

TEXAS ETHICS COMMISSION

IN THE MATTER OF § BEFORE THE
PERFECTO GARZA, § TEXAS ETHICS COMMISSION
RESPONDENT § SC-3140375

FINAL ORDER

The Texas Ethics Commission (Commission), having heard this case and voting to find a violation of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Perfecto Garza, whose last known mailing address is 6810 E. Ingle Road, Edinburg, Texas. Sworn complaint SC-3140375 was filed with the Commission against the respondent on May 2, 2014. The Notice of Hearing was mailed to the respondent on May 15, 2015, by certified mail, return receipt requested, restricted delivery and delivery confirmation. United States Postal Service records indicate that the Notice of Hearing was delivered to the respondent on May 18, 2015.
2. The preliminary review hearing was held on June 11, 2015, by the Commission in Austin, Texas.
3. The respondent did not file a reply to the Notice of Hearing and did not appear at the hearing.
4. The respondent was an unsuccessful candidate for Hidalgo County Clerk in the March 2014 primary election.

Expenditures Without a Campaign Treasurer Appointment in Effect

5. The complaint alleged that the respondent made political expenditures without first filing a campaign treasurer appointment (CTA). The allegation was based on the complainant swearing that she saw political advertising signs for Perfecto Garza around February 12, 2014, and that she knew he paid a filing fee for his name to appear on the ballot in the primary election.
6. In response to the complaint, the respondent admitted that he had not filed an appointment of a campaign treasurer before paying the fee for his application for a place

on the ballot in the March 2014 primary. The respondent also admitted spending money on campaign signs. The respondent filed campaign finance reports in response to the complaint and disclosed making \$2,300 in political expenditures for “event expense[s], signs, [and] stamps.” Hidalgo County records indicate the respondent filed his CTA on December 17, 2013.

Filing of Campaign Finance Reports

7. The complaint alleged that the respondent did not file his January 2014 semiannual campaign finance report, or his 30-day and 8-day pre-election campaign finance reports for the March 2014 primary election.
8. At the time the complaint was filed, the respondent had not filed any campaign finance reports.
9. The respondent admitted to making campaign expenditures to purchase campaign signs and pay his filing fee without filing any campaign finance reports. He also swore in response to written questions from Commission staff that he did not accept any campaign contributions and that he never maintained a separate campaign account. The respondent stated that he was a first-time candidate and was unaware of the filing requirements.
10. In response to the complaint and after the Commission sent written questions, the respondent filed one campaign finance report with the Hidalgo County Clerk on December 1, 2014. The report is marked as a final report and covers from February 23, 2014, to June 30, 2014.

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11. The complaint also alleged the respondent made political expenditures and accepted political contributions, but did not disclose that activity on campaign finance reports, as required by section 254.031 of the Election Code.
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.

Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. GOV'T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.

Expenditures Without a Campaign Treasurer Appointment in Effect

3. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
4. An individual must file a campaign treasurer appointment for the individual's own candidacy with the county clerk, if the appointment is made for candidacy for a county office, a precinct office, or a district office other than one included in section 252.005(1) of the Election Code. *Id.* § 252.005(2).
5. 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.
6. 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).
7. A campaign expenditure is an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
8. The Commission may consider the failure to timely file a campaign treasurer appointment a technical or *de minimis* violation if, before filing the campaign treasurer appointment, the total amount of political contribution accepted does not exceed \$2,500 and the total amount of political expenditures made or authorized does not exceed \$2,500.
9. In December of 2013, the respondent took the affirmative step of filing for a place on the ballot, one of the enumerated acts in section 251.001(1) of the Election Code. Filing for a place on the ballot made the respondent a candidate.
10. The respondent admitted in a sworn statement that he paid a filing fee for a place on the ballot before filing a campaign treasurer appointment. The filing fee was \$1,200. Hidalgo County records indicate the respondent filed a campaign treasurer appointment on December 17, 2013.
11. Therefore, there is credible evidence of technical or *de minimis* violations of sections 252.001 and 253.031(a) of the Election Code because the respondent was a candidate and knowingly made or authorized campaign expenditures without first filing a campaign treasurer appointment.

Filing of Campaign Finance Reports

12. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). 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).
13. 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. *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 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 Chapter 254, 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).
14. The respondent applied for a place on the ballot in December 2013. Therefore, he was a candidate at that time and was required to file a January 2014 semiannual report by January 15, 2014. The respondent did not file a campaign finance report until December 1, 2014. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.
15. The respondent had an opponent on the ballot in the March 2014 primary election and did not elect to file on the modified reporting schedule. Accordingly, the respondent was required to file the 30-day pre-election report by February 3, 2014, and the 8-day pre-election report by February 24, 2014. The respondent did not file a campaign finance report until December 1, 2014, more than eight months after the election. Therefore, there is credible evidence of violations of section 254.064 of the Election Code.

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16. 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."

17. 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.
18. 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.
19. The Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. GOV'T CODE § 571.173.

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$250.

Order Date: _____

FOR THE COMMISSION

Natalia Luna Ashley
Executive Director
Texas Ethics Commission