

TEXAS ETHICS COMMISSION

IN THE MATTER OF

GERARDO A. "GERRY" LOZANO,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32404319



ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (TEC) met on September 24, 2024, to consider sworn complaint SC-32404319. A quorum of the TEC was present. The TEC determined that there is credible evidence of a violation of Section 254.063 of the Election Code, a law administered and enforced by the TEC. To resolve and settle this complaint without further proceedings, the TEC adopted this resolution.

II. Allegation

The complaint alleged that the respondent did not file the January 2024 semiannual campaign finance report, which was due by January 16, 2024, in violation of Section 254.063 of the Election 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 was a candidate for Edinburg City Council, Place 4, in the November 7, 2023 election. The respondent lost the election by 10 votes and filed a lawsuit to contest the results. On May 31, 2024, after a bench trial was conducted in the 430th District Court, the court declared the respondent the winner after it was determined that a number of votes were cast illegally.

The Respondent Failed to Timely File the January 2024 Semiannual Report

2. The sworn complaint was filed on April 23, 2024. At the time the complaint was filed, the respondent had not filed the January 2024 semiannual report. On May 7, 2024, in response to the complaint, the respondent filed the report. The report disclosed no contributions and

\$101,400 in total political expenditures made from political contributions, \$100,000 of which was for a loan repayment. The respondent stated that the new city secretary did not send him a reminder to file the report, which is something the previous city secretary had done.

3. On May 13, 2024, TEC staff notified the respondent of the requirement to disclose all political expenditures, including expenditures made from personal funds. The respondent was also notified that expenditures incurred in connection with the election contest lawsuit were required to be disclosed as campaign expenditures. *See* Tex. Elec. Code § 251.001(7) (defining "campaign expenditure" as an expenditure made by any person in connection with a campaign for an elective office, regardless of whether the expenditure is made before, during, or after an election).
4. On June 7, 2024, the respondent corrected the January 2024 report to disclose \$64,554.70 in additional political expenditures, all of which were made from his personal funds. Although the report was only required to disclose activity occurring through December 31, 2023, the report disclosed activity occurring through June 5, 2024. Tex. Elec. Code § 254.063(c). Of the \$64,554.70 in political expenditures from personal funds, only \$37,500 were made on or before December 31, 2023 and were required to be disclosed in the report. In total, the respondent made \$138,900 in political expenditures during the statutorily required reporting period.
5. The respondent was a candidate during the period at issue and was required to file a January 2024 semiannual campaign finance report by January 16, 2024. Tex. Elec. Code § 254.063(c); 1 Tex. Admin. Code § 20.21. The respondent filed the report late. Therefore, there is credible evidence of a violation of Section 254.063 of the Election Code.

IV. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the TEC:

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 and settling the sworn complaint.
2. The respondent consents to this order and agreed resolution before any adversarial evidentiary hearings or argument before the TEC, and before any formal adjudication of law or fact by the TEC. The respondent waives any right to a hearing before the TEC or an administrative law judge and consents to TEC staff presenting this order and agreed resolution to the commissioners outside of the respondent's presence. The respondent further waives any right to a post-hearing procedure established or provided by law. The TEC and respondent agree that the entry of this order and agreed resolution will be a full and complete resolution of sworn complaint SC-32404319.

3. The respondent understands and agrees that the TEC will consider this order and agreed resolution in any future sworn complaint proceedings against the respondent regarding a similar violation that occurs after the date this agreement is executed.

V. Confidentiality

This order and agreed resolution describes a violation that the TEC has determined is 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 TEC.

VI. Sanction

The TEC may impose a civil penalty of not more than \$5,000 or triple the amount at issue, whichever amount is more. Tex. Gov't Code § 571.173. 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. Tex. Gov't Code § 571.177.

The Amount at Issue

In total, the respondent failed to timely disclose \$138,900 in political expenditures. In fact, the activity was not fully disclosed until June 7, 2024, which is seven months after the November 7, 2023 election.

Factor 1: The Seriousness of the Violation

The violations caused meaningful harm to disclosure. The respondent did not disclose his expenditures until after the November 2023 election and more than five months after he filed a lawsuit to contest the election results. The late report disclosed substantial activity in connection with the November 2023 election. However, the TEC also takes into account that the respondent did not accept any political contributions during the reporting period, and of the \$138,900 in political expenditures, \$100,000 was for the repayment of a campaign loan.

Factor 2: The History and Extent of Previous Violations

The respondent has no previous violations.

Factor 3: The Demonstrated Good Faith of the Violator

The respondent filed the missing report two weeks after the sworn complaint was filed. Although the

report was originally incomplete, there is no evidence to show that, at the time the report was initially filed, the respondent was aware that he was required to disclose as campaign expenditures his legal expenses incurred in connection with the election contest. The respondent corrected the report after being notified by TEC staff that the legal fees were required to be disclosed as political expenditures made from personal funds.

Factor 4: The Penalty Necessary to Deter Future Violations

There is no reason to believe that this respondent intends to commit future violations; however, a penalty is justified by the general need to deter violations with significant disclosure consequences.

Factor 5: Any Other Matters that Justice May Require

The respondent did not squarely address the allegation in response to the complaint and appeared to attribute the late filing to the city secretary's failure to provide notice – even though there is no requirement under the law for local filing authorities to provide notice of campaign finance reporting deadlines. As the candidate and person required to file the report, the respondent was responsible for knowing the filing deadlines and timely filing the report.

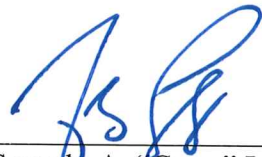
Conclusion

After considering the amount at issue and the nature, circumstances, and consequences of the violations described under Section III, the TEC imposes a \$2,500 civil penalty. If the penalty is not paid within 30 days of the date of this Order and Agreed Resolution, the penalty shall increase to \$5,000 and shall be referred to the Office of the Attorney General for collections.

VII. Order

The TEC hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-32404319.

AGREED to by the respondent on this 18 day of July, 2024.



Gerardo A. "Gerry" Lozano, Respondent

EXECUTED by the TEC on:

9/24/24

Texas Ethics Commission

By:



J.R. Johnson, Executive Director