

TEXAS ETHICS COMMISSION

IN THE MATTER OF

HECTOR ENRIQUEZ III,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31205132 AND SC-31205164

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 30, 2012, to consider sworn complaints SC-31205132 and SC-31205164. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.001, 254.031, and 254.0612 of the Election Code, laws administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent: 1) did not maintain a record of reportable activity; 2) did not properly disclose total political contributions and total political expenditures; 3) did not properly disclose principal occupation and employer information for certain contributors; 4) did not disclose total political contributions maintained; and 5) did not properly disclose political expenditures.

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 State Representative, District 75, in the May 29, 2012, primary election.

Maintaining Records of Reportable Activity

2. The complaints alleged that the respondent did not properly maintain a record of reportable activity. The allegation was based on Schedule A (used to disclose political contributions) of the respondent's January 2012 semiannual report. The respondent disclosed \$490 in anonymous cash donations. The respondent did not provide any contributor information and disclosed the contributions as "cash donations anonymously."
3. In response to the complaints, the respondent swore that he donated the \$490 in anonymous contributions to the El Paso Boxing-Martial Arts Hall of Fame on June 7, 2012, after the complaints had been filed. The entity is part of El Paso Athletic Hall of Fame, Inc., a 501(c)(3) domestic non-profit corporation. The respondent submitted a copy of the check showing the donation.

Total Political Contributions

4. The complaints alleged that the respondent did not properly disclose the amount of total political contributions in his January 2012 semiannual report. The respondent disclosed \$166.73 in total political contributions in the original January 2012 semiannual report that was filed on January 17, 2012. However, Schedule A of the report disclosed 50 political contributions totaling \$13,746.92.
5. On January 25, 2012, before the complaints were filed, the respondent filed a correction to the January 2012 semiannual report and changed the amount of total political contributions to \$13,256.92. The report included an attached typed statement that listed all of the contributions received from September 14, 2011, through January 15, 2012, which is the period covered by the report. The contributions listed on the attached statement total \$13,580.19, which is approximately \$320 more than what was disclosed in the contribution totals section on page two of the cover sheet.
6. On June 11, 2012, after the complaints were filed, the respondent filed another correction to the January 2012 semiannual report and changed the amount of total political contributions to \$13,746.92, which is the total amount of political contributions that were disclosed on Schedule A of the original report.

Total Political Expenditures

7. The complaints alleged that the respondent did not properly disclose the amount of total political expenditures in his January 2012 semiannual report. The respondent itemized all political expenditures on Schedule F (used to disclose political expenditures). The respondent disclosed \$166.73 in total political expenditures in the original January 2012 semiannual report that was timely filed on January 13, 2012. However, Schedule F of the report disclosed 43 political expenditures totaling \$16,388.93.

8. On January 23, 2012, and again on January 25, 2012, before the complaints were filed, the respondent filed corrections to the January 2012 semiannual report. The amount of total political expenditures disclosed in those corrections was \$16,400.52. The corrected amount includes all of the political expenditures that were disclosed on Schedule F of the original report.

Principal Occupation and Employer Information

9. The complaints alleged that the respondent did not properly disclose in his January 2012 semiannual report, the principal occupations or job titles and names of employers for five contributors who made political contributions totaling \$3,000. All five of the contributors at issue contributed \$500 or more during the reporting period.
10. For three of the contributions totaling \$2,000, the respondent listed the contributors as self-employed. However, there was insufficient evidence to show that the contributors were employed by someone else, or that the contributors were not otherwise self-employed.
11. For one of the contributions of \$500, the respondent listed the contributor's principal occupation as "attorney" and the contributor's employer as "law office." The evidence indicated that the contributor was a sole practitioner and owner of a law firm that contained the contributor's name in the business title.
12. For one of the contributions of \$500, the respondent listed the contributor's occupation as "Attorney" and employer as "Self." The evidence indicated that the contributor was a sole practitioner and owner of a law firm that contained the contributor's name in the business title.

Total Political Contributions Maintained

13. The complaints alleged that the respondent did not disclose total political contributions maintained in his January 2012 semiannual report. The respondent left the total political contributions maintained box blank in the original report. In response to the complaints, the respondent's third corrected report disclosed "0" in the totals box.

Disclosure of Political Expenditures

14. The complaints alleged that the respondent did not report a December 5, 2011, \$750 filing fee that was made to the El Paso Democratic Party. The respondent's January 2012 semiannual report covered from September 14, 2011, through January 15, 2012, but did not show the \$750 filing fee.
15. In response to the complaints, the respondent provided a copy of a campaign check and receipt showing that he paid \$750 to the El Paso County Democratic Party on December 5, 2011, for his filing fee in connection with his campaign for state representative. In the

response affidavit, the respondent swore that the expenditure would be shown in his next campaign finance report on June 29, 2012.

16. The complaints also alleged that the respondent did not list the amount of a political expenditure that was disclosed on Schedule F of his January 2012 semiannual report. Schedule F of the report disclosed a political expenditure to La Tapatia on September 9, 2011, but the respondent did not include an amount. In response to the complaints, the respondent provided a receipt stub from the restaurant showing that the expenditure was in the amount of \$11.59.

