

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GUSTAVO RAMIREZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2610217, SC-2610218,
SC-2610219, SC-2610220,
SC-2610221, SC-2610222, and
SC-2610223

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 13, 2007, to consider sworn complaints SC-2610217, SC-2610218, SC-2610219, SC-2610220, SC-2610221, SC-2610222, and SC-2610223. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.036 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaints allege that the respondent failed to properly report four political contributions and failed to file three campaign finance reports electronically.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of facts:

1. During the relevant time in question in this sworn complaint, the respondent was a candidate for state representative.

Political Contributions

2. Sworn complaints SC-2610217, SC-2610218, SC-2610219, and SC-2610220, each allege that the respondent failed to properly disclose a political contribution from Texans For Insurance Reform (TIR), a general-purpose political committee, on two campaign finance reports.

3. The complaints allege that the respondent failed to disclose the following four in-kind contributions in the form of a mail-out:

Date	Contributor		Amount
2/24/2006	TIR	(SC-2610217)	\$10,875.69
2/22/2006	TIR	(SC-2610218)	\$1,500.00
2/24/2006	TIR	(SC-2610219)	\$2,500.00
3/05/2006	TIR	(SC-2610220)	\$22,787.16

4. The respondent did not disclose the contributions on his February 27, 2006, 8-day pre-election report or on his final report filed May 12, 2006.
5. The contributions were made by TIR to support the respondent's candidacy.
6. The respondent received advanced copies of the mail-out.
7. The respondent swears that he did not report the contributions because he did not know the amounts of the in-kind contributions at the time he filed his reports.
8. The respondent's sworn response included a letter from TIR dated February 24, 2006, detailing the expenditures at issue and reminding the respondent to disclose the amounts as in-kind contributions on his next report.
9. The February 27, 2006, 8-day pre-election report disclosed a notice of direct campaign expenditure from TIR, but shows no contributions from TIR.
10. With respect to the fourth political contribution, made the basis of sworn complaint SC-2610220, the respondent reported a political contribution from TIR on his March 6, 2006, special pre-election campaign finance report in the amount of \$11,393.58.
11. The complaint alleges that this contribution was actually an in-kind contribution in the amount of \$22,787.16.
12. A letter from TIR addressed to the respondent dated March 5, 2006, and indicating that it was e-mailed on that date, details two in-kind contributions from TIR each in the amount of \$11,398.58.
13. The letter reminds the respondent to disclose the contributions on his next report. The respondent disclosed only one of the contributions on the special pre-election (formerly "telegram") report that he filed on March 6, 2006. The respondent swears that he failed to

disclose the proper amount because he misunderstood that there were two in-kind contributions in the amount of \$11,393.58, not just one.

14. The respondent did not report either contribution on his next campaign finance report, which was his final report filed on paper on May 12, 2006.

Electronic Filing Requirement

15. Sworn complaint SC-2610221 alleges that the respondent failed to file his May 12, 2006, final campaign finance report electronically.
16. Sworn complaint SC-2610222 alleges that the respondent failed to file his February 6, 2006, 30-day pre-election campaign finance report electronically.
17. Sworn complaint SC-2610223 alleges that the respondent failed to file his February 27, 2006, 8-day pre-election campaign finance report electronically.
18. The respondent swears that he believed that he could file his campaign finance reports either by mail or electronically.
19. The respondent swears that while he did timely file his campaign finance report by mail, he now understands that the reports needed to be filed electronically.
20. The respondent filed an affidavit of exemption from electronic filing with each campaign finance report that he filed. The affidavit itself explains the conditions that must be met in order to be exempt from electronic filing.
21. The respondent's campaign finance reports disclose that, when he filed his February 6, 2006, 30-day pre-election report he had not accepted over \$20,000 in political contributions or made over \$20,000 in political expenditures.
22. The respondent's campaign finance reports disclose that the respondent exceeded \$20,000 in political contributions no later than the end of the reporting period for the February 27, 2006, 8-day pre-election report.

