

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARIA ELENA MORALES,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-2803162

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2803162. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 252.001, 252.005, 253.004, and 253.031 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to timely file a campaign treasurer appointment, and made political expenditures at a time when she did not have a campaign treasurer appointment in effect.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for district attorney for Webb and Zapata Counties in the 2008 election.
2. On August 30, 2007, the respondent filed a campaign treasurer appointment for that office.
3. In a March 2008 political advertisement the respondent stated, "Since March 2007, I have been campaigning for the office of District Attorney for Webb and Zapata County."
4. The respondent swore that the word "campaigning" was used in the advertisement to convey that she had "been contemplating running for district attorney since March of 2007," and that she had "made a personal decision to run long before her opponents."

5. The respondent's website disclosed photographs of the respondent at a May 2007 Mother's Day event where the respondent was shown posing with her campaign treasurer, wearing a lapel sticker, shaking hands, and passing out items.
6. The sticker on the respondent's lapel was the type of lapel sticker worn by candidates, and the sticker graphics were virtually identical to the graphics used for the respondent's campaign t-shirts and bumper stickers.
7. The domain name for the respondent's website was registered on April 13, 2007, and registration information showed the respondent as the registrant.
8. The domain registration contact information for the respondent included the e-mail address for Pixl Studios, a digital media business that developed websites as part of its business.
9. The respondent's campaign finance reports disclosed political expenditures to Pixl Studios, but disclosed none that were made before the respondent filed a campaign treasurer appointment.

IV. Findings and Conclusions of Law

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

1. "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. ELEC. CODE § 251.001(1).
2. Examples of affirmative action include the filing of a campaign treasurer appointment, the filing of an application for a place on the ballot, the filing of an application for nomination by convention, the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy, the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement, before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication, the soliciting or accepting of a campaign contribution or the making of a campaign expenditure, and the seeking of the nomination of an executive committee of a political party to fill a vacancy. *Id.* § 251.001(1).
3. Each candidate shall appoint a campaign treasurer. ELEC. CODE § 252.001. An individual must file a campaign treasurer appointment for the individual's own candidacy with the commission, if the appointment is made for candidacy for a district office filled by voters of more than one county. ELEC. CODE § 252.005.

4. A candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031. A person may not knowingly make or authorize a political expenditure in violation of this chapter. ELEC. CODE § 253.004.
5. “Political expenditure” means a campaign expenditure or an officeholder expenditure. ELEC. CODE § 251.001 (10).
6. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. ELEC. CODE § 251.001(7). Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.*
7. The word campaign or campaigning is not defined in title 15 of the Election Code. “Campaign” means a connected series of operations designed to bring about a particular result, for example election campaign. “Campaign.” Merriam-Webster Online Dictionary. 2009.
8. The respondent filed a campaign treasurer appointment on August 30, 2007.
9. Although she asserted that the use of the term “campaigning” really meant “contemplating,” the respondent is an attorney and presumably knows that the two words have completely different meanings.
10. Although the respondent asserts she was not a candidate for district attorney, on April 13, 2007, the respondent acquired the web domain that she used for her campaign website and had some contact with Pixl Studios at that time. (Pixl Studios developed her website and she later disclosed them as the payee for media related political expenditures. The photograph of the respondent at the May 2007 Mother’s Day event showed her wearing a lapel sticker that was virtually identical to her other campaign materials and the respondent’s March 2008 political advertisement in the newspaper stated that she had been campaigning since March 2007.
11. Thus no later than April 13, 2007, (the date she registered the website) the respondent made an expenditure in connection with a campaign for elective office. The respondent also made campaign expenditures for lapel stickers prior to filing a campaign treasurer appointment. Therefore, there is credible evidence that the respondent violated sections 252.001, 252.005, 253.004, and 253.031 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 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 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 each candidate shall appoint a campaign treasurer and that an individual must file a campaign treasurer appointment for the individual's own candidacy with the commission, if the appointment is made for candidacy for a district office filled by voters of more than one county. The respondent further acknowledges that a candidate may not knowingly make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. The respondent also acknowledges that a person may not knowingly make or authorize a political expenditure in violation of chapter 253 of the Election Code. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, 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-2803162.

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

Maria Elena Morales, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director