

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ELOY VERA,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-32206265, SC-32209325,
AND SC-32210388

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 27, 2023, to consider sworn complaints SC-32206265, SC-32209325, and SC-32210388. 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 255.003 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

SC-32206265 alleged that the respondent: 1) did not file a campaign treasurer appointment, in violation of Section 252.001 of the Election Code; 2) accepted campaign contributions and/or made or authorized campaign expenditures without a campaign treasurer appointment on file, in violation of Section 253.031(a) of the Election Code; and 3) did not file the July 2020, January 2021, July 2021, and January 2022 semiannual campaign finance reports, in violation of Section 254.063 of the Election Code.

SC-32209325 alleged that the respondent spent or authorized the spending of public funds by using county resources for a political advertising video, in violation of Section 255.003(a) of the Election Code.

SC-32210388 alleged that the respondent failed to file a 30-day pre-election report for the November 8, 2022 election in violation of Section 254.064 of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent was elected to the position of Starr County Judge in 1998. The respondent was the successful incumbent candidate for Starr County Judge in the November 8, 2022 election.

Campaign Treasurer Appointment

2. Sworn complaint SC-32206265 alleged that the respondent did not file a campaign treasurer appointment.
3. The information submitted with the complaint showed that the respondent did not have a campaign treasurer appointment on file with the Starr County Elections Administrator.
4. In response to the complaint, the respondent swore that he filed his campaign treasurer appointment with the Starr County Democratic Party chair on November 18, 2021. The respondent included a copy of a campaign treasurer appointment that was dated November 18, 2021, but did not have a date stamp to indicate when it had been filed.
5. In response to written questions, the respondent swore that filing with the chair of the local Democratic Party was the standard practice for Democratic candidates in Starr County.
6. Records on file with the Secretary of State indicate that the respondent filed his ballot application on November 19, 2021.
7. Each candidate shall appoint a campaign treasurer. Tex. Elec. Code § 252.001.
8. “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. Examples of affirmative action include the filing of an application for a place on a ballot. *Id.* § 251.001(B).
9. 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. *Id.* § 252.005
10. A campaign treasurer appointment takes effect at the time it is filed with the authority specified by this chapter. *Id.* § 252.011.

11. Credible evidence indicates that the respondent became a candidate on November 19, 2021, when he filed his ballot application with the Secretary of State. Credible evidence also indicates that the respondent did not file his campaign treasurer appointment with the proper local filing authority. Therefore, the campaign treasurer appointment given to the Starr County Democratic Party chair was not effective and credible evidence indicates that the respondent violated Section 252.001 of the Election Code by failing to submit a campaign treasurer appointment with his local filing authority.

Campaign Contributions and/or Campaign Expenditures Without Treasurer Appointment

12. Sworn complaint SC-32206265 alleged that the respondent accepted campaign contributions and/or made or authorized campaign expenditures without a campaign treasurer appointment on file.
13. The information submitted with the complaint included a partial photograph of a large roadside political advertising sign for the respondent. The photograph included the respondent's last name and website, and the political advertising disclosure statement read "Pol. Adv. Paid for by Candidate."
14. In response to the complaint, the respondent denied the allegation as he had given a campaign treasurer appointment to the Starr County Democratic Party chair and believed that had fulfilled the requirement to have a campaign treasurer appointment on file.
15. In response to written questions, the respondent swore that he had accepted no campaign contributions and made or authorized no campaign expenditures during the period from January 1, 2020, through December 31, 2021. The respondent further swore that this period of time represented a "dormant and inactive political activity time."
16. The respondent further explained that the political advertising signs pictured in the complaint were purchased for a previous campaign and stored to be reused. No political expenditures had been made during the time period at issue for the pictured political advertising.
17. 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. Tex. Elec. Code § 253.031(a).
18. The respondent did not have a campaign treasurer appointment on file from January 1, 2020, through December 31, 2021. However, the evidence indicates that the respondent accepted no campaign contributions and made or authorized no campaign expenditures during that time period. Therefore, there is credible evidence of no violation of Section 253.031(a) of the Election Code.

