

TEXAS ETHICS COMMISSION

IN THE MATTER OF
VANESSA TIJERINA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3200126, SC-3200267,
AND SC-3200268

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on September 14, 2020, to consider sworn complaints SC-3200126, SC-3200267, and SC-3200268. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 252.001, 253.031(a), and 254.063 of the Election Code, and Sections 571.1242 and 572.021 of the Government Code. The Commission met again on December 1, 2020, to consider a resolution to sworn complaints SC-3200126, SC-3200267, and SC-3200268. A quorum of the Commission was presented. To resolve and settle these complaints without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaints make identical allegations that the respondent: 1) did not file a campaign treasurer appointment, in violation of Section 252.001 of the Election Code; 2) made political expenditures without a campaign treasurer appointment on file, in violation of Section 253.031(a) of the Election Code; and 3) did not file a January 2020 semiannual campaign finance report, in violation of Section 254.063 of the Election Code.

The Commission also considered whether the respondent: 1) failed to timely file a response to the sworn complaints, in violation of Section 571.1242 of the Government Code; and 2) failed to timely file a personal financial statement (PFS) in violation of Section 572.021 of the Government Code.

III. Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of facts and conclusions of law:

1. The respondent was an unsuccessful candidate for Texas Senate, District 27, in the November 3, 2020, election.

Campaign Treasurer Appointment

2. The complaints alleged that the respondent did not file a campaign treasurer appointment.
3. The information submitted with the complaints showed that, on or around December 9, 2019, the respondent submitted an application to be placed on the ballot for the March 2020 primary election and paid the \$1,250 filing fee. At the time of the ballot application filing, the respondent did not have a campaign treasurer appointment on file with the Commission.
4. The respondent filed a campaign treasurer appointment with the Commission on February 7, 2020.
5. Each candidate and each political committee shall appoint a campaign treasurer as provided by Chapter 252 of the Election Code. Tex. Elec. Code § 252.001.
6. “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. Examples of affirmative action include the filing of an application for a place on the ballot. *Id.* § 251.001(1).
7. Credible evidence indicates the respondent filed an application for a place on the ballot without a campaign treasurer appointment on file. The submission of an application for a place on the ballot constituted an affirmative action and made the respondent a candidate. Accordingly, the respondent was a candidate and did not have a campaign treasurer appointment on file. Therefore, there is credible evidence of a violation of Section 252.001 of the Election Code.

Political Expenditure without Campaign Treasurer Appointment on File

8. The complaints alleged that the respondent made a political expenditure without a campaign treasurer appointment on file.
9. The information submitted with the complaints showed that, on or around December 9, 2019, the respondent submitted an application to be placed on the ballot for the March 2020 primary election and paid the \$1,250 filing fee. At the time of the ballot application filing, the respondent did not have a campaign treasurer appointment on file with the Commission.
10. The respondent filed a campaign treasurer appointment with the Commission on February 7, 2020.

11. 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. Tex. Elec. Code § 253.031(a).
12. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7).
13. The respondent paid the \$1,250 ballot application filing fee on December 9, 2019. The respondent did not file a campaign treasurer appointment until February 7, 2020. Therefore, the respondent made a campaign expenditure at a time when a campaign treasurer appointment was not in effect. Therefore, there is credible evidence of a violation of Section 253.031(a) of the Election Code.

January 2020 Semiannual Report

14. The complaints alleged that the respondent failed to file the January 2020 semiannual campaign finance report, which was required to be filed by January 15, 2020.
15. In response to the initial filing of SC-3200126, on February 7, 2020, the respondent emailed the Commission a handwritten copy of her January 2020 semiannual report, disclosing a \$1,250 political expenditure to pay her ballot application fee.
16. Commission staff made numerous attempts to contact the respondent via telephone and email to request she submit an electronic filing exemption form so the handwritten semiannual report could be filed. The sworn complaints were scheduled for a preliminary review hearing to be held on June 18, 2020, but the hearing was continued. After the hearing date, the respondent worked with Commission staff to submit an electronic exemption form on July 14, 2020.
17. A candidate shall file two reports for each year. The second report shall be filed not later than January 15. The report covers the period beginning July 1, the date the candidate’s campaign treasurer appointment is filed, or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through December 31. Tex. Elec. Code § 254.063(c).
18. “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. Examples of affirmative action include the filing of an application for a place on the ballot. *Id.* § 251.001(1).

19. Each report filed under this chapter with an authority other than the commission must be in a format prescribed by the commission. A report filed with the commission that is not required to be filed by computer diskette, modem, or other means of electronic transfer must be on a form prescribed by the commission and written in black ink or typed with black typewriter ribbon or, if the report is a computer printout, the printout must conform to the same format and paper size as the form prescribed by the commission. *Id.* § 254.036(a).
20. A candidate, officeholder, or political committee that is required to file reports with the commission may file reports that comply with Subsection (a) if:
- (1) the candidate, officeholder, or campaign treasurer of the committee files with the commission an affidavit stating that the candidate, officeholder, or committee, an agent of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee; and
 - (2) the candidate, officeholder, or committee does not, in a calendar year, accept political contributions that in the aggregate exceed \$20,000 or make political expenditures that in the aggregate exceed \$20,000.
- Id.* § 254.036(c).
21. An affidavit under Subsection (c) must be filed with each report filed under Subsection (a). The affidavit must include a statement that the candidate, officeholder, or political committee understands that the candidate, officeholder, or committee shall file reports as required by Subsection (b) if:
- (1) the candidate, officeholder, or committee, a consultant of the candidate, officeholder, or committee, or a person with whom the candidate, officeholder, or committee contracts uses computer equipment for a purpose described by Subsection (c); or
 - (2) the candidate, officeholder, or committee exceeds \$20,000 in political contributions or political expenditures in a calendar year.
- Id.* § 254.036(c-1).
22. The respondent filed for a place on the ballot in December 2019 and was a candidate for Texas Senate, District 27, in the March 3, 2020, primary election. Therefore, the respondent was required to file a January 2020 semiannual report electronically with the Commission by

