

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ALFONSO “AL” CAVALIER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31604107

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on August 15, 2016, to consider sworn complaint SC-31604107. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 252.001, 253.031, 254.063, 254.064, and 255.001 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: 1) did not file a campaign treasurer appointment; 2) accepted campaign contributions or made or authorized campaign expenditures at a time when the respondent did not have a campaign treasurer appointment in effect; 3) did not file the January 2016 semiannual report; 4) did not file the 30-day and 8-day pre-election reports for the March 1, 2016, primary election; and 5) did not include a disclosure statement on political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful non-incumbent primary candidate for Jim Wells County Constable, Precinct 3, in the March 1, 2016, primary election.

Campaign Treasurer Appointment and Expenditures without a Campaign Treasurer Appointment in Effect

2. The complaint alleged that the respondent did not file a campaign treasurer appointment and made or authorized campaign expenditures without a campaign treasurer appointment in effect.

3. The respondent admitted he did not file a campaign treasurer appointment. A telephone conversation with the Jim Wells County Clerk's Office confirmed that the respondent did not file a campaign treasurer appointment as required by section 252.001 of the Election Code.
4. The respondent also admitted he made campaign expenditures without a campaign treasurer appointment in effect. The respondent's final report disclosed political expenditures totaling \$3,504.24.

Semiannual Campaign Finance Report

5. The complaint alleged that the respondent did not timely file the January 2016 semiannual report.
6. The respondent admitted he did not file the January 2016 semiannual report. Records on file with the county clerk's office show the respondent's January 2016 semiannual report was not filed. The respondent's final report disclosed a \$5,000 personal loan and \$1,998.16 in total political expenditures made during the period of time the January 2016 semiannual campaign finance report would cover.

Pre-Election Reports

7. The complaint alleged that the respondent did not timely file the 30-day and 8-day pre-election reports for the March 1, 2016, primary election
8. The respondent's name appeared on the ballot for the March 1, 2016, primary election as an opposed candidate for Jim Wells County Constable, Precinct 3. The respondent did not file a campaign treasurer appointment on which he could have elected to file reports on the modified reporting schedule.
9. The respondent admitted he did not file the 30-day and 8-day pre-election reports for the March 1, 2016 primary election. Records on file with the county clerk's office show the respondent's 30-day and 8-day pre-election reports were not filed. The respondent's final report disclosed \$1,506.08 in total political expenditures made during the period of time the pre-election reports would cover.

Political Advertising Disclosure Statement

10. The complaint alleged that the respondent did not include a political advertising disclosure statement on two campaign flyers. There is no question the campaign flyers were authorized by the candidate. The first flyer at issue does not contain the political advertising disclosure statement. The second flyer at issue contains a form of disclosure statement that reads: "paid for by C4C fund, B. Cavalier, treasurer." However, the statement does not disclose the

fact that the flyer is political advertising. The words “political advertising” do not appear on the flyer.

11. The respondent swore that the first campaign flyer cost approximately \$334.58 to publish and distribute. The respondent also submitted a scanned image of a check for \$314.58, which he swore was the cost of postage for the first campaign flyer. The respondent swore that the second campaign flyer cost approximately \$50.00 to publish and distribute.

IV. Findings and Conclusions of Law

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

Campaign Treasurer Appointment and Expenditures without a Campaign Treasurer Appointment in Effect

1. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252, Election Code. ELEC. CODE § 252.001.
2. An individual must file a campaign treasurer appointment for the individual’s own candidacy with the county clerk, if the appointment is made for candidacy for a county office, a precinct office, or a district office other than one included in Subdivision (1). *Id.* § 252.005(2).
3. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. *Id.* § 253.031(a).
4. The respondent’s name appeared on the ballot for the March 1, 2016, primary election. He made public announcements of his intent to run for public office. He solicited support for his election, and he made campaign expenditures. Therefore, he was a candidate for purposes of chapter 252 of the Election Code.
5. Because the respondent was a candidate, he was required to file a campaign treasurer appointment with the county clerk’s office. Records on file with the Jim Wells County Clerk’s Office show the respondent never filed a campaign treasurer appointment.
6. Credible evidence demonstrates the respondent made campaign expenditures totaling approximately \$3,480 without filing a campaign treasurer appointment. In addition, the respondent admits he made campaign expenditures without a campaign treasurer appointment on file. Therefore, there is credible evidence of violations of sections 252.001 and 253.031(a) of the Election Code.

Semiannual Campaign Finance Report

7. A candidate shall file two reports for each year as provided by this section. The second report shall be filed not later than January 15. The 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.
8. The respondent was a candidate and made political expenditures during the period of time the January 2016 semiannual report covered. Therefore, he was required to file the January 2016 semiannual campaign finance report. Records on file with the Jim Wells County Clerk's Office show the respondent's January 2016 semiannual campaign finance report was never filed. In addition, the respondent admitted that he did not file the January 2016 semiannual campaign finance report. Therefore, there is credible evidence of a violation of section 254.063(c) of the Election Code.

Pre-Election Reports

9. 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 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. 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. ELEC. CODE § 254.064.
10. The respondent did not file a campaign treasurer appointment on which he could have elected to file reports on the modified reporting schedule. In addition, the respondent's name appeared on the ballot for the March 1, 2016, primary election as an opposed candidate. Therefore, the respondent was required to file the 30-day and 8-day pre-election reports. Records on file with the Jim Wells County Clerk's Office show the respondent's pre-election reports were never filed. In addition, the respondent admitted that he did not file the pre-election reports. Therefore, there is credible evidence of violations of sections 254.064(b) and 254.064(c) of the Election Code.

Political Advertising Disclosure Statement

11. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising,

- the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).
12. Section 255.001 of the Election Code does not apply to: (1) tickets or invitations to political fund-raising events; (2) campaign buttons, pins, hats, or similar campaign materials; or (3) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute. *Id.* § 255.001(d).
 13. The disclosure statement required by section 255.001, Election Code, must contain the words “political advertising” or any recognizable abbreviation, and must appear on one line of text or on successive lines of text on the face of the political advertising. Ethics Commission Rules § 26.1(a).
 14. “Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that, in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television, or that appears in a pamphlet, circular, flyer, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. ELEC. CODE § 251.001(16).
 15. The first campaign flyer at issue did not contain a political advertising disclosure statement. In addition, the respondent admitted that he did not include the political disclosure statement on the first flyer. Although the second campaign flyer at issue included a form of the disclosure statement, it did not contain the words “political advertising” or a recognizable abbreviation of the phrase.
 16. Credible evidence indicates the cost to produce and distribute each flyer, in the aggregate, was less than \$500. The first flyer, according to the respondent, cost approximately \$334.58 to publish and distribute. The second flyer, according to the respondent, cost approximately \$50.00 to publish and distribute. Therefore, pursuant to section 255.001(d)(3) of the Election Code, section 255.001 of the Election Code does not apply and the disclosure statements are not required. Accordingly, there is credible evidence of no violation of section 255.001(a) 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) each candidate shall appoint a campaign treasurer as provided by chapter 252, Election Code; 2) a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect; 3) a candidate shall file two reports for each year as provided by this section; 4) the second report shall be filed not later than January 15 and 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; 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; 6) 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 chapter 254, as applicable, and continuing through the 40th day before election day; 7) 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 and covers the period beginning the 39th day before election day and continuing through the 10th 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 \$500 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-31604107.

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

Alfonso "Al" Cavalier, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Natalia Luna Ashley, Executive Director