

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RICARDO MERCADO
“EL YAKE” GARZA,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31409201CI

FINAL ORDER

The Texas Ethics Commission (Commission), having heard this case and voting to find a violation of a law under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Ricardo Mercado “El Yake” Garza, whose last known mailing address is P.O. Box 631, Elsa, Texas 78543. The Texas Ethics Commission (Commission) initiated the complaint against the respondent on August 20, 2014. The Notice of Hearing was mailed to the respondent on March 10, 2016, by certified mail, return receipt requested, restricted delivery and delivery confirmation.
2. The preliminary review hearing was held on April 8, 2016, by the Commission in Austin, Texas.
3. The respondent did not file a response to the notice of hearing or appear at the hearing.
4. At all times relevant to the complaint, the respondent was an opposed candidate for the Edcouch-Elsa Independent School District (EEISD) board of trustees in the November 6, 2012, election.
5. 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, election and all Campaign Treasurer Appointments (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, 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 stated that it did not have any campaign finance reports or CTAs on file for the respondent.

6. In response to the complaint, the respondent swore that he attempted to file the campaign finance reports with EEISD, but that the business manager refused to accept the reports based on the erroneous belief that the reports had to be filed with the county.
7. The EEISD business manager indicated during a telephone conversation that he does not have a specific recollection of the incidents the respondent described. However, he did state that other candidates were able to successfully file their reports with the EEISD, and that the EEISD would not refuse to accept reports.

Campaign Treasurer Appointment

8. The complaint alleged that the respondent, as a candidate for the EEISD board of trustees in the November 6, 2012, election, did not file a CTA with the EEISD.
9. On August 17, 2012, the respondent filed an application for a place on the ballot in the November 6, 2012, election. The respondent was opposed in the election.
10. According to records on file with EEISD, the respondent did not file a CTA with the EEISD business manager.

Filing of Campaign Finance Reports

11. 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, election in which the respondent was an opposed candidate for the EEISD board of trustees
12. The respondent became a candidate for the EEISD board of trustees on or around August 17, 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.
13. Regarding the 30-day pre-election report for the November 6, 2012, election, the respondent was required to file the report with EEISD by October 9, 2012. EEISD records indicate that the respondent did not file the 30-day pre-election report until the week of April 4, 2016.
14. Regarding the 8-day pre-election report for the November 6, 2012, election, the respondent was required to file the report with EEISD by October 29, 2012. EEISD records indicate the respondent did not file the 8-day pre-election report until the week of April 4, 2016.

Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Commission. GOV'T CODE § 571.061.

2. The respondent received legally sufficient notice of the hearing in this case. GOV'T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.

Campaign Treasurer Appointment

3. "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).
4. Examples of affirmative action include the filing of an application for a place on a ballot. *Id.* § 251.001(1)(B).
5. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. *Id.* § 252.001.
6. The respondent became a candidate for the EEISD board of trustees on or around August 17, 2012, when he filed his application for a place on the ballot. EEISD has no record that the respondent submitted a CTA. Therefore, there is credible evidence of a violation of section 252.001 of the Election Code.

Filing of Campaign Finance Reports

7. 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).
8. Regarding the 30-day pre-election report for the November 6, 2012, 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 until the week of April 4, 2016. Therefore, there is credible evidence of a violation of section 254.064(b) of the Election Code.

9. Regarding the 8-day pre-election report for the November 6, 2012, 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 did not file the report with EEISD until the week of April 4, 2016. Therefore, there is credible evidence of a violation of section 254.064(c) of the Election Code.
10. The Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. GOV'T CODE § 571.173.

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$250.

Order Date: _____

FOR THE COMMISSION

Natalia Luna Ashley
Executive Director
Texas Ethics Commission