

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARY H. CAZARES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31511175

ORDER And AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on August 15, 2016, to consider sworn complaint SC-31511175. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of section 254.064(b) of the Election Code, technical or *de minimis* violations of sections 253.031 and 254.094 of the Election Code, and no violation of section 255.003 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) accepted political contributions and made political expenditures at a time when she did not have a campaign treasurer appointment (CTA) in effect; 2) did not file a campaign finance report within 15 days after appointing a campaign treasurer; 3) did not timely file the 30-day pre-election report for the November 2015 special election; and 4) spent or authorized the spending of public funds for political advertising.

III. Facts Supported by Credible Evidence

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

Accepting Political Contributions and Making Political Expenditures Without a Campaign Treasurer Appointment in Effect

1. The complaint alleged the respondent accepted political contributions and made political expenditures at a time when the respondent did not have a CTA in effect.

2. The respondent was appointed to fill the seat of a retiring Galveston Independent School District (GISD) trustee in July 2012. She successfully ran for her first elected term in the November 3, 2015, election. She was opposed in the election.
3. The respondent filed her application for a place on the ballot on July 27, 2015. The respondent filed her CTA on October 16, 2015.
4. The first campaign finance report the respondent filed was a 30-day pre-election report on October 21, 2015. The report covered the period from August 26, 2015, to October 5, 2015, and reported no activity.
5. The respondent filed the 8-day pre-election report on October 26, 2015. It covered the period from September 25, 2015, to October 26, 2015. The 8-day pre-election report disclosed \$354.39 in total political contributions accepted during the reporting period and \$2,487.54 in total political expenditures made during the reporting period. All of the expenditures were made from personal funds. Among the political expenditures were a \$524 expenditure and a \$224.73 expenditure, both made on October 14, 2015, for political advertising signs. Both expenditures, totaling \$748.73, were made two days before the respondent filed her CTA.
6. The political contributions reported in the 8-day pre-election report included a \$100 political contribution accepted on October 14, 2015, which was two days before the respondent filed her CTA.
7. In response to the complaint, the respondent swore that the political contributions and political expenditures included in her 8-day pre-election report reflect her first reportable activity.

Filing of Campaign Finance Reports

8. The complaint alleged that the respondent, as an officeholder, did not file a campaign finance report within 15 days of filing her CTA and did not timely file the 30-day pre-election report in advance of the November 3, 2015, election.

15th Day After Appointing a Campaign Treasurer Report

9. The respondent did not file a report marked as a “15th day after campaign treasurer appointment.” However, the 30-day pre-election report was filed within 15 days of the respondent filing a CTA.

30-day Pre-election Report

10. Records on file with the GISD indicate that the first campaign finance report the respondent filed was the 30-day pre-election report on October 21, 2015. The report covered August 26, 2015, through October 5, 2015, and disclosed \$0 in political expenditures and \$0 in political contributions.

Spending or Authorizing the Spending of Public Funds for Political Advertising

11. The complaint alleged the respondent, as an officer of a political subdivision, knowingly spent or authorized the spending of public funds for political advertising. The complaint alleged the act that constituted a violation was addressing the public at a GISD board of trustees meeting and urging the public to vote in the special election in which the respondent was a candidate, and the school board trustee seat she was running for was the only office on the ballot. The respondent made the exhortation to vote to the audience at a public GISD board of trustees meeting, which was broadcast on public access television and later posted on the school district's Internet website for on-demand streaming.
12. The meeting took place on October 18, 2015. A review of the recorded school board meeting shows the respondent note that voter turnout was low in the special election and urge people to go out and vote. She did not specifically advocate that people vote for her, only that they go vote.
13. However, after the respondent urged voters to go vote, another school board trustee made a formal endorsement for the respondent regarding her re-election at the broadcast meeting. After concluding his comments regarding an outgoing school board member, the other trustee momentarily ceded the floor before he stated the following:

Oh, I have one more thing. I have one more thing.
I normally don't make endorsements, but there is an election. Mary Cazares is running for re-election and I do endorse her as a candidate. And I know elected officials probably shouldn't do that. And I was told I shouldn't do it. But I am doing it anyway. So I endorse Ms. Cazares for this election, for the board, for district 3-C.

14. In response to the complaint the respondent swore:

I did not spend or authorize the spending of public funds for political advertising. At the end of the meeting the Board of Trustees on October 18, 2015, during Board comments, I did encourage citizens to vote in the upcoming election. The election . . . for position 3C, was the only contested election. I never authorized the expenditure of public funds for political advertising. When I encouraged the public to vote, I was

merely encouraging voting in the election, not voting for one candidate or the other. I never encouraged the public to vote for me in the Board meeting.

15. The respondent later told the Commission she did not know that the other trustee was going to endorse her.
16. The Commission received from the other trustee a sworn statement in which he swears that he did not coordinate or give an advanced notice to the respondent of his plan to endorse her at the public meeting.

