

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
RUBEN CORTEZ, JR.  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-32311317 AND SC-3240154

## FINAL ORDER

### I. Recitals

The Texas Ethics Commission (TEC) held a preliminary review hearing on June 18, 2024, to consider sworn complaints SC-32311317 and SC-3240154. A quorum of the TEC was present. The respondent received legally sufficient notice of the hearing but did not appear at the hearing. The TEC proceeded with the hearing in the respondent's absence and found credible evidence of violations of Section 254.031 of the Election Code and Section 571.1242 of the Government Code. The TEC voted to issue this final order.

### II. Allegations

Sworn complaint SC-32311317 alleges that the respondent did not properly disclose total political contributions maintained, or in the alternative, did not properly disclose political contributions, loans, and/or political expenditures, in violation of Section 254.031 of the Election Code. The allegation relates to campaign finance reports filed by the respondent between May 16, 2022 (runoff report) through August 2, 2023 (July 2023 semiannual report).

Sworn complaint SC-3240154 alleges that the respondent: 1) did not file special session reports, which were due by August 14, 2023, December 7, 2023, and January 4, 2024, in violation of Section 254.0391 of the Election Code; and 2) did not disclose in his January 2024 semiannual campaign finance report political contributions or political expenditures for political advertising on Facebook, in violation of Section 254.031 of the Election Code.

The TEC also considered whether the respondent failed to respond to the complaints, in violation of Section 571.1242 of the Government Code.

### III. Findings of Fact and Conclusions of Law

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

1. The respondent is a former member of the State Board of Education. The respondent was a candidate for State Representative, District 37, in the March 5, 2024 primary election and

the primary runoff election held on May 28, 2024. The respondent was unsuccessful in the primary runoff election.

### **Disclosure of Total Political Contributions Maintained**

2. Sworn complaint SC-32311317 alleged that, after performing a basic accounting and reconciliation of the respondent's campaign finance reports filed between May 16, 2022 and August 2, 2023, the respondent failed to properly disclose total political contributions maintained and did not properly account for his political activity.
3. The respondent disclosed in his 8-day pre-election report filed February 21, 2022 an ending balance of \$17,763.94 in total political contributions maintained as of February 19, 2022. The respondent then disclosed the following totals in his subsequent campaign finance reports filed between May 16, 2022 (runoff report) and August 2, 2023 (July 2023 semiannual report):

#### Runoff Report (filed 5/16/22)

- \$36,775.72 in total monetary political contributions
- \$10,000 loan from an individual
- \$44,618.33 in political expenditures from political contributions
- \$20,531.94 in political contributions maintained as of 5/14/22
  - \$19,921.33 is the estimated contributions maintained (difference is \$610.61)

#### July 2022 Semiannual Report (filed late on 8/2/23)

- \$8,238.92 in total monetary political contributions
- \$10,000 in outstanding loans
- \$15,962.90 in political expenditures from political contributions
- \$114.10 in political contributions maintained as of 6/30/22
  - \$12,197.35 is the estimated contributions maintained (difference is \$12,083.25)

#### January 2023 Semiannual Report (filed late on 8/2/23)

- \$0 in total monetary political contributions
- \$10,000 in outstanding loans
- \$0 in political expenditures from political contributions
- \$114.10 in political contributions maintained as of 12/31/22
  - \$12,197.35 is the estimated contributions maintained (difference is \$12,083.25)

#### July 2023 Semiannual Report (filed late on 8/2/23)

- \$0 in total monetary political contributions

- \$10,000 in outstanding loans
  - \$0 in political expenditures from political contributions
  - \$114.10 in political contributions maintained as of 6/30/23
    - \$12,197.35 is the estimated contributions maintained (difference is \$12,083.25)
4. If the total amount of contributions and loans accepted during the reporting periods (\$55,014.64) is added to the ending balance disclosed by the respondent as of February 19, 2022 (\$17,763.94), the total is \$72,778.58. Then, by subtracting from that amount the total amount of political expenditures made from political contributions during the reporting periods (\$60,581.23), the estimated ending balance of total political contributions maintained as of June 30, 2023 is \$12,197.35. The respondent disclosed only \$114.10, which is a discrepancy of \$12,083.25.
  5. 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. Tex. Elec. Code § 254.031(a)(6).
  6. 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. *Id.* § 254.031(a)(8).
  7. A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section. *Id.* § 254.031(a-1).
  8. For purposes of Election Code § 254.031(a-1), the difference between the total amount of political contributions maintained that is disclosed in a report and the correct amount is a *de minimis* error if the difference does not exceed the lesser of 10% of the amount disclosed or \$2,500. 1 Tex. Admin. Code § 20.50(c).
  9. Based on the face of the respondent's campaign finance reports, there is credible evidence that the respondent did not properly disclose total political contributions maintained, or in the alternative, the respondent did not properly disclose political contributions, loans, and/or political expenditures. Regarding the runoff report filed May 16, 2022, the discrepancy in total political contributions maintained was *de minimis*, and therefore, there is no violation of Section 254.031(a)(8) of the Election Code. However, regarding the July 2022, January 2023, and July 2023 semiannual reports, there is credible evidence of a violation of Section 254.031 of the Election Code.

