

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RICARDO "RICK" FLORES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2803164

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 9, 2009, to consider sworn complaint SC-2803164. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.003, 253.094, 254.001, and 254.031 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 accepted political contributions exceeding \$100 in cash, unlawfully accepted political contributions from a corporation, failed to include a disclosure statement on political advertising, failed to maintain a record of all of his reportable activity, and failed to properly report political contributions.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful incumbent candidate for Webb County Sheriff in an April 2008 runoff election. The respondent had held that office since 2004.
2. The complaint alleged that the respondent: 1) failed to properly report political contributions on his January 2008 semiannual report, 2) accepted political contributions exceeding \$100 in cash from multiple contributors during the periods covered by his January 2008 semiannual report, 3) unlawfully accepted approximately \$8,875 in political contributions from corporations during the period covered by his January 2008 semiannual report and approximately \$4,000 in political contributions from corporations during the period covered by his 8-day pre-election report for the March 2008 election, 4) failed to include a disclosure statement on political advertising in the form of a newspaper advertisement (the newspaper

advertisement was a full page ad which ran in the Laredo Morning Times on February 17 and 18, 2008), and 5) failed to maintain a record of all his reportable activity.

3. On January 15, 2008, the respondent filed his January 2008 semiannual report. The report disclosed that it covered a period beginning July 1, 2007, through December 31, 2007. The report disclosed 130 pledges. 34 of those pledges totaling approximately \$78,640 were disclosed as fundraiser proceeds but pledgor names and addresses were not disclosed. The report also disclosed approximately \$2,675 in pledges from entities identified as corporations in Texas Secretary of State (SOS) records. The report did not disclose a zip code for an additional 70 pledges. The report also disclosed 172 political expenditures totaling approximately \$109,980 and did not disclose an address for any of those expenditures. The report also disclosed:
 - \$842.41 in total political contributions of \$50 or less
 - \$129,938.57 in total political contributions (although the report did not include a Schedule A, used to disclose political contributions)
 - \$679.85 in political expenditures of \$50 or less
 - \$109,978.18 in total political expenditures
 - \$19,960.39 in total political contributions maintained
 - \$0 outstanding loans
4. On February 25, 2008, the respondent filed his 8-day pre-election report for the March 2008 election. The report disclosed that it covered a period beginning January 25, 2008, through February 23, 2008. The report disclosed 96 political contributions. The report did not disclose addresses for five political contributions totaling approximately \$8,050. The report disclosed an in-kind contribution from Novastar for radios totaling \$4,500 but did not disclose an address. SOS records show that there is a corporation named Novastar, but also disclose a number of unincorporated entities with that name. The report disclosed 32 political expenditures totaling approximately \$73,980 and did not disclose an address for any of those expenditures. The report also disclosed:
 - \$1,695 in total political contributions of \$50 or less
 - \$78,100 in total political contributions
 - \$184.62 in political expenditures of \$50 or less
 - \$74,162.23 in total political expenditures
 - \$4,535.71 in total political contributions maintained
 - \$0 outstanding loans
5. The respondent signed the reports at issue and his signature was notarized.
6. The respondent swore that no contribution disclosed on the January 2008 semiannual report exceeded \$100 in cash.

7. The respondent admitted that he accepted \$8,273 in political contributions from corporations but disputes the allegation with respect to \$4,602 in political contributions. The respondent swore that those \$8,273 in contributions have been returned. Two of the contributions (one from Manuanil's Exchange Inc. and the other from Orozco's Inc.) disclosed on the respondent's January 2008 semiannual report totaling approximately \$300 were identified as corporations on the report.
8. Copies of checks disclosing the reimbursements show that approximately \$4,223 of the reimbursements were to corporations, \$2,750 are to professional associations, \$200 is to a professional limited liability company, and \$1,000 is to a limited liability company. One contributor that made a \$100 contribution (GPC Net) is disclosed as a corporation on the check given to the respondent and on the reimbursement check given to the contributor by the respondent. SOS records do not disclose a corporate entity named GPC Net. A \$1,000 contribution was also accepted from Plastic and Metal Recycling, during the period covered by the respondent's January 2008 semiannual report and was not reimbursed by the respondent.
9. Of the approximately \$4,223 the respondent reimbursed to corporations, approximately \$2,550 was not reported as contributions on the respondent's January 2008 semiannual report. Copies of checks provided by the respondent disclosed that each contribution exceeded \$50 and were received within the period covered by the respondent's January 2008 semiannual report.
10. In an affidavit provided by the respondent, the Webb County Sheriff's Office Comptroller swore that on his days off he assisted the respondent with some aspects of his re-election campaign. He swore that he helped some of the deputies produce the campaign advertisement at issue. He swore that the failure to include a disclosure statement was due to an innocent oversight on his part. He also swore that, "While the advertisement was paid out of campaign funds, Sheriff Flores had nothing to do with approval of this advertisement which was the idea of his deputies as evidenced by the advertisement."
11. The respondent swore that he properly maintained and reported all contributions and expenditures pursuant to the requirements of the Texas Election Code. He swore that all contributions on his January 2008 semiannual report were inadvertently entered on Schedule B (used for pledges) instead of Schedule A (used for political contributions).
12. In response to the complaint the respondent submitted a corrected January 2008 semiannual report. The report was not signed by the respondent, was not date stamped by the local filing authority and shows no indication it was filed with that authority. According to the Webb County Elections Administrator, to date, the respondent has not filed amendments or corrections to any previously filed reports (including the corrected 2008 semiannual report filed with the respondent's response to the commission). The unfiled report removed the approximately \$78,640 in pledges disclosed as fundraiser proceeds on his originally filed