IV. Findings and Conclusions of Law

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

Accepting Political Contributions and Making Political Expenditures Without a Campaign Treasurer Appointment in Effect

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252, Election Code. ELEC. CODE § 252.001.
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. *Id.* § 253.031(a).
3. A technical, clerical, or *de minimis* violation for purposes of section 571.0631 of the Government Code may include a first-time allegation against a respondent for failure to timely file a campaign treasurer appointment if, before filing the campaign treasurer appointment, the total amount of political contributions accepted does not exceed \$2,500 and the total amount of political expenditures made or authorized does not exceed \$2,500. Ethics Commission Rules § 12.81(7).
4. Credible evidence based on the activity disclosed in the respondent's campaign finance reports indicates that the respondent accepted \$100 in total political contributions and made political expenditures totaling \$748.73 before filing a CTA. This is the first allegation of this type made against the respondent and the total political expenditures and political contributions are below the \$2,500 technical or *de minimis* threshold laid out in section 12.81(7) of the Ethics Commission Rules. Therefore, there is credible evidence of technical or *de minimis* violations of section 253.031 of the Election Code.

Filing of Campaign Finance Reports*15th Day After Appointing a Campaign Treasurer Report*

5. An officeholder who appoints a campaign treasurer is required to file a report not later than the 15th day after the date the officeholder's campaign treasurer is appointed. ELEC. CODE § 254.094(c). The report covers the period beginning the first day after the period covered by the last report required to be filed under this chapter or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed. *Id.* § 254.094(b).
6. If at the end of any reporting period prescribed by this subchapter an officeholder who is required to file a report with an authority other than the Commission has not accepted political contributions that in the aggregate exceed \$500 or made political expenditures that in the aggregate exceed \$500, the officeholder is not required to file a report covering that period. *Id.* § 254.095.
7. The respondent filed her CTA on October 16, 2015, and made more than \$500 in political expenditures before filing the CTA. Therefore, she was required to file the 15th day after appointing a campaign treasurer report by November 2, 2015 (the 15th day fell on a weekend and therefore was extended to the next business day).
8. The respondent filed her 30-day pre-election report on October 21, 2015, before the 15th day after appointment of a campaign treasurer report was due. However, that report only covered a reporting period beginning on August 26, 2015. The 15th day after appointment of a campaign treasurer report should have covered through the day the respondent took office on July 11, 2012. However, the respondent swore that the "first money I spent was on October 14, 2015." She also stated that the first contributions she accepted were disclosed in the 8-day pre-election report.
9. Although the respondent filed a report within 15 days of appointing a campaign treasurer, the report period covered did not begin when the respondent was appointed to office. This amounts to the report covering almost three years less time than was required by section 254.094 of the Election Code, even if there was no political activity during the omitted period of time. Credible evidence shows that the respondent did not file the 15th day after appointing a campaign treasurer report, as required by section 254.094 of the Election Code, in that the report she filed within 15 days of appointing a campaign treasurer did not cover the necessary time period. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.094 of the Election Code.

30-day Pre-election Report

10. 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 chapter 254, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b).
11. The respondent was an opposed candidate during the 30-day reporting period. The 30-day pre-election report for the November 3, 2015, election was due October 5, 2015. The respondent did not file the 30-day pre-election report until October 21, 2015, making it 16 days late. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.

Spending or Authorizing the Spending of Public Funds for Political Advertising

12. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003(a).
13. "Political advertising" means, in relevant part, a communication supporting or opposing a candidate for nomination or election to a public office that in return for consideration is broadcast on television, or appears on an Internet website. *Id.* § 251.001(16).
14. In Ethics Advisory Opinion No. 456 (2004), the Commission concluded that Section 255.003 of the Election Code does not prohibit a city from broadcasting a tape of a city council meeting at which the city council considers placing an issue before the voters if the broadcast is in keeping with the city's regular practice of broadcasting meetings. The Commission reasoned that in that situation, city resources would not be used "for" political advertising even if an incidental effect of broadcasting the tape would be to broadcast statements supporting or opposing a ballot measure.
15. However, the Commission cautioned that:

It is not possible, however, to state that comments by city council members at a recorded public meeting could never give rise to a violation of section 255.003 because we can imagine a situation in which one or more city council members might arrange a discussion of a matter not pending before the city council with the hope that broadcasts of the discussion would influence the outcome of an election.

16. In this case, the credible evidence shows that the other trustee acted alone in making statements that supported the respondent during the broadcast of the school board meeting. Therefore, the question is whether the respondent urging voters to turn out and vote, without advocating they vote in a particular way, amounts to a communication that supports or opposes a candidate. This analysis is complicated in this case by the context in which this communication took place, i.e., a seemingly neutral statement made by a candidate in an election in which her seat was the only one on the ballot. The respondent was also only able to broadcast the message to vote by virtue of her position as a GISD trustee.
17. Although the context of the exhortation to vote could be suggestive of support, the statement standing alone did not support or oppose a given candidate. Based on the facts of this case, the context of the statement was not enough to transform a neutral statement to vote into a statement that supported the respondent. Consequently, there is credible evidence of no violation of section 255.003 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 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. The respondent further acknowledges that an officeholder who appoints a campaign treasurer is required to file a report not later than the 15th day after the date the officeholder's campaign treasurer is appointed. The report covers the period beginning the first day after the period covered by the last report required to be filed under this chapter or the day the officeholder takes office, as applicable, and continuing through the day before the date the officeholder's campaign treasurer is appointed. The respondent further 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 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 \$125 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-31511175.

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

Mary H. Cazares, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director