Failure to file Campaign Finance Reports

19. Sworn complaint SC-32206265 alleged that the respondent failed to file the July 2020, January 2021, July 2021, and January 2022 semiannual campaign finance reports.
20. In response to the complaint the respondent admitted that he had not filed the campaign finance reports and further clarified that the failure to do so was “purely an oversight.”
21. The respondent was elected to the position of Starr County Judge in 1998 and did not have a campaign treasurer appointment on file. Therefore, until he submitted his ballot application to the Secretary of State on November 19, 2021, the respondent was an officeholder, rather than a candidate.
22. A candidate shall file two reports for each year as provided by this section. Tex. 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). 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. *Id.* § 254.063(c).
23. An officeholder shall file two reports for each year. *Id.* § 254.093(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through June 30. *Id.* § 254.093(b). The second report shall be filed not later than January 15. The report covers the period beginning July 1, the day the officeholder takes office, or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through December 31. *Id.* § 254.093(c).
24. If at the end of any reporting period prescribed by this subchapter an officeholder who is required to file a report with an authority other than the commission has not accepted political contributions that in the aggregate exceed \$500 (\$900 as of January 1, 2020, \$930 as of January 1, 2021) or made political expenditures that in the aggregate exceed \$500 (\$900 as of January 1, 2020, \$930 as of January 1, 2021), the officeholder is not required to file a report covering that period. *Id.* § 254.095; 1 Tex. Admin. Code § 18.31(a).
25. The respondent was an officeholder until November 19, 2021, and was not required to file semiannual reports prior to that date as he had \$0 in political activity. However, the respondent was required to file the semiannual campaign finance reports as a candidate starting November 19, 2021. Therefore, there is credible evidence of no violation of

Section 254.063 of the Election Code regarding the July 2020, January 2021, and July 2021 semiannual reports. There is credible evidence of a violation of Section 254.063 of the Election Code regarding the January 2022 semiannual report.

Use of Public Funds for Political Advertising

26. Sworn complaint SC-32209325 alleged that the respondent spent or authorized the spending of public funds by using county resources for a political advertising video, in violation of Section 255.003(a) of the Election Code.
27. The video was posted to the Starr County Texas Facebook page on September 12, 2022, with the caption “Your Starr County | Historical Growth | Accountable Governance: Information video from Starr County Judge Eloy Vera.” In the video, the respondent makes use of both Starr County facilities and equipment. The respondent appeared in his office, in a chair that appeared to be embossed with the county logo, wearing a shirt with the county logo, and behind a desk that included his name plate.
28. The video was posted with an image of the respondent and the “check mark” logo that the respondent uses in his political advertising. In the video, the respondent states “I am very happy today that thanks to God and with your help, the citizens of this County, we have been very successful in building a lot of things in our community. From the Medical Plaza, different things that are going on, your unemployment, just the quality of life in our community.”
29. In response to the complaint, the respondent provided a transcript of the video. In addition, the respondent swore that the video was recorded and produced entirely at his expense and that there was no cost or any expense to the county for the recording or production.
30. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a).
31. In order to find a violation of Section 255.003(a) of the Election Code, the Commission must determine:
 - 1) the respondent was an officer or employee of a political subdivision;
 - 2) the respondent knowingly spent or authorized the spending of public funds (or the use of public resources) for the video; and
 - 3) the video constitutes political advertising.
32. The “spending” of public funds includes the use of a political subdivision employee’s work time or a political subdivision’s equipment or facilities. *See, e.g.*, Tex. Ethics Comm’n Op. No. 443 (2002) (placement of campaign flyers in a school district teachers’ lounge would involve the spending of public funds where school district employees were required to

