

TEXAS ETHICS COMMISSION

IN THE MATTER OF

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BEFORE THE

EDWARD D. VILLANUEVA,

TEXAS ETHICS COMMISSION

RESPONDENT

SC-31806232, SC-31806233,
SC-31806234, SC-31806235,
SC-31806236, SC-31806237,
SC-31806238 AND SC-31806239

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on December 13, 2018, and considered sworn complaints SC-31806232, SC-31806233, SC-31806234, SC-31806235, SC-31806236, SC-31806237, SC-31806238, and SC-31806239. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031, 254.036, 254.063, and 254.064 of the Election Code, laws administered and enforced by the Commission. To resolve and settle these complaints without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaints alleged that the respondent: 1) did not properly disclose political contributions, political expenditures, and/or the total amount of political contributions maintained in campaign finance reports filed from July 2016 through January 2018; 2) did not timely file the January and July 2017 semiannual reports; 3) did not timely file the 30-day and 8-day pre-election reports for the May 5, 2018, uniform election; 4) did not complete the January and July 2017 semiannual reports in black ink; and 5) did not include cover sheet page three subtotals with the January 2018 semiannual report. The Commission also considered whether the respondent timely filed a July 2018 semiannual report.

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 complaints, the respondent was Council Member, Place 1, for the City of Helotes, Texas. The respondent was a candidate for Mayor of Helotes in the

May 6, 2017, uniform election, and was a candidate for re-election to Council Member, Place 1, in the May 5, 2018, uniform election.

Disclosure of Political Contributions and Expenditures

2. The complaints alleged that the respondent did not properly disclose total political contributions maintained in campaign finance reports filed from July 2016 through January 2018, or in the alternative, did not properly report political contributions and political expenditures. The complaints also alleged that the respondent did not properly disclose total political contributions of \$50 or less in the 30-day and 8-day pre-election reports for the May 2017 election.
3. In response to the complaints the respondent provided campaign account bank statements. The campaign finance reports at issue, along with the bank statements, disclosed the following amounts of political contributions maintained:
 - July 2016 semiannual report disclosed \$1.00; bank statement showed \$2,853.78.
 - January 2017 semiannual report disclosed \$0; bank statement showed \$2,853.78.
 - 30-day pre-election report for May 2017 election disclosed \$2,106.30; bank statement showed \$2,106.30.
 - 8-day pre-election report for May 2017 election disclosed \$2,206.30; bank statement showed \$2,306.30.
 - July 2017 semiannual report disclosed \$2,206.30; bank statement showed \$2,306.30.
 - January 2018 semiannual report disclosed \$2,306.30; bank statement showed \$2,306.30.
4. Regarding the 30-day and 8-day pre-election reports for the May 2017 election, the respondent accepted one political contribution of \$200 during each reporting period and itemized each contribution. Although the respondent properly disclosed total political contributions of \$200 during each reporting period, the respondent erroneously included the \$200 contribution in the total amount of political contributions of \$50 or less in each report.
5. Based on the campaign finance reports and bank statements provided by the respondent, credible evidence indicates that the respondent disclosed all political contributions accepted and political expenditures made in the reports at issue.

Filing of Semiannual Reports

6. The complaints alleged that the respondent did not timely file the January and July 2017 semiannual reports. Although not alleged in the complaints, the evidence also indicated that the respondent did not file a July 2018 semiannual report.

7. Based on records on file with the City of Helotes, the respondent had an active campaign treasurer appointment on file during all times relevant to the complaints. The respondent was required to file the January 2017 semiannual report by January 17, 2017 (deadline extended due to weekend and holiday), and the July 2017 semiannual report by July 17, 2017 (deadline extended due to weekend). Records on file with the City of Helotes confirm that the respondent filed the January 2017 semiannual report one-day late on January 18, 2017, and the July 2017 semiannual report four-days late on July 21, 2017. The respondent did not accept any political contributions or make any political expenditures during the reporting periods. Regarding the January 2017 semiannual report, credible evidence indicates that the report was filed late due to medical reasons.
8. Although not alleged in the complaints, the evidence also indicates that the respondent did not file a final report after the May 2018 election, and therefore the respondent was required to file a July 2018 semiannual report by July 16, 2018 (deadline extended due to weekend). The respondent had \$1,387.27 in political contributions maintained during the reporting period but did not accept any political contributions or make any political expenditures. The bank statements show that the respondent withdrew the \$1,387.27 and closed his campaign bank account on May 11, 2018.
9. In response to the complaint, the respondent filed all outstanding reports.

Filing of Pre-election Reports

10. The complaints alleged that the respondent did not file the 30-day and 8-day pre-election reports for the May 5, 2018 election, in which the respondent was a candidate for re-election to Council Member, Place 1, City of Helotes. The respondent did not elect to file campaign finance reports on the modified reporting schedule and had an opponent whose name appeared on the ballot. Accordingly, the respondent was required to file the 30-day pre-election report by April 5, 2018, and the 8-day pre-election report by April 27, 2018. The respondent did not file the reports before the election. Regarding the 30-day pre-election report, credible evidence indicates the respondent did not have any activity during that reporting period. Regarding the 8-day pre-election report, the evidence indicates that the respondent made two political expenditures totaling \$919.03 for political advertising during the reporting period.
11. In response to the complaint, the respondent filed all outstanding reports.

