

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GUADALUPE TREVINO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3140134

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on January 30, 2018, to re-consider sworn complaint SC-3140134. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of section 253.033 of the Election Code, a law administered and enforced by the Commission.

The respondent was first elected to the office of Hidalgo County Sheriff in 2002 and held that position until his resignation in March 2014. The evidence indicates that the federal government began investigating public corruption in the Hidalgo County Sheriff's Office (HCSO) in 2012. The respondent, two employees of HCSO, including the respondent's campaign treasurer, and a known drug trafficker were all targets of the investigation.

The evidence indicates that the respondent admitted to accepting cash and other benefits from a known drug trafficker. Some of the cash was used for the respondent's 2012 re-election campaign for the office of Hidalgo County Sheriff, and some of the cash was for the respondent's personal use.

The evidence indicates that the respondent pleaded guilty in federal court to conspiracy to conduct a financial transaction that involved the proceeds of unlawful activity. The respondent was sentenced to five years in federal prison.

To resolve and settle this complaint without further proceedings, the Commission proposed this resolution to the respondent.

II. Allegation

The complaint alleged that the respondent accepted a political contribution in cash that exceeded

\$100 in a reporting period from a single contributor.

III. Facts Supported by Credible Evidence

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

1. During all times relevant to the complaint, the respondent was the holder of and candidate for the office of Hidalgo County Sheriff. The respondent was first elected to the office of sheriff in 2002 and held that position until his resignation in March 2014.
2. The complaint alleged that the respondent accepted a political contribution exceeding \$100 in cash in a reporting period from a single contributor.
3. The respondent disclosed on the July 2012 semiannual report accepting a \$5,000 contribution on June 22, 2012, from a known drug trafficker. The end of the reporting period was June 30, 2012.
4. The respondent disclosed on the 30-day pre-election report for the November 6, 2012, general election, a \$5,000 expenditure to the same known drug trafficker on August 18, 2012, with a purpose description of "Return of Contribution." The check was never cashed.
5. In response to the complaint, the respondent swore he never accepted the contribution at issue. The respondent swore that he sought the advice of the Hidalgo County District Attorney on how to return the money to the contributor. He swore that he was advised to deposit the money in his campaign account and write a check to refund the money to the contributor.
6. Regarding the \$5,000 cash contribution dated June 22, 2012, the respondent swore:

I had intended to write and send [the contributor] the repayment check immediately but was distracted by other events until I undertook to return it on August 18, 2012... It was never my intent to accept this cash contribution, or any other contribution of any kind from the person in question. It was always my intention to return and report the money in the manner recommended by the District Attorney, and I did so, albeit unintentionally, three days late.

7. The respondent provided a photocopy of the carbon duplicate of a check dated August 18, 2012, made out to the contributor for \$5,000. The memo field on the check stated “refund of contribution.”
8. The respondent also submitted a sworn statement from the Hidalgo County District Attorney during the time period at issue. The former district attorney swore that he advised the respondent to deposit the money in his campaign bank account and write a check back to the contributor to return the money. He also confirmed that he advised the respondent to report these transactions on his campaign finance reports.

IV. Findings and Conclusions of Law

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

1. A 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. ELEC. CODE § 254.031(a)(1).
2. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. *Id.* § 253.033(a).
3. A determination to accept or refuse a political contribution that is received by a candidate, officeholder, or political committee shall be made not later than the end of the reporting period during which the contribution is received. If the determination to accept or refuse a political contribution is not made before the time required by Subsection (a) for purposes of this chapter, the contribution is considered to have been accepted on the last day of that reporting period. A political contribution that is received but not accepted shall be returned to the contributor not later than the 30th day after the deadline for filing a report for the reporting period during which the contribution is received. A contribution not returned within that time is considered to be accepted. *Id.* § 254.034(a)-(c).
4. A candidate, officeholder, or political committee commits an offense if the person knowingly fails to return a political contribution as required by Subsection (c). *Id.* § 254.034(d).
5. Although returning a contribution would be the strongest evidence of refusal, the determination to refuse a contribution and the return of the contribution are distinct acts. Ethics Advisory Opinion No. 6 (1992) (EAO 6). Ethics Commission Rules § 20.55(b). In EAO 6, the Commission cautioned that even though the determination to refuse a contribution is distinct from the actual return of a contribution, it would be advisable for a

person who has made a determination to refuse a contribution to take some action to provide evidence of the determination in case it is called into question. Ethics Advisory Opinion No. 6 (1992).

6. Regarding the allegation that the respondent accepted from a contributor in a reporting period a political contribution in cash that exceeded \$100, the respondent disclosed on his July 2012 semiannual report accepting a \$5,000 political contribution on June 22, 2012. Credible evidence indicates that the contribution was in the form of cash. Although the respondent swore that he never intended to accept the \$5,000 cash contribution, the fact that he deposited the money into his campaign account and reported it on his campaign finance report is evidence of acceptance.
7. If the respondent made a determination to refuse the contribution by the end of the reporting period (June 30, 2012), he was required to return the contribution no later than the 30th day after the deadline for filing the July 2012 semiannual report. The deadline for filing the July 2012 semiannual report was July 16, 2012 (deadline extended because of weekend). Thus, the respondent had until August 15, 2012, to return the contribution.
8. There is no evidence that the respondent took any action to indicate his intent to refuse the contribution until the respondent wrote a check returning the contribution on August 18, 2012. Because the respondent did not attempt to return the contribution at issue until after the 30th day after the deadline for filing the July 2012 semiannual report had passed, the respondent accepted the contribution by operation of law. Therefore, there is credible evidence of a violation of section 253.033 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 a candidate or officeholder may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. The respondent agrees to comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the Commission has determined is 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 violation described under Sections III and IV, after considering the sanction necessary to deter future violations, and after re-consideration of the case, the Commission imposes a \$10,000 civil penalty. Regularly-scheduled monthly payments of \$285.00 to satisfy this penalty will begin no later than February 1, 2019 and end no later than December 5, 2021.

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-3140134.

AGREED to by the respondent on this _____ day of _____, 201__.

Guadalupe Trevino, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director