

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
RUBEN BECERRA,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-31611229

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met on September 27, 2017, to consider sworn complaint SC-31611229. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031 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 properly disclose political contributions and political expenditures in 30-day and 8-day pre-election campaign finance reports; and 2) did not include a political advertising 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 a candidate for Mayor of the City of San Marcos in the November 8, 2016, election and December 13, 2016, runoff election.

#### **Disclosure of Political Contributions and Political Expenditures**

2. The complaint alleged that the respondent did not properly disclose on his 30-day and 8-day pre-election reports for the November 2016 election political contributions accepted and political expenditures made during the reporting periods. Specifically, the complaint alleged that the respondent did not timely disclose political expenditures made to the *San Marcos Daily Record* for three newspaper advertisements. The complaint also alleged that the respondent did not properly disclose total political contributions and expenditures on the cover sheet of each report.

30-day pre-election report for the November 2016 Election

3. The complaint alleged that the respondent did not disclose on his 30-day pre-election report political expenditures made to the *San Marcos Daily Record* for three newspaper advertisements. The advertisements were published on October 23, 2016, October 30, 2016, and November 6, 2016. Records on file with the City of San Marcos show that the respondent timely filed a 30-day pre-election report on October 7, 2016, and reported \$1,875 in monetary political contributions on Schedule A1 (used to disclose monetary political contributions) and \$2,882.16 in expenditures made by credit card on Schedule F4 (used to disclose expenditures made by credit card). The cover sheet totals on page two were left blank, and thus the respondent did not disclose amounts for total political contributions of \$50 or less, total political contributions accepted, total political expenditures of \$100 or less, total political expenditures made, and total political contributions maintained as of the last day of the reporting period.
4. The respondent disclosed a \$2,882.16 political expenditure to a credit card company on Schedule F4. The respondent disclosed the actual vendor payee of the \$2,882.16 political expenditure on Schedule F1 (used to disclose political expenditures from political contributions) but crossed out the expenditure on the report. The expenditure disclosed on Schedule F1 should have been disclosed on Schedule F4. When the respondent paid the credit card company for the charge, the respondent should have then disclosed the expenditure to the credit card company on Schedule F1 of the appropriate report.

8-day pre-election report for the November 2016 Election

5. The complaint alleged that the respondent did not disclose on his 8-day pre-election report political expenditures made to the *San Marcos Daily Record* for the three newspaper advertisements. Records on file with the City of San Marcos show that the respondent timely filed an 8-day pre-election report on October 31, 2016, and reported \$312 in total political expenditures for Facebook advertising. The respondent disclosed \$450 in total political contributions of \$50 or less but disclosed \$0 for total political contributions accepted during the reporting period. The respondent's 8-day pre-election report did not disclose political expenditures made to the *San Marcos Daily Record*.
6. In response to the complaint, the respondent stated that he purchased newspaper advertisements for his campaign from the *San Marcos Daily Record* using his credit card on October 10, 2016, but did not report the political expenditures on his 8-day pre-election report because he was waiting for the *San Marcos Daily Record* to send him an invoice. The respondent also stated that \$1,034 was the exact amount charged to his credit card on October 10, 2016, for the newspaper advertisements and that he reported the expenditure in his runoff report for the December 13, 2016, runoff election.

**Political Advertising Disclosure Statement**

7. The complaint alleged that the respondent did not include a disclosure statement on political advertising appearing in a newspaper. The complainant attached three print-outs of three different newspaper advertisements that appeared in the *San Marcos Daily Record* from October 23, 2016, through November 6, 2016. The respondent advertised his candidacy for Mayor of San Marcos in all three newspaper advertisements at issue, but none of the advertisements contained a political advertising disclosure statement.
8. In response to the complaint, the respondent stated that he purchased the newspaper advertisements on October 10, 2016, and acknowledged that there were no disclosure statements on any of the advertisements.

**IV. Findings and Conclusions of Law**

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

**Disclosure of Political Contributions and Political Expenditures**

1. Each report filed under this chapter 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).
2. Each report filed under this chapter must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. *Id.* § 254.031(a)(5).
3. Each report filed under this chapter 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).
4. Each report filed under this chapter 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).
5. For purposes of reporting under this chapter, a political expenditure is not considered to have been made until the amount is readily determinable by the person making the expenditure, except as provided by Subsection (b). *Id.* § 254.035(a).

6. If the character of an expenditure is such that under normal business practice the amount is not disclosed until receipt of a periodic bill, the expenditure is not considered made until the date the bill is received. *Id.* § 254.035(b).

#### 30-day pre-election report for the November 2016 Election

7. The respondent did not disclose any totals on cover sheet page two of his 30-day pre-election report. Therefore, there is credible evidence of a violation of sections 254.031(a)(5), 254.031(a)(6), and 254.031(a)(8) of the Election Code. The respondent also did not properly itemize a political expenditure of \$2,882.16. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code.

#### 8-day pre-election report for the November 2016 Election

8. The respondent disclosed \$450 in total political contributions of \$50 or less but disclosed \$0 for total political contributions accepted during the reporting period. Therefore, there is credible evidence of a violation of section 254.031(a)(6) of the Election Code regarding the respondent not properly disclosing total political contributions.
9. Credible evidence indicates that the respondent purchased three newspaper advertisements on October 10, 2016. The political expenditure amount was readily determinable when \$1,034 was charged to the respondent's credit card on October 10, 2016. The 8-day pre-election report was required to disclose activity from September 30, 2016, through October 29, 2016. Therefore, the respondent was required to disclose the \$1,034 political expenditure in the 8-day pre-election report and include the expenditure in the amount of total political expenditures. The respondent erroneously disclosed the expenditure in the subsequent runoff report for the December 13, 2016, runoff election. Therefore, there is credible evidence of a violation of sections 254.031(a)(3) and 254.031(a)(6) of the Election Code.

#### **Political Advertising Disclosure Statement**

10. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising: (1) that it is political advertising; and (2) 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).
11. "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. *Id.* § 251.001(16).

12. The newspaper advertisements at issue constituted political advertising because they were communications that supported the respondent as a candidate for Mayor of San Marcos and were published in a newspaper in return for consideration. The advertisements contained express advocacy and were therefore required to include a political advertising disclosure statement. The respondent did not include a disclosure statement on the advertisements. Therefore, there is credible evidence of violations of section 255.001 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 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; 2) each campaign finance report must include the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period; 3) 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; 4) each campaign finance 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; and 5) 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.

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-31611229.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Ruben Becerra, Respondent

EXECUTED ORIGINAL received by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Seana Willing, Executive Director