

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ENRIQUE ESCOBEDO, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290235

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-290235. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of sections 252.010 and 255.004 of the Election Code, and credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint alleges that the respondent failed to file a campaign treasurer appointment and accepted campaign contributions and made or authorized campaign expenditures at a time when a campaign treasurer appointment was not in effect. The commission also considered whether the respondent failed to include a disclosure statement on political advertising, and that the respondent represented in a campaign communication that the communication emanated from a source other than its true source.

III. Facts Supported by Credible Evidence

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

1. The respondent is a Brownsville Independent School District (“BISD”) school board trustee and a candidate for Cameron County Commissioner, Precinct Two, in the 2010 elections.
2. The complaint included a page from the respondent’s Internet website. The page indicates it was printed on February 15, 2009. The page announces the respondent’s candidacy for county commissioner in the 2010 elections, and states “VOTE ENRIQUE ESCOBEDO FOR COUNTY COMMISSION PCT. 2.” The domain name (www.voteescobedo.com) is registered to the respondent. The printed page from the website does not indicate that it is

- political advertising, but it does include the respondent's name, telephone number, fax number, physical address, and e-mail address.
3. The complaint also included a printed advertisement from the Brownsville Herald newspaper. The advertisement announces the respondent's candidacy for county commissioner, and includes the text "PROVEN LEADERSHIP." The advertisement includes the address for the respondent's Internet website. The advertisement indicates it is political advertising paid for by a third party.
 4. The evidence indicates that in February 2009, the respondent announced his candidacy for Cameron County Commissioner, Precinct Two, on his Internet website and in an advertisement in the Brownsville Herald. The evidence indicates that the respondent filed a campaign treasurer appointment on March 21, 2006, which lists the office sought as BISD trustee.
 5. The evidence indicates that on March 13, 2009, the respondent filed a campaign treasurer appointment with the Cameron County Department of Elections and Voter Registration which lists the office sought as county commissioner.
 6. The evidence indicates that the respondent made an expenditure of \$669.13 for the newspaper advertisement in the Brownsville Herald, which indicates that it was paid for by a third party.
 7. At the time of the expenditure for the newspaper advertisement, the respondent had not filed a final report with BISD.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment

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. Each candidate shall appoint a campaign treasurer as provided by this chapter. *Id.* § 252.001.
3. A candidate for school board trustee is required to file a campaign treasurer appointment with the clerk or secretary of the governing body of the political subdivision or, if the political subdivision has no clerk or secretary, with the governing body's presiding officer. *Id.* § 252.005(3). A candidate for county commissioner is required to file a campaign

treasurer appointment with the county clerk or elections administrator, as applicable. *Id.* § 252.005(3), Ethics Commission Rules § 20.5(a).

4. If a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment. ELEC. CODE § 252.010(a). The original appointment terminates on the filing of the copy with the appropriate authority or on the 10th day after the date the decision to seek a different office is made, whichever is earlier. *Id.* § 252.010(b).
5. A campaign treasurer appointment remains in effect until terminated. *Id.* § 252.011. The designation of a report as a final report terminates a candidate's campaign treasurer appointment. *Id.* § 254.065(b). Filing a new campaign treasurer appointment terminates the old one. Ethics Commission Rules § 20.207.
6. A candidate may not knowingly accept a campaign contribution or 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).
7. In March 2006, the respondent filed a campaign treasurer appointment in connection with his candidacy for school board trustee. During the time in question, the respondent did not file a final report. Thus, the evidence indicates the respondent still had a treasurer appointment in effect in February 2009 when he made political expenditures for his campaign website and a newspaper advertisement. Although the respondent filed a treasurer appointment in connection with his candidacy for county commissioner in March 2009 (after the complaint was filed), the respondent failed to transfer his appointment to the county filing authority as provided by section 252.010 of the Election Code. Therefore, there is credible evidence of a violation of section 252.010 of the Election Code, and credible evidence of no violation of sections 252.001 and 253.031(a) of the Election Code.

Political Advertising Disclosure and True Source of Communication

8. "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 that 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(16).
9. 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 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. *Id.* § 255.001(a). Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. *Id.* § 255.001(b).

10. “Campaign communication” means, in pertinent part, a written or oral communication relating to a campaign for nomination or election to public office. *Id.* § 251.001(17).
11. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. *Id.* § 255.004(b).
12. The respondent’s Internet website supports his candidacy for county commissioner. The website does not indicate that it is political advertising, although it does include the respondent’s name and contact information. Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.001 of the Election Code.
13. The evidence indicates that the respondent made a political expenditure to place an advertisement in the Brownsville Herald newspaper. The advertisement states that a third party paid for the advertisement. The advertisement attempts to influence the result of an election by supporting the respondent as a candidate for county commissioner. Thus, the advertisement is a campaign communication. Because the campaign communication attempts to influence the result of an election and appears to emanate from a source other than the respondent, there is credible evidence of a violation of section 255.004(b) 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 if a candidate who has filed a campaign treasurer appointment decides to seek a different office that would require the appointment to be filed with another authority, a copy of the appointment certified by the authority with whom it was originally filed must be filed with the other authority in addition to the new campaign treasurer appointment. The respondent also acknowledges that 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 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. The respondent also acknowledges that a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. 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 \$200 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-290235.

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

Enrique Escobedo, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director