report and all contributions were disclosed on Schedule A. The corrected report also removed approximately \$1,675 in pledges from entities identified as corporations by SOS records and that were disclosed on his originally filed report. The corrected report added approximately \$72,350 itemized contributions from various individuals. Of the newly itemized contributions, approximately \$3,630 are disclosed as contributions from, "Walk in Donor/Dinner Fundraiser," with an unknown address. All other previously reported pledges were moved to Schedule A (used for political contributions). The report still does not disclose an address for 172 political expenditures totaling approximately \$109,980. The report also disclosed:

- \$4,511.16 in total political contributions of \$50 or less
- \$117,078 in total political contributions
- \$679.85 in political expenditures of \$50 or less
- \$109,978.18 in total political expenditures
- \$10,931.13 in total political contributions maintained
- \$0 outstanding loans

IV. Findings and Conclusions of Law

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

Failure to Properly Report Political Contributions or Political Expenditures

1. 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. The report must also include the amount of political expenditures that in the aggregate exceed \$50 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. The report must also 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 \$50 or less made during the reporting period. The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The report must also include as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(1),(3),(5),(6), and (8).

2. As to the allegations relating to the January 2008 semiannual report, the respondent disclosed approximately \$78,640 in pledges as fundraiser proceeds with no pledgor names or addresses and failed to include a zip code for 70 pledges. All of the pledges on the respondent's originally filed January 2008 semiannual report should have been disclosed as political contributions. The unfiled corrected January 2008 semiannual report submitted in response to the complaint disclosed \$0 in pledges and \$72,350 on Schedule A, and provided dates for the contributions as well as the contributors names and addresses. Regarding the approximately \$3,630 in political contributions disclosed on Schedule A as "walk in Donor/Dinner fundraiser," the evidence is insufficient to show whether detailed reporting was required for those expenditures. The respondent's unfiled corrected January 2008 semiannual report disclosed a different amount for total political contributions of \$50 or less, total political contributions, and total political contributions maintained than was disclosed on his original report. To date, the corrected report has not been filed with the local authority. The respondent also failed to disclose an address for 172 political expenditures. Therefore, as to the respondent's January 2008 semiannual report there is credible evidence of violations of sections 254.031(a)(1),(3),(5),(6), and (8) of the Election Code.
3. The respondent's 8-day pre-election report for the March 2008 election did not disclose addresses for five political contributions. The report also did not disclose addresses for 32 political expenditures. Therefore, as to the respondent's 8-day pre-election report for the March 2008 election, there is credible evidence of violations of sections 254.031(a)(1) and (3) of the Election Code.
4. The respondent used political funds to reimburse multiple corporations approximately \$2,550 but failed to disclose the acceptance of contributions from those entities. Each of those contributions exceeded \$50. Therefore, as to those contributions, there is credible evidence of a violation of section 254.031(a)(1) of the Election Code.

Acceptance of Over \$100 in Cash from an Individual during a Reporting Period

5. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. ELEC. CODE § 253.033.
6. There is insufficient evidence to show that the respondent accepted political contributions exceeding \$100 in cash from multiple contributors during the period covered by his January 2008 semiannual report. Therefore, there is insufficient evidence of a violation of section 253.033 of the Election Code.

Accepted Political Contributions from a Corporation

7. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. ELEC. CODE § 253.094. That subchapter does not authorize corporations to make political contributions to a candidate.
8. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003(b). Thus, in order to show a violation of section 253.003(b) of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew it was from a corporation, and that the respondent knew that corporate contributions for a candidate were illegal.
9. The complaint alleged that the respondent accepted political contributions from corporations during the period covered by his January 2008 semiannual report and 8-day pre-election report for the March 2008 election. The respondent disclosed that he accepted approximately \$4,223 in contributions from corporations during the period covered by his January 2008 semiannual report. Approximately \$2,550 of that amount was not reported on the respondent's January 2008 semiannual report. An additional \$1,000 was accepted from Plastic and Metal Recycling, during the period covered by the respondent's January 2008 semiannual report.
10. A \$100 contribution disclosed on the respondent's January 2008 semiannual report came from GPC Net. In the check given to the respondent, GPC Net identifies itself as a corporation, however, the evidence is insufficient to show that GPC Net is actually a corporation.
11. The respondent also disclosed a \$4,500 contribution from Novastar on his 8-day pre-election report. SOS records show that there is a corporation named Novastar as well as other unincorporated entities of that same name. The respondent disputes this allegation and there is insufficient evidence to determine whether this contributor was a corporation, and whether the respondent knew it was a corporation at the time he accepted the contribution. Therefore, there is insufficient evidence that the respondent accepted any contributions from corporations on his 8-day pre-election report for the March 2008 election.
12. The respondent reimbursed \$8,273 in contributions to some of his contributors. Approximately \$4,223 of the reimbursements were to entities clearly identified by SOS records as corporations. (As noted, there was an additional \$1,000 contribution from an incorporated entity that has not been reimbursed.) Two of the contributions (one from Manuanil's Exchange Inc. and the other from Orozco's Inc.) disclosed on the respondent's January 2008 semiannual report totaling approximately \$300 were identified as corporations on the report. The respondent's notarized signature appears on the report acknowledging that the report is true and correct. Thus, the evidence indicates that the respondent was

