

TEXAS ETHICS COMMISSION

IN THE MATTER OF
NICOLASA M. MIRELES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31004116

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2011, to consider sworn complaint SC-31004116. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 255.006 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 represented in campaign communications that she held a public office that she did not hold at the time the representations were made, and failed to properly disclose political contributions or expenditures in connection with those campaign communications.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful non-incumbent candidate for Freeport City Council in an election held on May 8, 2010.
2. At issue in the complaint are approximately 25 signs that are alleged to have been placed throughout Freeport, Texas. The complaint included a photograph of a sign that read:

Elect Nicolasa "Nicole"
MIRELES
CITY COUNCIL-WARD C

3. The complaint alleges that the signs are campaign communications that represent the respondent held the office of City Council-Ward C.
4. The complaint also alleged that the respondent failed to disclose political expenditures related to the signs.
5. The respondent's 30-day pre-election report filed in connection with the May 2010 election disclosed:
 - \$1,490 in the space provided to disclose total political contributions of \$50 or less;
 - \$0 in the space provided to disclose total political contributions;
 - \$1,212.49 in the space provided to disclose total political expenditures of \$50 or less;
 - \$1,212.49 in the space provided to disclose total political expenditures;
 - \$1,490 in the space provided to disclose total political contributions maintained; and
 - \$287.51 in the space provided to disclose total outstanding loans.
6. In response to the sworn complaint, the respondent swore that she was unaware of the requirement to use the word "for" in political advertising as a non-incumbent candidate. The respondent included a photograph with the word "for" handwritten on one of her signs and swore that she made similar changes to all of the signs at issue.
7. The respondent swore that she properly disclosed all political contributions and expenditures. The respondent filed corrections to her 30-day pre-election report, disclosing four contributions totaling \$160, and detailing seven expenditures totaling \$721.87. One of these expenditures was to payee "AGE Graphics" and the respondent included an invoice from A.G.E. Graphics in that amount, for signs, wire stakes, and shipping costs in the amount of \$290, with an invoice date of March 15, 2010.
8. The respondent filed an 8-day pre-election report on May 3, 2010. This report did not contain a schedule itemizing expenditures.
9. The respondent filed a final report on May 12, 2010, which disclosed \$255.02 in total political contributions, none of which were included in the total political contributions of \$50 or less. This report included no schedules.
10. On March 28, 2011, the respondent filed further corrections with the local filing authority itemizing the expenditures at issue from the 30-day and 8-day reporting periods.

IV. Findings and Conclusions of Law

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

Use of Office Title

1. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. *Id.* § 255.006(b). For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
2. “Campaign communication” means, in pertinent part, a written communication relating to a campaign for election to public office or office. *Id.* § 251.001(17).
3. The respondent was not a member of the Freeport City Council at the time the signs were printed or distributed. The signs were campaign communications that did not include the word “for” before the office sought, “CITY COUNCIL-WARD C” to clarify that she did not hold the office. Therefore, there is credible evidence that the respondent violated section 255.006(b) of the Election Code.

Reporting Political Contributions or Political Expenditures

4. 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 or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(1).
5. Each report must 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. ELEC. CODE § 254.031(a)(3).
6. The respondent swore that she properly disclosed all contributions accepted and provided records which indicate that no single contributor exceeded \$50 in contributions for the 30-day pre-election reporting period. Therefore, there is credible evidence of no violation of section 254.031(a)(1) of the Election Code.

7. The respondent failed to itemize five expenditures exceeding \$50 on her 30-day pre-election report. Although the respondent filed corrected reports with the local filing authority, the original reports failed to disclose these expenditures. Furthermore, the respondent did not itemize these or any other expenditures on any other original campaign finance report filed in 2010. Therefore, there is credible evidence that the respondent violated section 254.031(3) 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 a person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. The respondent also acknowledges that each campaign finance report filed by a candidate must 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 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-31004116.

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

Nicolasa M. Mireles, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director