 2013, general election. Based on the report, the respondent did not disclose a street address for the payees of six political expenditures totaling approximately \$1,375. In response to the complaint, the respondent corrected the report and provided complete address information.

Total Political Contributions and Expenditures

14. Sworn complaint SC-3140101 alleged that the respondent did not properly disclose total political contributions and total political expenditures on the cover sheet of the 8-day pre-election report for the November 5, 2013, general election.
15. In the report at issue, the respondent disclosed total political contributions of \$2,334 and total political expenditures of \$2,250. Schedule A (used to disclose political contributions) of the report disclosed 29 political contributions totaling \$2,884. Therefore, the respondent did not include \$550 in the amount of total political contributions. Schedule F (used to disclose political expenditures) of the report disclosed nine political expenditures totaling \$2,550; Schedule G (used to disclose political expenditures made from personal funds) of the report

disclosed 27 political expenditures totaling \$6,949.76. Therefore, the respondent did not include \$7,249.76 in the amount of total political expenditures.

Total Political Contributions Maintained

16. Sworn complaint SC-3140101 alleged that the respondent did not properly report total political contributions maintained in his 8-day pre-election report for the November 5, 2013, general election. In response to the complaint, the respondent provided copies of his campaign account bank statements. The original disclosure along with the balance shown on the bank statements is as follows: 8-day Pre-election Report – disclosed \$84; bank statement shows \$848; difference is \$764.

Timely Filing of Campaign Finance Reports

17. Sworn complaint SC-31310195 alleged that the respondent did not timely file a July 2013 semiannual report and 30-day and 8-day pre-election reports for the November 5, 2013, general election, in which the respondent was an opposed candidate.
18. The respondent became a candidate for public office on or around August 23, 2013, when he filed his application for a place on the ballot. The respondent subsequently filed a campaign treasurer appointment with the Houston city secretary on October 30, 2013, and did not select modified reporting. The July 2013 semiannual report was required to be filed by July 15, 2013, and covered activity occurring through June 30, 2013. Since the respondent was not a candidate during the period covered by the July 2013 semiannual report, the respondent was not required to file that report.
19. Regarding the 30-day pre-election report for the November 5, 2013, general election, the respondent was required to file the report with the Houston city secretary by October 7, 2013. The respondent erroneously filed a report marked as a 30-day pre-election report with the Texas Ethics Commission on October 9, 2013, and then re-filed the report with the Houston city secretary on October 28, 2013, which was 21 days after the filing deadline.
20. Regarding the 8-day pre-election report for the November 5, 2013, general election, the respondent was required to file the report with the Houston city secretary by October 28, 2013. The respondent filed the 8-day pre-election report with the Houston city secretary on October 28, 2013.

Misleading Use of Office Title

21. Sworn complaint SC-31310195 alleged that the respondent represented that he held the office of Houston City Council, District F, by not including the word “for” in political advertising signs and mailers. The complaint included a picture of one of the respondent’s

political advertising signs and a copy of a double-sided mailer that was distributed by the respondent.

22. Regarding the political advertising sign, the sign stated, "Richard Nguyen City Council District F." Regarding the mailer, the front side of the communication contained a picture of the respondent and stated, "Richard Nguyen City Council District F." The other side of the mailer stated, "[i]f you send me to City Hall, I will be a strong voice for Alief," which was followed by the slogan, "Richard Nguyen for City Council District F."

Timely Response to Notice of a Sworn Complaint

23. Sworn complaint SC-31310195 was originally filed on October 17, 2013, but was noncompliant. The complaint was re-filed on October 31, 2013, and was accepted by the commission. The commission sent a notice of the sworn complaint to the respondent by delivery confirmation on November 6, 2013. According to the United States Postal Service's record of the delivery, the notice of this complaint was delivered on November 8, 2013. The notice informed the respondent that the alleged violations in the sworn complaint were Category One violations, and that a response was required not later than 10 business days from the date the notice was received and that failure to respond constituted a separate violation for which a separate civil penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by November 25, 2013 (deadline extended due to holiday). The respondent did not submit a written response to the complaint until February 17, 2014, which was 84 days after the response deadline.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment

1. "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. ELEC. CODE § 251.001(1).
2. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. *Id.* § 252.001.
3. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).

4. The respondent became a candidate for public office on or around August 23, 2013, when he filed his application for a place on the ballot. The respondent did not properly file a campaign treasurer appointment with the Houston city secretary until October 30, 2013. In addition, credible evidence indicates that the respondent accepted political contributions and made political expenditures prior to filing his campaign treasurer appointment. Therefore, there is credible evidence of a violation of sections 252.001 and 253.031 of the Election Code.

