

# TEXAS ETHICS COMMISSION

<b>IN THE MATTER OF</b>	§	<b>BEFORE THE</b>
<b>GUADALUPE “LUPE” DE LEON,</b>	§	<b>TEXAS ETHICS COMMISSION</b>
<b>RESPONDENT</b>	§	<b>SC-3200272</b>

## FINAL ORDER

### I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on September 14, 2020, to consider sworn complaint SC-3200272. A quorum of the Commission was present. The Respondent received legally sufficient notice of the hearing but did not appear at the hearing. The Commission proceeded with the hearing in the Respondent’s absence and found credible evidence of violations of Section 254.031 of the Election Code, Section 12.83 of the Administrative Code, and Section 571.1242 of the Government Code. The Commission voted to issue this final order.

### II. Findings of Fact and Conclusions of Law

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

1. The Respondent is Guadalupe De Leon, who was an unsuccessful candidate for Webb County Commissioner in the March 3, 2020, primary election. The sworn complaint was filed against the Respondent on February 25, 2020.
2. The complaint alleged that the Respondent did not disclose in his January 2020 semiannual campaign finance report political contributions and expenditures in connection with two campaign fundraisers, in violation of Section 254.031 of the Election Code.

#### Campaign Fundraisers

3. The complaint included pictures from the Respondent’s Facebook page showing the Respondent made posts to advertise for two fundraisers. The first fundraiser was held on October 23, 2019; and the second on November 19, 2019. On a post dated October 22, 2019, the Respondent posted the details of the October event, including a picture of a loteria card indicating that cards would be 4 for \$10 and the event would be held at Salon Los Presidentes. A second post, dated “Monday at 11:54,” included the same loteria card picture

- and stated that the doors for the event opened at 3 p.m. A photo from the Respondent's Facebook page shows that door prizes such as crockpots were to be distributed at the event. A video from the Respondent's Facebook page indicated that the event was well attended.
4. On November 18, 2019, the Respondent posted a similar loteria card to his Facebook page with the details of the November 19 fundraiser. The post also detailed the door prizes that could be won at the event, with a picture of those prizes, and priced the loteria cards at \$20 for 8 cards. The event was also held at Salon Los Presidentes.
  5. Both fundraisers were held in 2019, but the fliers both have the phrase "LUPE DE LEON 2020" on the bottom. A video from the Respondent's Facebook page shows him sitting in front of the door prizes from the November 19 event with his campaign signs.
  6. The Respondent filed his campaign treasurer appointment on February 5, 2020. He filed his January 15, 2020, report late on February 5, 2020, and his 30-day pre-election report on February 3, 2020.
  7. The January 2020 semiannual report covers activity from December 3, 2020, through January 15, 2020. The report discloses \$0 in political contributions and \$1,486.56 in political expenditures. All of the political expenditures appear to be for political advertising signs and t-shirts unrelated to the campaign fundraisers. The 30-day pre-election report did not disclose a start date for the period covered and disclosed February 3, 2020, as the ending date. The 30-day report discloses \$0 in political contributions and \$0 in political expenditures.
  8. No political expenditures were disclosed to Salon Los Presidentes, and no political expenditures or in-kind contributions were disclosed for the door prizes for either event. No political contributions were disclosed from the sale of loteria tickets at these events. In addition, the loteria event fliers were printed in color, but no political expenditures or in-kind political contributions were disclosed for costs associated with the printing.
  9. The Respondent did not file a response to the sworn complaint or to written questions submitted by Commission staff.
  10. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2020) 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. Tex. Elec. Code § 254.031(a)(1).

11. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$180 as of January 1, 2020) and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3).
12. 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).
13. The Respondent held two fundraisers and did not include the campaign contributions or campaign expenditures related to those fundraisers on any campaign finance reports. Therefore, there is credible evidence of violations of Section 254.031 of the Election Code.

#### **Failure to Respond to Sworn Complaint and Written Questions**

14. Sworn complaint SC-3200272 was filed on February 25, 2020, and Commission staff attempted to immediately contact the Respondent by telephone to notify him of the complaint. Commission staff was able to make contact with the Respondent by telephone on February 28, 2020, where the Respondent verified his mailing and email addresses and was notified of the complaint.
15. Jurisdiction was accepted over the sworn complaint on March 4, 2020. The Commission sent a notice of the sworn complaint to the Respondent by email and United States Postal Service (USPS) certified mail, return receipt requested, to the mailing address and email address provided by the Respondent. According to the USPS tracking records, the notice was delivered and signed for by the Respondent on March 7, 2020. The notice informed the Respondent that the alleged violation in the sworn complaint was a Category One violation, 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 could be assessed. The Respondent was also notified of the complaint by email again on March 25, 2020, and on April 6, 2020.
16. Written questions were mailed to the Respondent by USPS certified mail, return receipt requested, on April 23, 2020. According to USPS tracking records, the written questions were delivered on April 29, 2020. The information provided with the written questions informed the Respondent that a response was required not later than 15 business days from the date the questions were received and that failure to respond constituted a separate violation for which a separate civil penalty could be assessed. No response was received.
17. Based on the delivery date of the sworn complaint, the Respondent was required to respond to the sworn complaint by March 20, 2020. Based on the delivery date of the written questions, the Respondent was required to respond to the written questions by May 20, 2020.

