

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

ROBERT LOPEZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31410225

## FINAL ORDER

The Texas Ethics Commission, having heard this case and voting to find violations of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

### Findings of Fact

1. The respondent is Robert Lopez, whose last known mailing address is P. O. Box 277, Rio Hondo, Texas 78583. A sworn complaint was filed with the Texas Ethics Commission against the respondent on October 14, 2014. The first Notice of Hearing was mailed to the respondent on November 8, 2016, by certified mail, return receipt requested, restricted delivery, and delivery confirmation. United States Postal Service records indicate that the first Notice of Hearing was delivered to the respondent on November 10, 2016. A second Notice of Hearing was mailed to the respondent on November 21, 2016, by delivery confirmation. United States Postal Service records indicate that the second Notice of Hearing was delivered to the respondent on November 25, 2016.
2. The preliminary review hearing was held on December 8, 2016, by the Texas Ethics Commission in Austin, Texas.
3. The respondent did not file a reply to the Notice of Hearing and did not appear at the hearing.
4. The respondent was a non-incumbent candidate for Cameron County Constable, Precinct 3, in the November 2014 general election. The respondent previously served as Cameron County Constable, Precinct 3, until December 31, 2012.

### Misleading Use of Office Title

5. The complaint alleged that the respondent represented on political advertising signs that he held an office that he did not hold at the time the representations were made, in violation of section 255.006 of the Election Code. The complaint alleged that the respondent represented that he held the office of Cameron County Constable in Precinct 3 by using on his political advertising signs the term "Re-Elect" in connection with that title, not including the word "for," and using an image of a sheriff-style badge with the word "Constable" and his name. In support of the allegation, the complainant provided a

photograph showing one of the political advertising signs purportedly used by the respondent during his 2014 campaign.

6. At the time the respondent was campaigning in 2014 for Cameron County Constable, Precinct 3, he was not an incumbent, but rather was a Deputy Constable for Cameron County. The respondent previously campaigned for Cameron County Constable in Precinct 3 in 2012. In response to the complaint, the respondent stated that he reused political advertising signs from the previous 2012 campaign for Cameron County Constable, Precinct 3. However, the respondent swore that for the November 2014 campaign, he covered the prefix “Re-” in “Re-Elect” with blue duct tape and wrote the words “For” and “Deputy” in black permanent marker on the salvaged signs that were being reused. The respondent also swore that he printed new campaign signs that complied with section 255.006 of the Election Code; however, while the new signs do include the words “Elect” and “For,” the respondent still used the badge without a clarification that he was not a Constable. It appears that he wrote “Deputy” above the sheriff-style badge with a permanent marker. The respondent stated that he started displaying all of his political advertising signs in August of 2014.
7. The photograph of the political advertising sign provided by the complainant shows no blue duct tape and no words written in permanent marker, as asserted by the respondent. The respondent alleged in his sworn response that an unidentified person removed the blue duct tape. However, even without the blue duct tape, the sign submitted by the complainant does not show “For” or “Deputy” written in permanent marker, as the respondent maintains in his sworn response. The respondent stated that heavy rain throughout the Cameron County area during the time at issue partially washed away the permanent marker he used to render his signs compliant. The respondent also stated that he had assistance in placing his political advertising signs and that there could have been a sign that was mistakenly made noncompliant by one of the individuals assisting him.

### **Response to Notice of a Sworn Complaint**

8. Sworn complaint SC-31410225 was filed on October 14, 2014. The Commission sent a notice of the sworn complaint to the respondent by delivery confirmation dated October 21, 2014. According to the United States Postal Service’s record of the delivery, the notice of this complaint was delivered to the respondent on October 24, 2014. The notice informed the respondent that the alleged violation in the sworn complaint was a Category One violation, and that the response was required not later than 10 business days from the date the notice was received and that failure to respond constituted a violation for which a separate civil penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by November 7, 2014.
9. On December 17, 2014, the Commission received a sworn response from the respondent. The respondent acknowledged that his response was late and stated that it was due to an

illness. The respondent did not produce sufficient documentation to substantiate his claim.

### Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. *Id.* § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.

### Misleading Use of Office Title

3. 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. ELEC. CODE § 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: 1) the candidate does not hold the office that the candidate seeks; and 2) 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).
4. “Campaign communication” means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. *Id.* § 251.001(17).
5. The political advertising sign at issue is a campaign communication because it is a written communication relating to a campaign for election to a public office.
6. At the time of the complaint, the respondent was a Deputy Constable for Cameron County. The political advertising sign submitted by the complainant includes the word “Re-Elect” in connection with Cameron County Constable, Precinct 3, a position the respondent did not hold at the time the sign was distributed. Additionally, the political advertising sign has an image of a sheriff-style badge with the word “Constable” and the respondent’s first and last name, again giving the impression that the respondent held this office when he did not. Finally, the political advertising sign does not include the word “for,” as required by section 255.006(c) of the Election Code. Although the respondent stated in his sworn response that for the November 2014 election he used old signs that were corrected, as well as new signs, there is no indication of tape or permanent marker on the sign in the picture that was submitted with the complaint, as the respondent swore was the manner in which he corrected his old political advertising signs.
7. As a whole, the political advertising sign used by the respondent for his 2014 campaign and submitted with the complaint gives the appearance that he held the office of Cameron

County Constable for Precinct 3 when he did not. Thus, there is credible evidence that the respondent violated section 255.006 of the Election Code.

### **Response to Notice of a Sworn Complaint**

8. If the alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) of the Government Code not later than the 10th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(a)(1). A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
9. The response required by section 571.1242 of the Government Code must be in writing, admit or deny the allegations set forth in the complaint, and be signed by the respondent. Ethics Commission Rules § 12.52(a). If a respondent does not submit a response within the time period prescribed by section 571.1242 of the Government Code, the Commission may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b).
10. The respondent was required to respond to the sworn complaint by November 7, 2014. The Commission did not receive a response until December 17, 2014, which was 40 days after the response deadline. The respondent was unable to show good cause why the response was late. Thus, there is credible evidence of a violation of section 571.1242(c) of the Government Code.
11. The Texas Ethics Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. GOV'T CODE § 571.173.

### **Therefore, the Texas Ethics Commission orders that:**

1. The respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$500. If the respondent does not pay the \$500 civil penalty within 30 days of the date of this order, then the civil penalty is increased to \$1,500 and the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: \_\_\_\_\_

FOR THE COMMISSION

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Natalia Luna Ashley  
Executive Director  
Texas Ethics Commission