

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RUBEN O. LUJAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31410251

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on October 13, 2016, to consider sworn complaint SC-31410251. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031, 254.063, and 253.040 of the Election Code and section 20.61 of the Ethics Commission Rules, 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: 1) did not properly report political contributions and political expenditures; and 2) did not timely file campaign finance reports.

III. Facts Supported by Credible Evidence

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

1. The respondent is the El Paso County Justice of the Peace for Precinct 6, Place 1.

Filing of Semiannual Campaign Finance Reports

2. The complaint alleged that the respondent did not file the July 2013 and 2014 semiannual campaign finance reports.
3. El Paso County records show that the respondent had an active campaign treasurer appointment on file at all times relevant to the complaint. El Paso County records show that

the respondent's July 2013 semiannual report was never filed and that the respondent's July 2014 semiannual report was filed on November 10, 2014.

Political Expenditures and Total Political Expenditures

4. The complaint alleged that the respondent did not disclose, in the January 2014 semiannual report, a \$1,000 political expenditure to the Democratic Party for a filing fee to have his name placed on the ballot.
5. The respondent's January 2014 semiannual report shows the respondent did not itemize any political expenditures and disclosed \$0 in total political expenditures and total political expenditures of \$100 or less, unless itemized.
6. The respondent admitted that he made a \$1,000 expenditure for a filing fee on November 14, 2013, that he did not disclose on the January 2014 semiannual report. In addition, the respondent admitted he made an expenditure of \$21.62 to Home Depot during the same reporting period.
7. The complaint alleged that the respondent did not properly disclose political expenditures in the 30-day pre-election report for the March 4, 2014, primary election. The complaint noted that the respondent disclosed \$700 in total political expenditures, but did not itemize any expenditures or disclose any amount in Box 3 of the cover sheet for total political expenditures of \$100 or less, unless itemized.
8. The respondent admitted that he did not make \$700 in total political expenditures during the 30-day pre-election reporting period. The respondent also submitted scanned copies of receipts indicating he made aggregate expenditures of \$169.94 to EZ Printing & Signs during this reporting period. These expenditures were not itemized on Schedule F (used to report political expenditures).
9. The complaint alleged that the respondent did not properly disclose the category and description, as well as the payee name and address, of a \$260 political expenditure disclosed on Schedule F of the respondent's 8-day pre-election report for the March 2014 primary election.
10. The respondent disclosed, in his 8-day pre-election report for the March 2014 primary election, a \$260 political expenditure on Schedule F, made on February 14, 2014, with a category of "Flyers/Push Cards." The respondent left blank the spaces for the description of the expenditure, the payee name, and the payee address. On the report's cover sheet, the respondent disclosed \$260 for total political expenditures and \$100 for total political expenditures of \$100 or less, unless itemized. The respondent submitted a scanned copy of a receipt confirming that the expenditure was for \$165, rather than \$260. The respondent also submitted scanned copies of receipts indicating the respondent made additional aggregate

expenditures of \$169.88 to EZ Printing & Signs during this reporting period that were not disclosed.

11. The respondent disclosed \$100 in unitemized expenditures on the cover sheet of the 8-day pre-election report for the March 2014 primary election. However, the submitted scanned copies of receipts do not show the respondent made any aggregate expenditures of \$100 or less.

Political Contributions and Total Political Contributions Maintained

12. The complaint alleged that the respondent did not disclose political contributions or alternatively disclosed an incorrect balance of total political contributions maintained in the respondent's 8-day pre-election report for the March 2014 primary election.
13. The respondent disclosed, in the 8-day pre-election report for the March 2014 primary election, \$340 in total political contributions maintained and \$260 in total political expenditures. In the respondent's 30-day pre-election report, the respondent disclosed \$700 for total political contributions and \$700 for total political expenditures, but left the space for total political contributions maintained blank. In the respondent's January 2014 semiannual report, the respondent disclosed \$0 for total political contributions maintained.
14. In response to the complaint, the respondent swore that he received only two contributions. The respondent also stated that he did not maintain campaign contributions in a separate account, but made all political expenditures out of his personal funds.
15. Based on the respondent's submitted receipts, the respondent made political expenditures totaling \$405.24 after receiving the political contributions. Therefore, the respondent's total political contributions maintained should have been disclosed as approximately \$294.76.

Full Addresses of Contributors

16. The complaint alleged that the respondent did not properly disclose the full addresses of two contributors who made political contributions totaling \$700 disclosed on Schedule A (used to disclose political contributions) of the respondent's 30-day pre-election report for the March 2014 primary election.
17. According to the report, the first contributor at issue made one contribution of \$500 and the second contributor at issue made one contribution of \$200. The respondent disclosed the full names of both contributors, but only disclosed "EP, TX" as the contributors' addresses.

IV. Findings and Conclusions of Law

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

Filing of Semiannual Campaign Finance Reports

1. A candidate shall file two reports for each year as provided by this section. ELEC. CODE § 254.063(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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 subchapter, as applicable, and continuing through June 30. *Id.* § 254.063(b).
2. The respondent was a candidate and was required to file the semiannual campaign finance reports at issue. El Paso County records show that the respondent's July 2013 semiannual report was never filed. The July 2014 semiannual report was due by July 15, 2014. El Paso County records show that the respondent's July 2014 semiannual report was filed 118 days late on November 10, 2014. Therefore, there is credible evidence of violations of section 254.063(b) of the Election Code with respect to both reports.

