

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ANTONIO "TONY" BARCO,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-31409195CI

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 5, 2015, to consider sworn complaint SC-31409195CI. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001 and 254.064(b) of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent, as an opposed candidate for the Edcouch-Elsa Independent School District (EEISD) Board of Trustees, did not file a campaign treasurer appointment (CTA) and did not file pre-election reports in connection with the November 6, 2012, general election.

III. Facts Supported by Credible Evidence

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

Background

1. At all times relevant to the complaint, the respondent was a candidate for the EEISD board of trustees in the November 6, 2012, general election.
2. On April 14, 2014, the Commission submitted an open records request to EEISD for all campaign finance reports filed by candidates in the November 6, 2012, general election and all CTAs filed after July 1, 2011. The Commission initiated this complaint after a review of campaign finance reports on record with EEISD revealed that the respondent

was an opposed candidate in the November 6, 2012, general election, but EEISD did not have a record of the respondent filing any campaign finance reports or a CTA. The Commission sent a second open records request to EEISD on September 26, 2014, that specifically asked by name for all campaign finance reports and CTAs filed by the respondent. In response to the second request, EEISD provided an 8-day pre-election report filed by the respondent. In a letter, EEISD stated that it did not have a 30-day pre-election report or CTAs on file for the respondent.

3. In response to the complaint, the respondent stated that he believes he filed all required forms with EEISD.

Campaign Treasurer Appointment

4. On August 20, 2012, the respondent filed an application for a place on the ballot in the November 6, 2012, general election. The respondent was opposed in the election.
5. According to records on file with EEISD, the respondent did not file a CTA with the EEISD business administrator.

Filing of Campaign Finance Reports

6. The complaint alleged that the respondent did not file the 30-day and 8-day pre-election campaign finance reports for the November 6, 2012, general election in which the respondent was an opposed candidate for the EEISD board of trustees, place 3.
7. The respondent became a candidate for the EEISD board of trustees on or around August 20, 2012, when he filed his application for a place on the ballot. The respondent did not file a CTA, and therefore did not elect to file on the modified reporting schedule.
8. Regarding the 30-day pre-election report for the November 6, 2012, general election, the respondent was required to file the report with EEISD by October 9, 2012. EEISD records indicate the respondent did not file the 30-day pre-election report.
9. Regarding the 8-day pre-election report for the November 6, 2012, general election, the respondent was required to file the report with EEISD by October 29, 2012. EEISD records indicate the respondent filed the 8-day pre-election report on October 29, 2012. The 8-day pre-election report covered the period from August 1, 2012, through October 29, 2012, two days past the end of the 8-day reporting period. The 8-day pre-election report disclosed \$11,000 in total political contributions and \$11,000 in total political expenditures.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Campaign Treasurer Appointment

1. “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. ELEC. CODE § 251.001(1).
2. Examples of affirmative action include the filing of an application for a place on a ballot. *Id.* § 251.001(1)(B).
3. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. *Id.* § 252.001.
4. The respondent became a candidate for the EEISD board of trustees on or around August 20, 2012, when he filed his application for a place on the ballot. EEISD has no record that the respondent submitted a CTA. The respondent was unable to produce a copy of his CTA. Despite the respondent’s belief that he filed all required forms, there is credible evidence of a violation of section 252.001 of the Election Code.

Filing of Campaign Finance Reports

5. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day and covers the period beginning the day 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 chapter, as applicable, and continuing through the 40th day before election day. *Id.* § 254.064(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).
6. Regarding the 8-day pre-election report for the November 6, 2012, general election, the respondent was an opposed candidate for the EEISD board of trustees and was required to file the report with EEISD by October 29, 2012. The respondent timely filed the report with EEISD. Therefore, there is credible evidence of no violation of section 254.064(c) of the Election Code.

7. Regarding the 30-day pre-election report for the November 6, 2012, general election, the respondent was an opposed candidate for the EEISD board of trustees and was required to file the report with EEISD by October 9, 2012. The respondent did not file the report with EEISD. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.
8. The 8-day pre-election report filed by the respondent covered the entire period that would have been covered by the 30-day pre-election report. Therefore, all the political activity that was required to be included in the 30-day pre-election report was disclosed eight days before the election.

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 facts described under Section III or the Commission's findings and conclusions of law described under Section IV, 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 each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. The respondent further acknowledges that in addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. 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 Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$250 civil penalty.

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-31409195CI.

AGREED to by the respondent on this _____ day of _____, 20__.

Antonio "Tony" Barco, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director