Campaign Finance Reports in Blue Ink

12. The complaints alleged that the respondent improperly used blue ink to complete the January and July 2017 semiannual reports, instead of black ink. Records on file with the City of Helotes confirm that the respondent completed both reports in blue ink.

Cover Sheet Subtotals

13. The complaints alleged that the respondent did not submit cover sheet page three subtotals with the January 2018 semiannual report. According to records on file with the City of Helotes, the respondent's January 2018 semiannual report only included cover sheet pages one and two.

IV. Findings and Conclusions of Law

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

Disclosure of Political Contributions and Expenditures

1. Each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. ELEC. CODE § 254.031(a)(5).
2. 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. *Id.* § 254.031(a)(6).
3. Each campaign finance 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. *Id.* § 254.031(a)(8).
4. A de minimis error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section. *Id.* § 254.031(a-1).
5. For purposes of Election Code § 254.031(a-1), the difference between the total amount of political contributions maintained that is disclosed in a report and the correct amount is a de minimis error if the difference does not exceed \$250, or the lesser of 10% of the amount disclosed or \$2,500. Ethics Commission Rules § 20.50(c).
6. Regarding the 30-day pre-election report for the May 2017 election and the January 2018 semiannual report, credible evidence indicates that the respondent properly disclosed total political contributions maintained. Therefore, there is credible evidence of no violation of section 254.031(a)(8) of the Election Code regarding those two reports. Regarding the 8-day pre-election report for the May 2017 election and the July 2017 semiannual report, credible evidence shows that the errors were *de minimis* under the thresholds set out in section 20.50(c) of the Ethics Commission Rules. Therefore, in accordance with section 254.031(a-1) of the Election Code, there is credible evidence of

no violation of section 254.031(a)(8) of the Election Code regarding those two reports. Regarding the July 2016 and January 2017 semiannual reports, the respondent did not properly disclose total political contributions maintained. The errors were not *de minimis*. Therefore, there is credible evidence of violations of section 254.031(a)(8) of the Election Code regarding those two reports.

7. Credible evidence also indicates that the respondent improperly disclosed total political contributions of \$50 or less in the 30-day and 8-day pre-election reports for the May 2017 election. The respondent disclosed \$200 in each report but should have disclosed \$0. Therefore, there is credible evidence of violations of section 254.031(a)(5) of the Election Code regarding those two reports.
8. Credible evidence indicates that the respondent disclosed all political contributions accepted and political expenditures made in the campaign finance reports at issue filed from July 2016 to January 2018. Therefore, there is credible evidence of no violation of section 254.031 of the Election Code regarding those allegations.

Filing of Semiannual Reports

9. 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. 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).
10. Credible evidence indicates that the respondent did not timely file the January 2017, July 2017, and July 2018 semiannual reports. Therefore, there is credible evidence of violations of section 254.063 of the Election Code. The Commission assesses no civil penalty regarding the late January 2017 semiannual report due to the medical issues stated by the respondent.

Filing of Pre-election Reports

11. 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). 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).

12. As an opposed candidate not filing under the modified reporting schedule, the respondent was required to file the 30-day and 8-day pre-election reports for the May 5, 2018, election. Credible evidence indicates that the respondent did not timely file the reports. Therefore, there is credible evidence of violations of section 254.064 of the Election Code.

Campaign Finance Reports in Blue Ink

13. Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. A report filed with the commission that is not required to be filed by computer diskette, modem, or other means of electronic transfer must be on a form prescribed by the commission and written in black ink or typed with black typewriter ribbon or, if the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission. ELEC. CODE § 254.036(a).
14. Credible evidence shows the respondent completed both the January and July 2017 semiannual reports in blue ink. However, the requirement under section 254.036(a) of the Election Code that campaign finance reports not required to be filed electronically be completed in black ink only applies to reports filed with the Commission. The respondent does not file campaign finance reports with the Commission. Therefore, there is credible evidence of no violation of section 254.036(a) of the Election Code regarding these allegations.

Cover Sheet Subtotals

15. Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. ELEC. CODE § 254.036(a).
16. If a required report will disclose that there has been no reportable activity during the reporting period, the filer shall submit only those pages of the report necessary to identify the filer and to swear to the lack of reportable activity. Ethics Commission Rules § 20.65(c).
17. The campaign finance report (Form C/OH) that is prescribed by the Commission requires filers to complete, at the very least, all three cover sheet pages. If a filer has no activity to disclose during a reporting period, then the filer should enter a \$0 in the totals/subtotals to properly disclose that fact. Credible evidence shows the respondent did not submit cover sheet page three with his January 2018 semiannual report. However, the respondent did not have any activity during the reporting period and the omission did not substantially

affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.036(a) 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 these sworn complaints.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in these matters.
3. The respondent acknowledges that: 1) each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period; 2) each campaign finance 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; 3) 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; 4) 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 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 5) each report filed with an authority other than the Commission must be in a format prescribed by the Commission. The campaign finance report form that is prescribed by the Commission includes cover sheet page three.

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 \$250 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-31806232, SC-31806233, SC-31806234, SC-31806235, SC-31806236, SC-31806237, SC-31806238, and SC-31806239.

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

Edward D. Villanueva, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director