aware at the time of acceptance that at least two contributions were from corporations. As the chief law enforcement officer for the county and as a candidate who had previously been involved in a political campaign, it is reasonable to infer that the respondent knew that corporate contributions were illegal. Therefore, with regard to those two contributions, there is credible evidence of violations of section 253.003 of the Election Code, for accepting political contributions that are illegal under section 253.094 of the Election Code, and insufficient evidence of a violation of those sections with regard to the remaining \$4,923 in corporate contributions.

13. A Texas limited liability company is subject to the restrictions in Election Code chapter 253, subchapter D, if it engages in a type of business listed in Election Code section 253.093 or if it is owned, in whole or in part, by an entity subject to the restrictions in Election Code chapter 253, subchapter D. Ethics Advisory Opinion No. 383 (1997).
14. Texas law allows candidates to accept political contributions from individuals, professional corporations, and professional associations, as well as general and limited partnerships that do not contain partners that are prohibited from making political contributions to candidates. Ethics Advisory Opinion No. 215 (1994).
15. The respondent accepted approximately \$3,950 from professional associations, a professional limited liability company, and a limited liability company, and that the respondent reimbursed that amount to those entities. There is insufficient evidence to show whether any of those entities contained a corporate partner, member or manager. Therefore, with regard to those contributions, there is insufficient evidence of a violation of sections 253.003 and 253.094 of the Election Code.

Failure to Include a Disclosure Statement on Political Advertising

16. “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. ELEC. CODE § 251.001.
17. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of either the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001.

18. The complaint alleged that the respondent failed to include a disclosure statement on political advertising in the form of a newspaper advertisement. The advertisement clearly supported the respondent's re-election as county sheriff and was published in a newspaper. Therefore, the newspaper advertisement at issue was political advertising. The Webb County Sheriff's Office Comptroller swore that he and some of the respondent's deputies produced the newspaper advertisement. He also swore that while the advertisement was paid out of the respondent's campaign funds, the respondent had nothing to do with approval of the advertisement. Thus, there is insufficient evidence to show that the respondent knowingly caused to be published, distributed, or broadcast political advertising containing express advocacy without the required disclosure statement. Therefore, there is insufficient evidence of a violation of section 255.001 of the Election Code as to the newspaper advertisement.

Failure to Maintain a Record of Reportable Activity

19. Each candidate and each officeholder shall maintain a record of all reportable activity. The record must contain the information that is necessary for filing campaign finance reports. Each candidate and each officeholder shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record. ELEC. CODE § 254.001.
20. The complaint alleged that the respondent failed to maintain a record of all his reportable activity. The respondent swore that he properly maintained and reported all contributions and expenditures pursuant to the requirements of the Texas Election Code. However, the evidence indicates that on his January 2008 semiannual report the respondent disclosed approximately \$78,640 in pledges as fundraiser proceeds with no pledgor names or addresses. Subsequently, in an unfiled corrected report submitted with his response, the respondent added approximately \$72,350 in political contributions and removed the \$78,640 disclosed as pledges. Approximately \$6,290 in political contributions are still unaccounted for on the corrected report. The respondent failed to disclose an address for 172 political expenditures on his January 2008 semiannual report and on the corrected report submitted to the commission. The respondent's 8-day pre-election report for the March 2008 election failed to disclose addresses for five political contributions and 32 political expenditures. It is reasonable to infer that the respondent failed to report, or improperly reported, those contributions and expenditures because he did not properly maintain records as required by statute. Therefore, there is credible evidence of a violation of section 254.001 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 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. The report must also include the amount of political expenditures that in the aggregate exceed \$50 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. The report must also 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 \$50 or less made during the reporting period. The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The report must also include as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

The respondent also acknowledges that a corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, Chapter 253, Election Code. The respondent also acknowledges that a person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. The respondent also acknowledges that subchapter does not authorize corporations to make political contributions to a candidate.

The respondent also acknowledges that each candidate and each officeholder shall maintain a record of all reportable activity and that the record must contain the information that is necessary for filing campaign finance reports.

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 \$5,000 civil penalty.

The respondent agrees that the Texas Ethics Commission, P. O. Box 12070, Austin, Texas 78711, must receive from the respondent full payment of the \$5,000 civil penalty no later than September 1, 2010, and agrees to waive any right to a hearing related to this sworn complaint. The respondent agrees that if the full amount is not received by September 1, 2010, the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

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-2803164.

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

Ricardo "Rick" Flores, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director