Accepting Political Contributions from Corporations

5. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b). In order to be a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation or labor organization, 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 or labor organization.
6. A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, of the Election Code. ELEC. CODE § 253.094.
7. 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.
8. According to records from the Texas Secretary of State (SOS), both contributors at issue are domestic for-profit corporations. On October 30, 2013, the respondent filed with the Houston city secretary a campaign treasurer appointment form. The form was signed by the respondent on September 10, 2013, and stated that the respondent was aware of the restrictions in title 15 of the Election Code on contributions from corporations and labor organizations.
9. Regarding the \$200 political contribution from Lanico Healthcare Resources Inc., credible evidence indicates that the contribution was made by a prohibited corporation and was accepted by the respondent. Therefore, there is credible evidence of a violation of sections 253.003 and 253.094 of the Election Code with respect to that contribution.
10. Regarding the \$300 in-kind contribution from SGN-TV, Inc., there is insufficient evidence to show whether the respondent accepted the contribution and whether the respondent knew that the contribution was from a corporation. Therefore, there is insufficient evidence of a

violation of sections 253.003 and 253.094 of the Election Code with respect to that contribution.

Contributor Addresses

11. Each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
12. Regarding the 8-day pre-election report, the respondent did not disclose street addresses for 11 contributors who made political contributions totaling approximately \$2,290. Therefore, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code with respect to that report.
13. Regarding the January 2014 semiannual report, credible evidence indicates that the respondent provided complete contributor address information. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code with respect to that report.

Payee Addresses

14. A campaign finance report must include, for all 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 political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. Regarding the six political expenditures at issue that were disclosed in the 8-day pre-election report, the respondent was required to disclose complete address information because each expenditure exceeded \$100 in the aggregate. Credible evidence indicates that the respondent did not disclose a street address for the payees of six political expenditures totaling approximately \$1,375. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

Total Political Contributions and Expenditures

16. Each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
17. Regarding the 8-day pre-election report at issue, the respondent did not include political contributions totaling \$550 in the amount of total political contributions. In addition, the

respondent did not include political expenditures totaling \$7,249.76 in the amount of total political expenditures. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

Total Political Contributions Maintained

18. Each report must include, as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
19. Regarding the 8-day pre-election report at issue, credible evidence indicates that the respondent did not properly report the total political contributions maintained. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

Timely Filing of Campaign Finance Reports

20. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15 and 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).
21. 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 and 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 and covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).
22. Regarding the July 2013 semiannual report, credible evidence indicates that the respondent was not a candidate or officeholder during the period covered by the report and was therefore not required to file that report. Therefore, there is credible evidence of no violation of section 254.063(b) of the Election Code.

23. Regarding the 30-day pre-election report, the respondent was required to file the report with the Houston city secretary by October 7, 2013. The respondent filed the report with the Houston city secretary on October 28, 2013, which was 21 days after the filing deadline. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.
24. Regarding the 8-day pre-election report, the respondent was required to file the report with the Houston city secretary by October 28, 2013. The respondent filed the report on October 28, 2013. Therefore, there is credible evidence of no violation of section 254.064(c) of the Election Code.

Misleading Use of Office Title

25. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b). For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
26. “Campaign communication” means, in pertinent part, a written communication relating to a campaign for election to public office. *Id.* § 251.001(17).
27. The communications at issue supported the respondent for election to a public office and appeared on a sign and a mailer. Therefore, the communications are political advertising. Regarding the political advertising sign, the communication stated the respondent’s name and office sought but did not include the word “for.” Therefore, there is credible evidence of a violation of section 255.006(c) of the Election Code with respect to the sign.
28. Regarding the mailer, one side of the communication stated the respondent’s name and office sought but did not include the word “for.” However, the communication viewed as a whole does not appear to otherwise be misleading. Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.006(c) of the Election Code with respect to the mailer.

Timely Response to Notice of a Sworn Complaint

29. If the alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) not later than the 10th business day after the date the respondent receives the notice. GOV’T CODE § 571.1242(a)(1). A

respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).

30. The response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52(a). If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b).
31. Regarding sworn complaint SC-31310195, the respondent was required to submit a written response by November 25, 2013 (deadline extended due to holiday). The respondent's written response was received by the commission on February 17, 2014, which was 84 days after the response deadline. Therefore, there is credible evidence of a violation of section 571.1242(c) of the Government 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 these sworn complaints.
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: 1) each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code; 2) a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect; 3) a person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code; 4) 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; 5) each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions; 6) each campaign finance report must include 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 political expenditures are made, and the

dates and purposes of the expenditures; 7) each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period; 8) each campaign finance report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period; 9) 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 and 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 chapter 254 of the Election Code, as applicable, and continuing through the 40th day before election day; and 10) a person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication states the public office sought but does not include the word "for" in the communication in a type size that is at least one-half the type size used for the name of the office.

The respondent also acknowledges that a respondent must respond to a notice of a sworn complaint that contains a Category One violation within 10 business days of receiving the notice of the sworn complaint, and failure to respond to a notice of a sworn complaint within the time required is a separate Category One violation.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes certain 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 sworn complaints SC-31310195 and SC-3140101.

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

Richard Nguyen, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley,
Executive Director