IV. Findings and Conclusions of Law

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

Political Contributions

1. 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. ELEC. CODE § 254.031(a)(1).
2. The respondent failed to report three in-kind contributions totaling approximately \$14,875 on his February 27, 2006, 8-day pre-election campaign finance report.
3. The respondent asserts that he did not report the contributions because he did not know the amounts of the in-kind contributions until after the due date of the report. The evidence shows that the respondent knew about the contributions before they were made and could have inquired about the amount. However, even if he could not have found out until after the end of the reporting period, he was required to report the contributions on his next campaign finance report. The respondent did not disclose the contributions on his next campaign finance report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(1) of the Election Code, with respect to the three contributions referenced in sworn complaints SC-2610217, SC-2610218, and SC-2610219.
4. A candidate for state representative must file a special report near election during the period beginning the ninth day before election day and ending at 12 noon on the day before the election if the candidate accepts political contributions from a person that in the aggregate exceed \$1,000 during that reporting period. ELEC. CODE § 254.038. A candidate must report contributions reported on a telegram report on the next semiannual, pre-election, or runoff report filed, as applicable. Ethics Commission Rules § 20.221(g).
5. The evidence indicates that the respondent underreported the amount of an in-kind political contribution on his March 6, 2006, special pre-election report by \$11,393.58.
6. The respondent swears that he failed to disclose the proper amount because he misunderstood that there were two in-kind contributions of \$11,393.58, not just one. However, without regard to the March 6, 2006, special pre-election report the respondent was required to report the contributions on his next regular report. The respondent did not disclose the contributions on his next report, a final report filed May 12, 2006. Therefore, there is credible evidence of violations of section 254.031(a)(1) of the Election Code, with respect to sworn complaint SC-2610220.

Electronic Filing Requirement

7. Except as otherwise provided, each campaign finance report filed with the commission must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commissions specifications for a standard file format. ELEC. CODE § 254.036.
8. A candidate that is required to file reports with the commission may file reports that comply with section 254.036 of the Election Code if the candidate files with the commission an affidavit stating that the candidate, an agent of the candidate, or a person with whom the candidate, contracts does not use computer equipment to keep the current records of political contributions, political expenditures, or persons making political contributions to the candidate, officeholder, or committee, the candidate does not, in a calendar year, accept political contributions that in the aggregate exceed \$20,000 or make political expenditures that in the aggregate exceed \$20,000. ELEC. CODE § 254.036(c).
9. The respondent did not file the three reports at issue in sworn complaints SC-2610221, SC-2610222, and SC-2610223 electronically.
10. The respondent submitted an affidavit of exemption from electronic filing for all three reports.
11. The evidence indicates that when the respondent filed his February 6, 2006, 30-day pre-election report, made the basis of sworn complaint SC-2610222, he had not exceeded either \$20,000 in political contributions or political expenditures. Thus, the respondent was not required to file that report electronically. Therefore, there is credible evidence that the respondent did not violate section 254.036 of the Election Code with respect to that report.
12. The evidence shows that the respondent exceeded \$20,000 in political contributions no later than the end of the reporting period for the February 27, 2006, 8-day pre-election report.
13. Sworn complaint SC-2610223 relates to the respondent's February 27, 2006, 8-day pre-election report, and sworn complaint SC-2610221 relates to his May 12, 2006, final report.
14. Once the respondent exceeded either the \$20,000 contribution threshold or the \$20,000 expenditure threshold he was no longer entitled to file reports on paper. Thus, the respondent was not entitled to file the reports at issue electronically. Therefore, there is credible evidence of violations of section 254.036 of the Election Code, with respect to sworn complaints SC-2610221 and SC-2610223.

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 these sworn complaints.
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 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. The respondent further acknowledges that each campaign finance report filed with the commission must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commissions specifications for a standard file format. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,500 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 sworn complaints SC-2610217, SC-2610218, SC-2610219, SC-2610220, SC-2610221, SC-2610222, and SC-2610223.

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

Gustavo Ramirez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director