

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FIDENCIO LEIJA, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31908128

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on November 20, 2019, to consider sworn complaint SC-31908128. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.063, 254.064, and 255.007 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleges that the respondent: 1) did not file a 30-day and an 8-day pre-election report for the May 4, 2019, election, in violation of section 254.064 of the Election Code; 2) did not file a July 2019 semiannual report, in violation of section 254.063 of the Election Code; and 3) did not include on political advertising signs the notice stating that the signs shall not be placed in a highway right-of-way, in violation of section 255.007 of the Election Code.

III. Findings of Fact and Conclusions of Law

Credible evidence supports the following findings of fact and conclusions of law:

1. The respondent was an opposed candidate for Santa Fe City Council, Place 4, in the May 4, 2019, election. Records provided by the Santa Fe city secretary show that the respondent filed his campaign treasurer appointment on February 15, 2019, and elected to file reports on the modified reporting schedule. However, the records also show that the respondent exceeded the \$500 limit for modified reporting before any campaign finance reports were required to be filed.

Filing of Campaign Finance Reports

2. Regarding the 30-day pre-election report for the May 4, 2019, election, the respondent was required to file the report by April 4, 2019, and disclose activity from February 15, 2019, through March 25, 2019.

3. Regarding the 8-day pre-election report for the May 4, 2019, election, the respondent was required to file the report by April 26, 2019, and disclose activity from March 26, 2019, through April 24, 2019.
4. Regarding the July 2019 semiannual report, the respondent did not file a final report on or before June 30, 2019. Therefore, the respondent was required to file the report by July 15, 2019, and disclose activity from April 25, 2019, through June 30, 2019.
5. In response to the complaint, the respondent stated he filed a report on August 14, 2019, in response to a notice he received from the city secretary. The respondent also admitted that the reports were filed late.
6. Records provided by the respondent and the city secretary show that the report was filed on August 14, 2019. It covered a reporting period from February 15, 2019, through July 15, 2019, which encompassed the reporting periods required for the 30-day and 8-day pre-election reports as well as the July 2019 semiannual report. The report disclosed \$5,600 in total political contributions and \$5,617.40 in total political expenditures. Upon request from Commission staff, the respondent also filed a correction affidavit on August 22, 2019, to include Page 3 of the coversheet for the report.
7. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15. *Id.* § 254.063(b). 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 of chapter 254, as applicable, and continuing through June 30. *Id.*
8. 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. *Id.* § 254.064(b). 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.* 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. *Id.* § 254.064(c). The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.*
9. An opposed candidate required to file reports under subchapter C of chapter 254 may file reports under the modified reporting schedule if the candidate does not intend to accept political contributions that in the aggregate exceed \$500 or to make political expenditures that in the aggregate exceed \$500 in connection with an election. ELEC. CODE § 254.181(a). In order to file reports under modified reporting schedule, an opposed candidate must file with the campaign treasurer appoint a written declaration of intent not to exceed \$500 in

political contributions or political expenditures in the election. *Id.* § 254.182(a). An opposed candidate that files under modified reporting schedule is only required to file semiannual reports due no later than July 15 and January 15. *Id.* § 254.184(b). However, if an opposed candidate exceeds \$500 in political contributions or political expenditures in the election then the candidate shall file reports as required by subchapter C chapter 254, as applicable. *Id.* § 254.183(a).

10. Records provided by the city secretary show that the respondent filed a written declaration with his campaign treasurer appointment to file reports under the modified reporting schedule. However, the records also show that the respondent exceeded \$500 in political contributions on March 6, 2019. Since the respondent exceeded the \$500 limit for accepting political contributions under modified reporting schedule and before any reports were required to be filed, he was required to file reports in accordance with subchapter C of chapter 254 of the Election Code.
11. Regarding the 30-day pre-election report for the May 2019 election, credible evidence shows the respondent filed the report one hundred thirty-two days late. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.
12. Regarding the 8-day pre-election report for the May 2019 election, credible evidence shows the respondent filed the report one hundred fourteen days late. Therefore, there is credible evidence of a violation of section 254.064(c) of the Election Code.
13. Regarding the July 2019 semiannual report, credible evidence shows the respondent filed the report approximately thirty days late. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code.

Right-of-Way Disclosure

14. The complaint also alleged that the respondent did not include the required highway right-of-way notice on his political advertising signs. The complaint included pictures of political advertising signs that supported the respondent. The pictures also plainly showed that they were meant to be seen from a highway. However, they did not possess the required highway right-of-way notice. In response to the complaint, the respondent admitted that he failed to include the highway right-of-way notice on his political advertising signs.
15. Under section 255.007(a) of the Election Code, the following notice must be written on each political advertising sign:

“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.”

ELEC. CODE § 255.007(a). Political advertising sign means a written form of political advertising designed to be seen from the road but does not include a bumper sticker. *Id.* § 255.007(e).

16. “Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office of a political party, a political party, or a public office, or a measure that appears in a pamphlet circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. ELEC. CODE. § 251.001(16)(B)(i).
17. The signs at issue in the complaint clearly communicated support for the respondent, as a candidate for election to public office, and are therefore political advertising. Because the signs are political advertising designed to be seen from a road, they were required to include the highway right-of-way notice. The signs at issue did not include this notice. Therefore, there is credible evidence that the respondent violated section 255.007 of the Election Code.

IV. 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 findings of fact and conclusions of law described under Section III 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 shall file two reports for each year until a final report is filed. The first report shall be filed not later July 15. The respondent also 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 second report must be received by the authority with whom the report is required to be filed not later than the 8th day before election day. The respondent also acknowledges that political advertising signs and materials require certain language that addresses that political advertising signs designed to be seen from the road are required to include the right-of-way notice. The respondent agrees to comply with these requirements of the law.

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

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 \$300 civil penalty.

VII. 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-31908128.

AGREED to by the respondent on this _____ day of _____, 2019.

Fidencio Leija, Jr., Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director