IV. Findings and Conclusions of Law

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

Maintaining Records of Reportable Activity

1. Each 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 under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
2. Each candidate and each officeholder shall maintain a record of all reportable activity. ELEC. CODE § 254.001(a). A person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record. *Id.* § 254.001(d).
3. Credible evidence indicates that the respondent accepted \$490 in anonymous cash contributions on November 15, 2011. Based on the fact that the contributions were accepted from anonymous sources, the respondent was not able to acquire and provide the information required by section 254.031(a)(1) of the Election Code. Accordingly, the respondent did not properly maintain records of reportable activity. Although the respondent donated the anonymous contributions at issue, this was after he accepted and reported the contributions. There is credible evidence of a violation of section 254.001 of the Election Code.

Total Political Contributions

4. Each report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. ELEC. CODE § 254.031(a)(6).
5. The respondent disclosed \$166.73 in total political contributions in the original January 2012 semiannual report that was filed on January 17, 2012. Before the complaints were filed, the respondent amended the report and changed the amount to \$13,256.92.

However, the typed statement that was attached to the amended report disclosed \$13,580.19 in total political contributions. In response to the complaints, the respondent filed another correction to the report and changed the amount of total political contributions to \$13,746.92. The respondent did not properly disclose total political contributions when the January 2012 semiannual report was originally filed. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

Total Political Expenditures

6. A person who files a semiannual report under this chapter may amend the report. ELEC. CODE § 254.0405(a). A semiannual report that is amended on or after the eighth day after the original report was filed is considered to have been filed on the date on which the original report was filed if the amendment is made before any complaint is filed with regard to the subject of the amendment, and the original report was made in good faith and without an intent to mislead or to misrepresent the information contained in the report. *Id.* § 254.0405(c)(1),(2).
7. The respondent filed a correction to the January 2012 semiannual report on the eighth day after the original report was filed and before the complaints were filed. In the correction affidavit, the respondent swore that the original report was made in good faith and without an intent to mislead or to misrepresent the information contained in the report. The respondent disclosed the total amount of political expenditures that were made during the reporting period. Therefore, there is credible evidence of no violation of section 254.031(a)(6) of the Election Code.

Principal Occupation and Employer Information

8. Each report by a candidate for statewide office in the executive branch or legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 during the reporting period, the individual's principal occupation or job title, and the full name of the individual's employer. ELEC. CODE § 254.0612.
9. For three of the contributions at issue totaling \$2,000, the evidence was inconclusive as to the contributors' employers. Therefore, there is insufficient evidence of violations of section 254.0612 of the Election Code with respect to those three contributions.
10. For one of the contributions of \$500, the respondent listed the contributor's principal occupation as "attorney" and the contributor's employer as "law office." Although the contributor was not identified as self-employed, and the respondent did not list the formal name of the law firm, the information was not misleading and did not substantially affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of section 254.0612 of the Election Code with respect to that contribution.

11. For one of the contributions of \$500, the respondent listed the contributor as a self-employed attorney. The commission has previously determined that there is no violation of section 254.0612 of the Election Code for listing a contributor as self-employed as long as the contributor is an officer or principal of an entity that bears the contributor's name, or if the contributor is otherwise self-employed. The evidence indicated that the contributor was a sole practitioner and owner of a law firm that contained the contributor's name in the business title. Therefore, there is credible evidence of no violation of section 254.0612 of the Election Code with respect to that contribution.

Total Political Contributions Maintained

12. Each report must include as of the last day of the reporting period, 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)(8).
13. Although the respondent left the total political contributions maintained box blank and did not have any political contributions maintained to disclose, the political expenditure and contribution totals were incorrect in the original January 2012 semiannual report. Accordingly, someone viewing the totals page of the report would not have been able to ascertain the approximate amount, if any, of the respondent's total political contributions maintained. There is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

Disclosure of Political Expenditures

14. A campaign finance report must include, for all political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
15. A campaign finance report must 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 \$100 or less made during the reporting period. *Id.* § 254.031(a)(5).
16. Regarding the \$750 filing fee, the respondent did not disclose the political expenditure in his January 2012 semiannual report. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with respect to that expenditure.
17. Regarding the expenditure to La Tapatia, the respondent was not required to itemize the political expenditure because the amount to that payee did not exceed \$100 in the aggregate during the reporting period. However, the respondent did not list an amount for the expenditure on Schedule F and did not disclose the amount on the cover sheet space for political expenditures of \$100 or less. Therefore, there is credible evidence of

no violation of section 254.031(a)(3) of the Election Code with respect to that expenditure, but credible evidence of a technical or *de minimis* violation of section 254.031(a)(5) 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 these sworn complaints.
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: 1) each candidate and each officeholder shall maintain a record of all reportable activity; 2) each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 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; 3) each campaign finance report must 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 \$100 or less made during the reporting period; 4) 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; 5) each campaign finance report must 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; and 6) each report by a candidate for a statewide office in the executive branch or a legislative office must include, for each individual from whom the person filing the report has accepted political contributions that in the aggregate equal or exceed \$500 and that are accepted during the reporting period, the individual's principal occupation or job title, and the full name of the individual's employer. 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 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-31205132 and SC-31205164.

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

Hector Enriquez III, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director