- transport the flyers to an area of the school that was not accessible to the public); Tex. Ethics Comm'n Op. No. 45 (1992) (distribution of political advertising using school district equipment or school district employees on school district time would be the spending of public funds where an already existing internal mail system was used); Attorney General Opinion No. KP-177 (2018) (statute prohibits the use of school district staff, facilities, or other resources where school districts electronically distributed links to Internet websites that were partisan in nature).
33. Ethics Advisory Opinion No. 550 concludes that Section 39.02(a)(2) of the Penal Code prohibits a public officer from using government resources, of which the officer has custody or possession, to create a photograph, video, or other communication for political advertising. In addition, Section 255.003(a) of the Election Code prohibits a public officer, who is also an officer of a political subdivision, from using government resources, such as restricted areas of government facilities, for political advertising. Tex. Ethics Comm'n Op. No. 550 (2019). Conversely, a "public area of a government facility" that is "equally accessible" to everyone is not in the "custody or possession" of a public officer for purposes of the Penal Code, and thus may be used for political advertisements. *Id.* For purposes of Section 255.003(a) of the Election Code, the use of a facility maintained by a political subdivision for political advertising, in an area that is restricted to its employees, requires government resources to operate while in that restricted area, and therefore would violate Section 255.003(a) of the Election Code. *Id.*
 34. "Political advertising" is defined, in relevant part, as a communication supporting or opposing a candidate for election to a public office, or a public officer, that appears on an Internet website. Tex. Elec. Code § 251.001(16).
 35. Whether a particular communication supports or opposes a candidate or a public officer is a fact question. Tex. Ethics Comm'n Op. No. 476 (2007). "The critical issue in determining whether an advertisement is 'political advertising' is whether it is a communication supporting or opposing a candidate or a public officer." *Id.* (citing Tex. Ethics Comm'n Op. No. 102 (1992)).
 36. The Commission has previously established that the use of county facilities and equipment can constitute the spending of public funds, and the respondent used both in the video at issue. The respondent filmed the video in his office, a Starr County facility. County equipment was visible throughout the video. Therefore, it is clear that the respondent spent public funds in the creation of the video. The video was posted on the Starr County Facebook page on September 12, 2022 at 9:57 AM. Access to post on that page is restricted to employees of Starr County, and the video was posted on a work day, during work hours. Therefore, in addition to the facilities and equipment used in filming the video, the respondent also spent public funds by using or authorizing the use of paid employee work time to post the video online.

37. The respondent's detailing of the successes of Starr County, paired with the use of his logo and picture as they appear in his political advertising make it clear that this video supports the respondent as a candidate and in his position as a public officer. As the video was posted on the Starr County Texas Facebook page, it appeared on an Internet website. Therefore, the video constitutes political advertising.
38. It is undisputed that the respondent is an officer or employee of a political subdivision. The evidence shows that the respondent used county resources to create and post the video at issue. Therefore, there is credible evidence of a violation of Section 255.003(a) of the Election Code regarding the respondent's use of a political subdivision's equipment or facilities and a political subdivision employee's work time for political advertising.

Failure to File 30-Day Pre-election Report

39. Sworn complaint SC-32210388 alleged that the respondent failed to file his 30-day pre-election report for the November 8, 2022 election, which was required to be filed by October 10, 2022.
40. The information submitted with the complaint showed that as of October 19, 2022, the respondent had not filed his 30-day pre-election report for the November 8, 2022 election.
41. In response to the complaint, the respondent admitted that the report was not timely filed. The respondent included a copy of the 30-day pre-election report with his response. The report was date stamped October 28, 2022, and disclosed \$15,150 in total political contributions, \$7,602.09 in total political expenditures, and \$8,548 in total political contributions maintained.
42. 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. Tex. 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. 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. *Id.* § 254.064(b).
43. If the deadline for a report falls on a Saturday, Sunday, or a legal state or national holiday, the report is due on the next regular business day. 1 Tex. Admin. Code § 20.21.
44. Thirty days before November 8, 2022, was Sunday, October 9, 2022. Therefore, the 30-day pre-election report was required to be filed by October 10, 2022.

45. Credible evidence indicates that the respondent had an opponent whose name appeared on the ballot in the November 8, 2022 election. Therefore, the respondent was required to file his 30-day pre-election report by October 10, 2022 (deadline extended due to weekend). Credible evidence indicates that the respondent filed his 30-day pre-election report on October 28, 2022. Therefore there is credible evidence of a violation of Section 254.064 of the Election Code.

IV. 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 findings of fact and conclusions of law described under Section III, 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 the filing requirements and restrictions prescribed by Sections 252.002, 253.031, 254.063, and 254.064 of the Election Code. The respondent also acknowledges that Section 255.003(a) of the Election Code prohibits an officer or employee of a political subdivision from spending or authorizing the spending of public funds, including using public resources, for political advertising specifically acknowledges that use of facilities or equipment owned by a political subdivision constitutes a use of public funds potentially subject to Section 255.003 of the Election Code. The respondent agrees to comply with these requirements of the law.

V. 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,500 civil penalty.

VII. 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 sworn complaints SC-32206265, SC-32209325, and SC-32210388.

AGREED to by the respondent on this _____ day of _____, 2023.

Eloy Vera, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director