

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SID ARISMENDEZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31807266

FINAL ORDER

I. Recitals

The Texas Ethics Commission (Commission) met on December 13, 2018, and considered sworn complaint SC-31807266. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 255.001, 254.064, and 255.007 of the Election Code, laws administered and enforced by the Commission. The Commission found no credible evidence of a violation of section 255.006 of the Election Code.

The Commission further determined that there is credible evidence that the respondent failed to respond to the sworn complaint, and failed to answer written questions, in violation of Government Code, section 571.1242(c). Further, the Commission finds that the respondent was duly served with the date and time of the preliminary review hearing, but failed to appear.

To resolve and settle this complaint without further proceedings, the Commission adopted this Order.

II. Allegations

The complaint alleged that the respondent: 1) did not include on political advertising a disclosure statement as required by section 255.001 of the Election Code and did not include a highway right-of-way notice on political advertising signs as required by section 255.007 of the Election Code; 2) failed to file 30-day and 8-day pre-election reports for the May 5, 2018, election, in violation of section 254.064 of the Election Code; and 3) represented that he held a public office that he did not hold at the time the representations were made by not including the word "for" before the office sought on campaign communications, which is prohibited by section 255.006 of the Election Code.

The respondent failed to respond to the complaint and or answer written questions/admissions propounded to him by the Commission.

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 complaint, the respondent was an opposed, non-incumbent candidate for Coastal Bend College Board of Trustees, Place 6 in the May 5, 2018, election.

Political Signage Requirements

2. The complaint alleged that the respondent failed to include on political advertising a required disclosure statement or a highway right-of-way notice on political advertising signs for the May 5, 2018 election. At issue in the complaint were the following campaign signs.



3. Although neither political advertising sign appears to contain either the required disclosure statement or the highway right-of-way language, staff's investigation revealed that the second sign is one that the respondent was responsible for. (The first sign was apparently purchased by a non-related third party without the input of the candidates).
4. The second sign at issue (stating "Let's clean up the mess!") fails to include any statement that it is political advertising, or who is paying for the sign, nor does it include the mandated highway right-of-way notice.

Filing of Pre-Election Reports

5. Records on file with the local filing authority confirm that the respondent filed an Appointment of Campaign Treasurer (CTA) on January 23, 2018. However, according to the CTA on file, the respondent elected to file campaign finance reports under the *modified* reporting schedule, which means that he represented that he was not going to spend over \$500, and as such was not required to file campaign finance reports. However, the complaint alleges that respondent apparently spent more than \$500 on political advertising and therefore should have filed reports.
6. The complaint alleged that the respondent did not file the 30-day and 8-day pre-election reports for the May 5, 2018, election. The local filing authority has indicated that the respondent had not filed either of these pre-election reports.

Misleading Use of Office Title

7. The complaint alleged that the respondent represented that he held a public office that he did not hold at the time the representations were made by not including the word "for" before the office sought on campaign communications.
8. At issue are the two signs pictured above. The first sign was apparently purchased by a non-related third party without the input of the respondent. The second sign in question does properly contain the word "for."

Response to Sworn Complaint and Questions

9. Sworn complaint SC-31807266 was filed on July 23, 2018. Per the respondent's request, a copy was e-mailed to him on July 25, 2018. The Commission sent a notice of the sworn complaint to the respondent by certified mail on July 30, 2018. According to the United States Postal Service's record of the delivery, the notice of this complaint was delivered to the respondent on August 7, 2018. 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 complaint by August 21, 2018. The Commission has not received a written response to the sworn complaint at all.

10. On October 3, 2018, Written Questions and Admissions were sent to the respondent. According to the United States Postal Service's record of the delivery, the notice of this complaint was delivered to the respondent on October 5, 2018. Based on the delivery date of the notice, the respondent was required to respond to the questions by October 26, 2018. The Commission has not received any written responses to the questions/admissions at all.

IV. Findings and Conclusions of Law

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

1. The respondent received legally sufficient notice of the hearing in this case, pursuant to Government Code, section 571.032 and Ethics Commission Rules, section 12.21. The hearing was held in accordance with Ethics Commission Rules, section 12.23.

Political Signage Requirements

2. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising: (1) that it is political advertising; and (2) the full name of: (a) the person who paid for the political advertising; (b) the political committee authorizing the political advertising; or (c) the candidate or specific purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001.
3. The following notice must be written on each political advertising sign designed to be seen from the road: "NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY. *Id.* § 255.007(a).
4. A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the required notice or instructs another person to place a political advertising sign that does not contain the required notice. *Id.* § 255.007(b).
5. "Political advertising" means, in pertinent part, a communication supporting or opposing a candidate for election to a public office that appears in a pamphlet, circular, flier, billboard or other sign. *See Id.* § 255.001(16).
6. Credible evidence indicates that the respondent did not include a disclosure statement or highway right-of-way notice on campaign signs meant to be seen from the road, and did not timely file 30-day and 8-day pre-election reports. Therefore, there is credible evidence of violations of sections 255.001 and 255.007 of the Election Code.

Filing of Pre-Election Reports

7. 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).
8. As an opposed candidate who appears to have exceeded the maximum amount of expenditures that would allow for 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.
9. Credible evidence indicates that the respondent failed to file either report. Therefore, there is credible evidence of a violation of sections 254.064(b) and 254.064(c) of the Election Code.

Misleading Use of Office Title

10. A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. ELEC. CODE § 255.006(a). 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. *Id.* § 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).
11. "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television, or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. *Id.* § 251.001(16).

12. "Campaign communication" means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. *Id.* § 251.001(17).
13. Although the respondent does not and did not hold the office of Coastal Bend College Trustee Place 6, the signs advertising his candidacy were either provided by a third party without the respondent's knowledge, or did, in fact, include the word "for" immediately before the name of the office. Therefore, there is no credible evidence of a violation of section 255.006(c) of the Election Code.
14. 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. *Id.* § 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).
15. "Campaign communication" means, in pertinent part, a written communication relating to a campaign for election to public office or office. *See Id.* § 251.001(17).

Response to Sworn Complaint and Questions

16. A respondent must respond to a Category One sworn complaint within 10 business days from the date the respondent receives the sworn complaint. A respondent's failure to timely respond is a Category One violation in and of itself. GOV'T CODE § 571.1242.
17. During a preliminary review, the commission staff may submit to the respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. GOV'T CODE § 571.1243. A respondent must respond to these written questions not later than 15 business days after the respondent receives the written questions. Texas Ethics Commission Rules, section 12.83(a).

V. 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.

VI. Sanction

The Texas Ethics 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.

When assessing a civil penalty against a respondent, the factors the Commission may consider whether the respondent timely responds to written questions or subpoenas. Ethics Commission Rules, section 12.36(a).

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 \$5,000 civil penalty.

VII. Order

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Texas Ethics Commission, within 30 days of the date of this order, a civil penalty in the amount of \$5,000. Failure to pay this amount within 30 days from the date of this order, the matter of the collection of this civil penalty will be referred to the Office of the Attorney General of Texas.

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director