

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RICARDO “RICK” GUERRA,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32012267

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on March 11, 2021, to consider sworn complaint SC-32012267. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 255.001 and 255.004 of the Election Code, laws administered and enforced by the Commission. To resolve and settle the complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) did not include a political advertising disclosure statement on a political advertising banner, in violation of Section 255.001 of the Election Code; 2) did not include a correct political advertising disclosure statement on political advertising published in a newspaper, in violation of Section 255.001 of the Election Code; and 3) misrepresented the true source of political advertising published in a newspaper, in violation of Section 255.004 of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent was the successful candidate for Mayor of San Benito, Texas, in the December 19, 2020, runoff election.

Political Advertising Banner

2. The complaint alleges the respondent failed to include a political advertising disclosure statement on a political advertising banner. The complaint included pictures that appeared to show that the banner did not have a political advertising disclosure statement.

3. In response to the complaint, the respondent swore that the political advertising disclosure statement was on the banner and all of his other political advertising. The respondent included pictures of the banner and other political advertising signs that showed all of the advertising had a disclosure statement. The pictures submitted by the respondent showed that the banner included a political advertising disclosure statement in small text at the bottom that read “Pol. Ad. Paid for by the Candidate.”
4. 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. Tex. Elec. Code § 255.001(a).
5. A technical, clerical, or *de minimis* violation for purposes of Section 571.0631 of the Government Code may include a first-time allegation against a respondent for failure to include a disclosure statement on political advertising. 1 Tex. Admin. Code § 12.81(a)(2).
6. The banner did not contain a correct political advertising disclosure statement because it stated paid for by “the candidate,” and did not include the respondent’s full name. However, the error was not misleading and did not substantially affect disclosure. Therefore, there is credible evidence of a technical or *de minimis* violation of Section 255.001 of the Election Code regarding the banner.

Political Advertising in Newspaper

7. The complaint alleges that the respondent did not include a complete political advertising disclosure statement in political advertising that was published in a local newspaper, the San Benito News. The complaint included two copies of the San Benito News published on November 27, 2020, and December 11, 2020. Each publication included a political advertisement for the respondent with a disclosure statement that read “Paid for by the Citizens of San Benito.”
8. The complaint alleged that the disclosure statement was incorrect and that the respondent misrepresented the true source of the political advertising.
9. Each political advertisement took up one quarter of one page of the newspaper and the text of each advertisement varied. The first ad was titled “San Benito First” and laid out the respondent’s plan to deal with local issues if he was elected; the second ad was titled “Voting: Your Right Your Voice” and encouraged people to get out and vote. Each advertisement contained an image at the bottom with the words “Elect Ricardo ‘Rick’ Guerra for San Benito Mayor” along with a picture of the respondent.

10. In response to the complaint, the respondent swore that he paid for the two political advertisements and provided credit card receipts for verification. The respondent also provided statements from private citizens of San Benito who had sponsored other similar political advertisements for the respondent in the San Benito News that contained the same political advertising disclosure statement, "Paid for by the Citizens of San Benito." The respondent further swore that "Citizens of San Benito" was not a political committee (PAC) and that he used the name to tell people that "their interest and the people were not going to be neglected anymore."
11. 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. Tex. Elec. Code § 255.001(a).
12. A person commits an offense if, with intent to injure a candidate or influence the election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. *Id.* § 255.004(a).
13. 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).
14. "Political advertising" is defined, in relevant part, as a communication supporting or opposing a candidate for nomination or election to a public office that in return for consideration, is published in a newspaper, magazine, or other periodical. *Id.* § 251.001(16).
15. The communications at issue are political advertising because they are communications supporting a candidate for election to public office that were published in a newspaper in return for consideration. The political advertisements contained express advocacy for the respondent as a candidate in the December 19, 2020, runoff election and were therefore required to include a political advertising disclosure statement.
16. The disclosure statement on each political advertisement read, "Paid for by the Citizens of San Benito." The disclosure statements did not include the words "political advertising," or a recognizable abbreviation thereof, and did not include the respondent's full name. Therefore, there is credible evidence of a violation of Section 255.001 of the Election Code regarding each newspaper advertisement.

17. The respondent attributed the political advertising to a group that is not a political committee and that does not otherwise exist as an organization. Moreover, the respondent was the true source of the political advertising. The political advertising purported to emanate from a source other than its true source because it purported to emanate from the Citizens of San Benito, when in fact, it emanated from the respondent. Credible evidence shows the respondent entered into a contract or agreement to print or publish political advertising that purported to emanate from a source other than its true source. Therefore, there is credible evidence of a violation of Section 255.004 of the Election Code regarding each newspaper advertisement.

IV. 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 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: 1) a person violates Section 255.001 of the Election Code if the person knowingly causes to be published, distributed, or broadcast political advertising that does not indicate in the advertising both that it is political advertising, and the full name of the person who paid for the political advertising, or the full name of the candidate, if the political advertising is authorized by the candidate; and 2) a person violates Section 255.004 of the Election Code if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. The respondent agrees to comply with these requirements of the law.

V. Confidentiality

This order and agreed resolution describes certain 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Sections III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$100 civil penalty. If the \$100 civil penalty is not paid within 30 days after the date this

order is executed, then the civil penalty is increased to \$2,500 and will be referred to the Office of the Attorney General of Texas for collection.

VII. 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-32012267.

AGREED to by the respondent on this _____ day of _____, 2021.

Ricardo "Rick" Guerra, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director