**Disclosure of Political Contributions or Expenditures**

10. Sworn complaint SC-3240154 alleged that the respondent did not disclose in his January 2024 semiannual campaign finance report political contributions or political expenditures for political advertising appearing on his campaign Facebook page, Ruben Cortez for Texas. The complaint included a screenshot of the Meta Ads confirmation page showing that the Facebook ad started running on December 13, 2023. The complaint noted that the respondent's January 2024 semiannual report did not disclose any political expenditures or in-kind contributions that directly correspond to the Facebook ads.
11. Records on file with the TEC show the respondent disclosed in his 30-day pre-election report filed February 5, 2024 a \$100 political expenditure to Facebook made on January 2, 2024. The respondent disclosed the expenditure under the category of "Advertising Expense," with a description of "ad."
12. 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. Tex. Elec. Code § 254.031(a)(6).
13. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b). *Id.* § 254.035(a).
14. If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b).
15. The respondent did not submit a response to the complaints. There is insufficient evidence to determine when the amount of the expenditure for the Facebook ad was readily determinable and required to be disclosed. Therefore, there is insufficient evidence of a violation of Section 254.031 of the Election Code.

**Failure to File Special Session Reports**

16. Sworn complaint SC-3240154 alleged that, as a candidate for the legislature, the respondent failed to file campaign finance reports for the 2023 special legislative sessions. TEC records show that, based on the respondent's January 2024 semiannual report, the respondent disclosed accepting political contributions during three of the 2023 special session reporting periods and was required to file the special session reports due by August 14, 2023, December 7, 2023, and January 4, 2024. The respondent did not file the reports.

17. A statewide officeholder, a member of the legislature, or a specific-purpose committee for supporting, opposing, or assisting a statewide officeholder or member of the legislature, or a candidate for statewide office or the legislature or a specific-purpose committee for supporting or opposing the candidate, that accepts a political contribution during the period beginning on the date the governor signs the proclamation calling a special legislative session and continuing through the date of final adjournment shall report the contribution to the commission not later than the 30th day after the date of final adjournment. Tex. Elec. Code § 254.0391(a).
18. Section 254.042 of the Election Code requires the TEC to determine on its own from any available evidence whether a report required to be filed with the TEC is late. If the TEC determines that a report is late, then the person required to file the report is liable to the state for a civil penalty, which is assessed by the TEC. *Id.* § 254.042(b).
19. The special session reports are being resolved by the TEC in accordance with Section 254.042 of the Election Code. Therefore, these allegations are dismissed with respect to the sworn complaint.

#### **Failure to Respond to Sworn Complaints**

20. Sworn complaint SC-32311317 was filed on November 22, 2013. On November 27, 2023, TEC staff made contact with the respondent by telephone and notified him of the complaint. The respondent confirmed his mailing address and e-mail address, and requested that correspondence be sent by physical mail. All notices regarding the complaints were mailed to the address provided to the TEC by the respondent, which is the same address on file with the TEC as the respondent's home address.
21. On November 28, 2023, the TEC sent notice of the complaint to the respondent by both United States Postal Service (USPS) certified mail, return receipt requested, and by e-mail to the addresses provided by the respondent. USPS records indicate that the notice letter was unclaimed and returned to the TEC. On December 20, 2023, TEC staff sent the respondent a follow-up e-mail with a copy of the notice letter documents and requesting the respondent to confirm receipt. The respondent did not respond. On December 28, 2023, TEC staff called the respondent and left a voicemail asking him to confirm receipt of the notice letter. The respondent did not respond.
22. On January 3, 2024, the TEC sent a second notice to the respondent by USPS delivery confirmation. USPS records confirm that the second notice was delivered to the respondent's home address on January 6, 2024. The notice letter designated the alleged violation as a Category One violation and notified the respondent that he was required to submit a response no later than ten business days after receiving the notice. The letter also notified the respondent that failure to respond would constitute a separate violation for