the January 15, 2020, filing deadline. *Id.* §§ 251.001, 254.063. If the respondent did not accept political contributions or make political expenditures exceeding \$20,000 in a calendar year, and neither the respondent nor any agent of the respondent used a computer to maintain records of reportable activity, then the respondent would qualify to file the January 2020 semiannual report on paper. However, the report would have to be accompanied by an affidavit swearing to those facts. *Id.* § 254.036(c-1).

23. Records on file with the Commission confirm that the respondent did not timely file an electronic January 2020 semiannual report. In addition, the paper report that the respondent emailed on February 7, 2020, was still after the January 15, 2020, filing deadline and the electronic exemption affidavit was not received until July 14, 2020. Therefore, there is credible evidence of a violation of Section 254.063 of the Election Code.

Personal Financial Statement

24. Although not alleged in the complaints, the Commission also considered whether the respondent timely filed her personal financial statement (PFS), which was due by February 12, 2020.
25. Except as provided by Section 572.0211, a state officer, a partisan or independent candidate for an office as an elected officer, and a state party chair, shall file with the commission a verified financial statement complying with Sections 572.022 and 572.0252. Tex. Gov't Code § 572.021.
26. An individual who is a partisan or independent candidate for an office as an elected officer shall file the financial statement required by this subchapter not later than the later of: 1) the 60th day after the date of the regular filing deadline for an application for a place on the ballot in the general primary election; or 2) February 12. *Id.* § 572.027(a).
27. "Elected officer" includes a member of the legislature. *Id.* § 572.002(4)(A).
28. As a partisan candidate for an office as an elected officer, the respondent was required to file a PFS by February 12, 2020. The respondent filed her PFS on June 23, 2020. Therefore, there is credible evidence of a violation of Section 572.021 of the Government Code.

Response to Sworn Complaints

29. Sworn complaint SC-3200126 was filed on January 28, 2020, and returned to the complainant for correction on February 4, 2020. It was resubmitted on February 21, 2020. Sworn complaints SC-3200267 and SC-3200268, which are substantively identical to SC-3200126, were submitted on February 24, 2020. Jurisdiction was accepted over all three complaints on February 28, 2020. The Commission sent a notice of the sworn complaints to the respondent by certified mail, return receipt requested and by email, at the PO Box address and email address that the respondent verified. According to the United States Postal Service's (USPS) tracking records, the notice arrived at the unit and was available for pickup on March 2, 2020. The notice was returned to sender after being unclaimed on March 17, 2020.
30. The Commission sent a second notice to the same address by delivery confirmation and by email on April 7, 2020. Tracking records show that USPS delivered this second notice on April 9, 2020. This notice informed the respondent that the alleged violations in the sworn complaints were Category One violations, that a response was required not later than 10 business days from the date the notice was received, and that failure to respond constituted a separate violation for which a separate civil penalty could be assessed.
31. Based on the delivery date of the second notice, the respondent was required to respond to the sworn complaints by April 23, 2019.
32. The sworn complaints were scheduled for a preliminary review hearing to be held on June 18, 2020, but the hearing was continued. After the hearing date, the respondent worked with Commission staff to submit a general denial on July 14, 2020, 82 days after the initial response deadline.
33. A respondent's failure to timely respond as required by Subsection (a) is a Category One violation. Tex. Gov't Code § 571.1242(c).
34. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b).
35. 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. *Id.* § 12.52(a).
36. 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).

37. The respondent did not file a response to the complaints, despite receiving notice from the Commission that the allegations were Category One violations and that she was required to respond within 10 business days under Section 571.1242(1) of the Government Code. Because Section 571.1242(c) of the Government Code provides that a respondent's failure to timely respond to a notice of a Category One complaint constitutes a Category One violation, there is credible evidence of a violation of Section 571.1242 of the Government 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 findings of fact and conclusions of law described under Section III, 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 these matters.
3. The respondent acknowledges that: 1) each candidate shall file a campaign treasurer appointment before taking an affirmative act; 2) 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; 3) each candidate must file two reports for each year, and the second report shall be filed not later than January 15; 4) each partisan candidate for an office as an elected officer shall file a personal financial statement no later than February 12; and 5) a respondent shall submit a response to a sworn complaint containing a Category One violation no later than ten business after receiving written notice of the complaint. 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 nature, circumstances, and consequences of the violations described under Section III, after considering the sanction necessary to deter future violations, and after considering the affidavit of indigence presented by the respondent, the Commission imposes a \$50 civil penalty that, if not paid within 30 days, increases to \$1,000 and will be referred to the Office of the Attorney General of Texas for collection.

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-3200126, SC-3200267, and SC-3200268.

AGREED to by the respondent on this _____ day of _____, 2020.

Vanessa Tijerina, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director