

TEXAS ETHICS COMMISSION

IN THE MATTER OF

CARLOS A. MERLA,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31808296

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 27, 2019, to consider sworn complaint SC-31808296. 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 255.006 of the Election Code, laws administered and enforced by the Commission. To resolve and settle the complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) misrepresented that he held an elective 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; 2) did not sign and notarize the affidavit on the 8-day pre-election report for the May 5, 2018, election; 3) did not file a July 2018 semiannual report; 4) did not disclose the correct period covered in a campaign finance report; and 5) did not disclose and/or did not properly disclose political contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent was a non-incumbent candidate for the City Council of Grapevine, Texas, in the May 5, 2018, election.

Misleading Campaign Communications

2. The complaint alleged that the respondent misrepresented that he held an elective public office on the Grapevine City Council that he did not hold at the time the representations were made by not including the word “for” before the office sought on political advertising.

3. The respondent published and distributed mailers, flyers, and signs containing political advertising. The respondent also created campaign and social media websites containing political advertising. The political advertising included the statements, "Elect Carlos Merla Grapevine City Council Place 2" and "Vote Carlos Merla Grapevine City Council Place 2." The campaign communications did not include the word "for" preceding the position the respondent sought.

8-day Pre-Election Report and Affidavit

4. The complaint alleged that the respondent did not sign and notarize the affidavit on the 8-day pre-election report for the May 2018 election.
5. Records on file with the Grapevine City Secretary's Office confirm that the respondent's 8-day pre-election report was not signed or notarized.

July 2018 Semiannual Report and Period Covered

6. The complaint alleged that the respondent did not file the July 2018 semiannual report. The complaint also alleged that the respondent did not disclose the correct reporting period covered on a report filed on July 16, 2018.
7. Records on file with the Grapevine City Secretary's Office confirm that the respondent filed a campaign finance report, marked as a final report, on July 16, 2018. The report was not also marked as the July 2018 semiannual report.
8. Records on file with the Grapevine City Secretary's Office confirm that the final report filed on July 16, 2018, covered the period from March 27, 2018, through May 5, 2018.
9. In response to the complaint, the respondent filed a corrected report covering the period from April 26, 2018, including the first day after the period covered by the last report (the 8-day pre-election report) through June 30, 2018. On the corrected report, the respondent disclosed total political contributions of \$1,000 and total political expenditures of \$730.

Reporting Political Contributions

10. The complaint alleged that the respondent did not include an itemization of each political contribution that exceeded \$50 on Schedule A1 (Monetary Political Contributions) for the report filed on July 16, 2018. The complaint also alleged that the respondent did not disclose political contributions accepted through a GoFundMe account on any campaign finance reports that he filed.
11. The original report filed on July 16, 2018, disclosed \$0 in unitemized political contributions and \$1,000 in total political contributions. Cover sheet page three, the schedule subtotal page of the report, disclosed a Schedule A1 subtotal of \$1,000. However, the original report did not include Schedule A1. Therefore, the respondent did not include the amount

of political contributions from each person, the full name and address of each person making the contributions, and the dates of the contributions for the contributions reported to exceed \$50 on the final report.

12. In his sworn response to the complaint, the respondent admitted that he did not disclose seven political contributions totaling \$650 accepted through a GoFundMe account. The respondent filed a corrected 8-day pre-election report for the May 2018 election, which disclosed and itemized the political contributions accepted through the GoFundMe account.

IV. Findings and Conclusions of Law

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

Misleading Campaign Communications

1. 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. ELEC. CODE § 255.006(b). 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).
2. There is credible evidence that the respondent did not hold the office he was seeking, and that the campaign communications at issue did not use the word “for” in connection with the name of the office sought by the respondent. Therefore, there is credible evidence of violations of section 255.006 of the Election Code.

8-day Pre-Election Report Affidavit

3. Each report filed under this chapter that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: “I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code.” ELEC. CODE § 254.036(h).
4. There is credible evidence that the respondent did not execute the affidavit for the 8-day pre-election report for the May 2018 election. Therefore, there is credible evidence of a violation of section 254.036(h) of the Election Code.

July 2018 Semiannual Report and Period Covered

5. 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).
6. There is credible evidence that the respondent filed a final report on July 16, 2018, that was not designated as a July 2018 semiannual report and did not cover the period beginning the first day after the period covered by the last report required to be filed and continuing through June 30. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.

Reporting Political Contributions

7. Each 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).
8. 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. *Id.* § 254.031(a)(5).
9. 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).
10. There is credible evidence that the respondent did not include the amount of political contributions from each person that in the aggregate exceeded \$50, the full name and address of the person making the contributions, and the dates of the contributions totaling \$1,000 on the final report. There is also credible evidence that the respondent did not disclose seven political contributions totaling \$650 that were accepted during the 8-day pre-election reporting period. Therefore, there is credible evidence of violations of section 254.031 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 acknowledges the violations and consents to the entry of this order and agreed resolution for the purpose of resolving the 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: 1) 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. 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; 2) Each report filed under Chapter 254 of the Election Code that is not filed by electronic transfer must be accompanied by an affidavit executed by the person required to file the report. The affidavit must contain the statement: “I swear, or affirm, under penalty of perjury, that the accompanying report is true and correct and includes all information required to be reported by me under Title 15, Election Code;” 3) A candidate shall file two reports each year. 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 subchapter C, Chapter 254 of the Election Code, as applicable, and continuing through June 30; 4) Each 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions; 5) 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; and 6) 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. 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 \$500 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-31808296.

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

Carlos Merla, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Executive Director