18. The Respondent did not respond to the sworn complaint notices or Commission staff's other efforts to reach the Respondent.
19. If the alleged violation is a Category One violation, the Respondent must respond to the notice required by Section 571.123(b) not later than the 10th business day after the date the Respondent receives the notice. Tex. Gov't Code § 571.1242(a).
20. A Respondent's failure to timely respond as required by Subsection (a) is a Category One violation. *Id.* § 571.1242(c).
21. A notice required to be sent to a Respondent under Chapter 571 of the Government Code shall be sent to the address provided by the Complainant or to the address most recently provided by the Respondent. 1 Tex. Admin. Code § 12.21(b).
22. The response required by Section 571.1242 of the Government Code must be in writing; admit or deny the allegations set forth in the complaint; and be signed by the Respondent. *Id.* § 12.52(a). If a Respondent does not submit a response within the time period prescribed by Section 571.1242 of the Government Code, the commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b).
23. During a preliminary review, the commission staff may submit to the Complainant or Respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation. Tex. Gov't Code § 571.1242(f).
24. A Respondent must respond to written questions not later than 15 business days after receiving the written questions. 1 Tex. Admin. Code § 12.83(a).
25. The Respondent did not file a response to the complaint, despite receiving notice from the Commission that the allegations were Category One violations and that he was required to respond within 10 business days under Section 571.1242 of the Government Code. Because Section 571.1242(c) of the Government Code provides that a Respondent's failure to timely respond to a notice of a Category One complaint constitutes a Category One violation, there is credible evidence of a violation of Section 571.1242 of the Government Code. There is also credible evidence of a violation of Section 571.1242 of the Government Code and Section 12.83(a) of the Texas Administrative Code regarding the Respondent failing to respond to written questions.

### III. Default Judgment

1. The preliminary review hearing was held remotely by video teleconference on September 14, 2020, at 1:15 p.m.
2. A notice required to be sent to a Respondent under Chapter 571 of the Government Code shall be sent to the address provided by the Complainant or to the address most recently provided by the Respondent. 1 Tex. Admin. Code § 12.21(b).
3. If a Respondent fails to appear at a hearing, the Commission may proceed in the Respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. *Id.* § 12.23.
4. The first notice of hearing was sent to the Respondent on July 31, 2020, by email and USPS certified mail, return receipt requested, and delivery confirmation. The notice stated that the hearing would be held on September 14, 2020, at 1:15 p.m. by video teleconference. The notice also stated that if the Respondent failed to appear at the hearing, then the allegations may be deemed admitted as true and the relief sought may be granted by default. A second notice of hearing was sent to the Respondent on August 14, 2020, by email and USPS certified mail, return receipt requested, and delivery confirmation. The notice stated that the hearing would be held on September 14, 2020, at 1:15 p.m. by video teleconference. All notices were sent to the email and mailing addresses provided to the Commission by the Respondent. The Respondent's last known mailing address is 2607 La Parra Lane, Laredo, Texas 78046-8922.
5. The Commission finds that the Respondent received legally sufficient notice of the sworn complaint and the September 14, 2020, preliminary review hearing in this case. The Respondent did not respond to the notices of hearing or appear at the hearing, despite multiple notices from the Commission and attempts by Commission staff to communicate with the Respondent and resolve the complaint. The Commission proceeded in the Respondent's absence and issued this final order in accordance with Section 12.23 of the Texas Administrative Code. By failing to appear at the preliminary review hearing, the Respondent forfeited his right to further proceedings before the Commission in this matter. This final order is a final and complete resolution of this complaint before the Commission, except for the issue of collection of the civil penalty.
6. The Commission finds credible evidence of violations of Section 254.031 of the Election Code and Section 571.1242 of the Government Code.

**IV. Sanction**

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.
3. The Respondent's lack of good faith is relevant to the appropriate penalty for this sworn complaint. In particular, the Respondent's failure to participate in the preliminary review hearing, and failure to participate in the sworn complaint process are factors that the Commission considers in assessing the civil penalty. *See Id.*
4. Therefore, the Texas Ethics Commission orders that the Respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$1,000. If the Respondent does not pay the \$1,000 civil penalty within 30 days of the date of this order, then the civil penalty is increased to \$2,500 and the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: \_\_\_\_\_

FOR THE COMMISSION

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Anne Temple Peters  
Executive Director  
Texas Ethics Commission