

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ISMAEL "KINO" FLORES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2802109

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 12, 2009, to consider sworn complaint SC-2802109. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 254.031 and 254.064 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 complaint alleges that the respondent failed to properly disclose political expenditures and political contributions maintained on his 30-day and 8-day pre-election campaign finance reports filed in connection with the March 2008 primary election.

III. Facts Supported by Credible Evidence

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

1. The respondent is the state representative of District 36, and was an opposed candidate for that office in the March 2008 primary election.
2. The respondent filed his initial campaign treasurer appointment on August 5, 1995. The respondent has not filed a final report.
3. On February 4, 2008, the respondent filed a 30-day pre-election report. The report disclosed \$143,651.68 in total political contributions and \$85,863.86 in total political expenditures. The report also disclosed \$113,252.02 in total political contributions maintained and no outstanding loans.

4. On February 25, 2008, the respondent filed an 8-day pre-election report. The report disclosed \$106,629.68 in total political contributions, no political expenditures, and included no schedules to detail political expenditures made by the respondent. The report also disclosed \$57,713.52 in total political contributions maintained and no outstanding loans.
5. On February 27, 2008, the respondent filed a second 8-day pre-election report that disclosed no contributions, \$188,066.17 in total political expenditures, and included no schedules to detail political contributions accepted by the respondent. The report also disclosed no political contributions maintained and no outstanding loans.
6. On February 28, 2008, the respondent filed a corrected 8-day pre-election report that disclosed \$106,629.68 in total political contributions and \$188,066.17 in total political expenditures. The report also disclosed \$57,713.52 in total political contributions maintained and no outstanding loans. The report included detailed schedules for both political contributions and political expenditures.
7. The respondent swears that he was notified on February 27, 2008, that his 8-day pre-election report was missing the expenditure portion.
8. The respondent swears that due to technical difficulties the expenditure portion of the report was not appearing, and that he filed a second report to disclose his campaign expenditures.

IV. Findings and Conclusions of Law

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

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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. The report must also include the amount of political expenditures that in the aggregate exceed \$50 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. The report must also 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 \$50 or less made during the reporting period. The report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The report must also 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. ELEC. CODE § 254.031.

2. 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, 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.
3. The respondent was an opposed candidate in the March 2008 primary election. As an opposed candidate the respondent was required to file reports 30 and 8 days before the election.
4. The evidence indicates that the respondent's 30-day pre-election report properly disclosed political contributions and political expenditures. The evidence also indicates that the respondent timely filed the report. Therefore, there is credible evidence of no violation of sections 254.031 and 254.064 of the Election Code as to the respondent's February 2008 30-day pre-election report.
5. The evidence indicates that the respondent attempted to timely file his 8-day pre-election report on February 25, 2008. The report failed to itemize or disclose any political expenditures made by the respondent. The respondent filed a report disclosing contributions and expenditures on February 28, 2008, three days after the deadline for the 8-day pre-election report. Although the evidence indicates that the respondent filed or corrected the report, there is credible evidence of violations of sections 254.031 and 254.064 of the Election Code.
6. The complaint also alleges that the totals for political contributions maintained disclosed on the respondent's February 2008 30-day and 8-day pre-election reports were incorrect. The allegations are based on adding the total political contributions maintained from the 30-day report to the total political contributions accepted during the reporting period for the 8-day pre-election report and then deducting the total expenditures. However, the amount of political contributions maintained cannot necessarily be calculated by looking at the face of a report, and there is no additional evidence to show that the amount disclosed was incorrect. Therefore, there is insufficient evidence of a violation of section 254.031 of the Election Code as to the total political contributions maintained disclosed on the respondent's February 2008 30-day and 8-day pre-election reports.

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 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 required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. The respondent also acknowledges that the report must also include the amount of political expenditures that in the aggregate exceed \$50 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. The respondent also acknowledges that the report must also 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 \$50 or less made during the reporting period. The respondent also acknowledges that the report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. The respondent also acknowledges that 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 second of which 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 respondent also acknowledges that the report 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 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 \$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-2802109.

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

Ismael "Kino" Flores, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director