Political Expenditures and Total Political Expenditures

3. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).
4. Each campaign finance report must include the total amount or a specific listing of the total amount of the political expenditures of \$100 or less made during the reporting period. *Id.* § 254.031(a)(5).
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. *Id.* § 254.031(a)(6).
6. Section 20.61(a) of the Ethics Commission Rules states in relevant part: For reporting required under Section 254.031 of the Election Code, the purpose of an expenditure means: (1) A description of the category of goods, services, or other thing of value for which an expenditure is made. (2) A brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of

- value for which the expenditure is made does not adequately describe the purpose of an expenditure. Ethics Commission Rules § 20.61(a).
7. The January semiannual report covers the period beginning July 1, 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 subchapter, as applicable, and continuing through December 31. ELEC. CODE § 254.063(c).
 8. The January 2014 semiannual report covered the period beginning July 1, 2013, and continued through December 31, 2013. The respondent admitted that he made a \$1,000 expenditure for a filing fee on November 14, 2013, that he did not disclose on the January 2014 semiannual report. In addition, the respondent admitted he made a political expenditure of \$21.62 to Home Depot during this reporting period, but disclosed "0" in total political expenditures of \$100 or less, unless itemized. The respondent disclosed "0" in total political expenditures. Therefore, there is credible evidence of violations of section 254.031(a)(3), (5), and (6) of the Election Code.
 9. The 30-day pre-election report 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).
 10. The reporting period for the 30-day pre-election report at issue covered January 1, 2014, through January 23, 2014. The respondent admitted that he did not make \$700 in total political expenditures during this reporting period. Thus, the amount of total political expenditures as disclosed by the respondent was incorrect. The respondent submitted receipts indicating he made aggregate expenditures of \$169.94 to EZ Printing & Signs during this reporting period. The expenditures were not itemized on Schedule F. Therefore, there is credible evidence of violations of section 254.031(a)(3) and (6) of the Election Code.
 11. The 8-day pre-election report covers the period beginning the 39th day before election day and continuing through the 10th day before election day. *Id.* § 254.064(c).
 12. The respondent provided a category for the \$260 expenditure on his 8-day pre-election report. The respondent did not disclose a description of the purpose of the expenditure at issue, nor did he disclose the name and address of the payee of the expenditure. In addition, credible evidence shows the amount of this expenditure was \$165, not \$260. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code with respect to disclosing the amount and the name and address of the payee of the expenditure at issue. There is credible evidence of a violation of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules with respect to the respondent not disclosing a description of the purpose of the expenditure at issue.

13. In addition, the respondent submitted receipts indicating he made additional aggregate expenditures of \$169.88 to EZ Printing & Signs during this reporting period that were not disclosed. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with respect to these expenditures.
14. The respondent disclosed \$100 in unitemized expenditures on the cover sheet of the 8-day pre-election report. However, the submitted scanned copies of receipts show the respondent did not make any aggregate expenditures of \$100 or less. Therefore, there is credible evidence of a violation of section 254.031(a)(5) of the Election Code.
15. The respondent disclosed \$260 in total political expenditures on the cover sheet of the 8-day pre-election report. However, credible evidence indicates the respondent actually made political expenditures totaling \$334.88 during this reporting period. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code.

Political Contributions and Total Political Contributions Maintained

16. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
17. Each 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).
18. Except as provided by Section 253.0351(c), each candidate or officeholder shall keep the person's campaign and officeholder contributions in one or more accounts that are separate from any other account maintained by the person. *Id.* § 253.040(a).
19. Based on the respondent's sworn response to the complaint, he received only two contributions during the reporting periods at issue. The respondent disclosed these two contributions. Therefore, there is credible evidence of no violations of section 254.031(a)(1) of the Election Code with respect to the alleged undisclosed contributions.
20. The respondent stated that he made all of his political expenditures out of his personal funds. He stated that he accepted political contributions, but did not maintain a separate campaign account. Therefore, there is insufficient evidence of a violation of section 254.031(a)(8) of the Election Code with respect to the reporting of total political contributions maintained.

21. There is credible evidence the respondent commingled two political contributions totaling \$700 with his personal funds. Therefore, there is credible evidence of a violation of section 253.040(a) of the Election Code with respect to the respondent's failure to maintain political contributions in a separate account.

Did Not Properly Disclose the Full Addresses of Contributors

22. A campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
23. El Paso County records show, and the respondent admits, that the respondent did not disclose, on the 30-day pre-election report for the March 2014 primary election, complete addresses for two contributors who made political contributions exceeding \$50. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code.

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: 1) a candidate shall file two reports for each year as provided by section 254.063 of the Election Code; the first report shall be filed not later than July 15 and covers the period beginning January 1, 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 subchapter, as applicable, and continuing through June 30; 2) each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions; 3) each campaign finance report must include the amount of political expenditures that in the aggregate exceed

\$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; 4) the purpose of an expenditure means a description of the category of goods, services, or other thing of value for which an expenditure is made and a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure; 5) each campaign finance report must include the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period; 6) 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; and 7) except as provided by Section 253.0351(c), each candidate or officeholder shall keep the person's campaign and officeholder contributions in one or more accounts that are separate from any other account maintained by the person. 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 \$1,000 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-31410251.

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

Ruben O. Lujan, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director