- which a separate civil penalty may be assessed. The respondent did not respond to the complaint.
23. Sworn complaint SC-3240154 was filed on January 29, 2024. That same day, TEC staff left a voicemail for the respondent and sent an e-mail in an attempt to notify him of the complaint. The respondent did not respond.
  24. On February 5, 2024, the TEC sent notice of the complaint to the respondent by USPS certified mail, return receipt requested, delivery confirmation, and by e-mail. USPS records show the notice sent by certified mail was unclaimed and returned to the TEC; and the notice sent by delivery confirmation was delivered to the respondent's home address on February 9, 2024. The notice letter designated the alleged violations as Category One violations and notified the respondent that he was required to submit a response no later than ten business days after receiving the notice. The letter also notified the respondent that failure to respond would constitute a separate violation for which a separate civil penalty may be assessed. The respondent did not respond to the complaint.
  25. On March 26, 2024, TEC staff called the respondent but the call went straight to voicemail and the mailbox was full.
  26. If an alleged violation is a Category One violation, a 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. Tex. Gov't Code § 571.1242(a). A respondent's failure to timely respond as required by Subsection (a) is a Category One violation. *Id.* § 571.1242(c). The response required by Subsection (a) must include any challenge the respondent seeks to raise to the TEC's exercise of jurisdiction. In addition, the respondent may: (1) acknowledge the occurrence or commission of a violation; (2) deny the allegations contained in the complaint and provide evidence supporting the denial; or (3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist. *Id.* § 571.1242(d).
  27. The response required by Section 571.1242 of the Government Code must: (1) be in writing; (2) admit or deny the allegations set forth in the complaint; and (3) be signed by the respondent. 1 Tex. Admin. Code § 12.52(a).
  28. If a respondent does not submit a response within the time period prescribed by Section 571.1242 of the Government Code, the TEC may issue an order imposing a civil penalty for failure to file a response. *Id.* § 12.52(b).
  29. If a respondent does not submit a response that satisfies the requirements of subsection (a) of this section, the TEC may issue an order imposing a penalty for failure to file a complete response. *Id.* § 12.52(c).

30. 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. *Id.* § 12.21(b).
31. Credible evidence shows the respondent received legally sufficient notice of the sworn complaints and was notified that he was required to file a written response. In addition, the respondent was notified that failure to respond would constitute a separate violation for which a separate civil penalty may be assessed. The respondent did not respond to either complaint, despite receiving multiple notices from the TEC. Therefore, there is credible evidence of violations of Section 571.1242 of the Government Code.

#### **IV. Default Judgment**

1. The preliminary review hearing was held on June 18, 2024, at 10:00 a.m., in person at the State Capitol Extension, Room E1.014, in Austin, Texas. The respondent was also given the option to appear remotely.
2. 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).
3. If a respondent fails to appear at a hearing, the TEC may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. *Id.* § 12.23.
4. The first notice of hearing was sent to the respondent on May 1, 2024, by USPS delivery confirmation, to the physical address provided by the respondent and on file with the TEC. The notice provided the date, time, and place of the hearing, and notified the respondent of the option to appear by video teleconference. The notice also stated that if the respondent failed to appear at the hearing, then the allegations may be deemed admitted as true and the relief sought may be granted by default. USPS records confirm the notice was delivered on May 3, 2024. A second notice of hearing was sent to the respondent on May 13, 2024, by USPS certified mail, return receipt requested, delivery confirmation, and by email. USPS records confirm the notice sent by certified mail, return receipt requested, was unclaimed; and the notice sent by delivery confirmation was delivered on May 15, 2024. The respondent did not respond to the notices.
5. The TEC finds that the respondent received legally sufficient notice of the sworn complaints and the June 18, 2024 preliminary review hearing in these cases. The respondent did not respond to the notices of hearing or appear at the hearing, despite multiple notices from the TEC and attempts by TEC staff to communicate with the respondent and resolve the complaints. The TEC proceeded in the respondent's absence and issued this final order in accordance with Section 12.23 of the TEC Rules. By failing

to appear at the preliminary review hearing, the respondent forfeited his right to further proceedings before the TEC in these matters. This final order is a final and complete resolution of these sworn complaints before the TEC, except for the issue of collection of the civil penalty.

6. The TEC finds credible evidence of violations of Section 254.031 of the Election Code and Section 571.1242 of the Government Code.

#### V. Sanction

1. The TEC may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the TEC, whichever amount is more, for a delay in complying with a TEC order or for violation of a law administered and enforced by the TEC. Tex. Gov't Code § 571.173.
2. The TEC shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.
3. The respondent's failure to respond to the sworn complaints demonstrates a lack of good faith. In addition, TEC records show the respondent filed the July 2022, January 2023, and July 2023 semiannual reports late, and also that the respondent failed to file three 2023 special legislative session reports. Given the respondent's pattern of disregard for the sworn complaint process and the laws enforced by the TEC, a substantial penalty is warranted.
4. After considering the penalty factors prescribed by Section 571.177 of the Government Code, the TEC orders that the respondent pay to the TEC, within 30 days of the date of this order, a civil penalty in the amount of \$10,000. If the respondent does not pay the \$10,000 civil penalty within 30 days of the date of this order, then the civil penalty will be referred to the Office of the Attorney General of Texas for collection.

Order Date: June 24, 2024

FOR THE TEC

***J.R. Johnson***

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J.R. Johnson  
Executive Director  
Texas Ethics Commission