

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JAVIER FARIAS,

RESPONDENT

§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-2904100 AND SC-2910267

FINAL ORDER

The Texas Ethics Commission, having heard this case and voting to find a violation of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The respondent is Javier Farias, whose last known mailing address is 2816 Jay Avenue, McAllen, Texas 78504-4736. Sworn complaint SC-2904100 was filed with the Texas Ethics Commission against the respondent on April 30, 2009. Sworn complaint SC-2910267 was filed with the Texas Ethics Commission against the respondent on October 21, 2009. The Notice of Hearing was mailed to the respondent on November 8, 2010, by certified mail, return receipt requested, restricted delivery, and delivery confirmation.
2. The preliminary review hearing was held on December 7, 2010, by the Texas Ethics Commission in Austin, Texas.
3. The respondent did not file a reply to the Notice of Hearing and did not appear at the hearing.
4. The respondent was a candidate for School Board Trustee, Place 3, McAllen ISD, in the May 2009 election.
5. Sworn complaint SC-2904100 alleged that the respondent's 30-day pre-election report filed in connection with the May 2009 election failed to disclose the office sought, did not include a cover sheet page two with the respondent's notarized signature, and failed to disclose the dates and addresses for five contributions and one pledge. The complaint also alleged that the respondent failed to disclose political expenditures.
6. Sworn complaint SC-2910267 alleged that the respondent failed to properly disclose political contributions and political expenditures on his 30-day pre-election report in connection with the May 2009 election, failed to properly disclose political contributions and political expenditures on his 8-day pre-election report in connection with the May 2009 election, and failed to timely file a July 2009 semiannual report.

7. On April 9, 2009, the respondent filed a 30-day pre-election report that consisted of a cover sheet page one, which disclosed an office sought of “Re-Election,” a Schedule A (used to disclose political contributions) that disclosed five contributions totaling approximately \$2,650, none of which disclosed contribution dates or the addresses of contributors, and a Schedule B (used to disclose pledged contributions) that disclosed one \$500 pledge, but did not disclose the date of the pledge or the address of the pledgor. The report did not include the second page of the cover sheet that discloses totals, and that includes the affidavit and jurat. The report did not include a Schedule F (used to disclose political expenditures).
8. On May 1, 2009, the respondent filed an 8-day pre-election report. The report disclosed three political contributions totaling \$2,300, and six political expenditures totaling approximately \$510, for which there were no addresses disclosed for the contributors or payees. No dates were disclosed for the three contributions. One of the expenditures disclosed a date of April 10, 2009, in the amount of \$100 for the purpose of “labor,” but no payee name is disclosed. Purposes were disclosed for each of the expenditures, including “push cards,” “wires,” and “lumber.”
9. The complaint alleged that the respondent failed to disclose political expenditures for advertising, most specifically 4x8 campaign signs. The complaint also alleged that during the election, “Mr. Farias and his poll workers were wearing shorts and baseball caps advertising the candidate” and that the respondent’s pre-election campaign finance reports did not disclose these items. The complaint also alleged that “no expense is indicated for a generous number of 4’x8’ signs placed throughout the city. Mr. Farias’ opponent . . . used 4’x4’ signs for the same purpose. His expense for this item was about \$3,000.”
10. In a sworn response to sworn complaint SC-2904100, regarding the 30-day pre-election report, the respondent stated that he had forgotten to file the second cover sheet page to his 30-day pre-election report, but that he had realized the error before he received notice of the complaint, and had filed the page with the filing authority. The respondent also admitted that he had omitted contributor addresses, and the dates of contributions and a pledge.
11. On May 14, 2009, the respondent filed a corrected 30-day pre-election report. The corrected report included a cover sheet page two, and disclosed the place number of the office sought by the respondent, left blank the space provided to disclose total political contributions of \$50 or less, disclosed \$3,150 in total political contributions, left blank the space provided to disclose total expenditures of \$50 or less, disclosed \$1,807.57 in total expenditures, disclosed \$1,342.43 in total political contributions maintained, and left blank the space provided to disclose outstanding loans. The report also disclosed complete addresses for each of the contributors at issue, and removed the single pledge from Schedule B and disclosed it as a contribution on Schedule A with a complete address. The report also disclosed \$1,807.57 on Schedule F (used to disclose political

- expenditures) where the original report had contained no schedules disclosing expenditures.
12. On April 8, 2010, the respondent filed a corrected 8-day pre-election report. The respondent's corrected 8-day pre-election report disclosed \$2,717.81 in additional contributions, one of which was an in-kind contribution, in the amount of \$1,217.81, with an in-kind contribution description of "signs & stakes."
 13. The complaint also alleged that the respondent failed to file a July 2009 semiannual report. On April 8, 2010, the respondent filed a report marked as a final report that disclosed a period covered of May 2, 2009, through April 7, 2010. The report left blank the spaces provided to disclose total political contributions of \$50 or less, total political contributions, total expenditures of \$50 or less, disclosed \$4,711.07 in total political expenditures, and left blank the spaces provided to disclose total political contributions maintained, and outstanding loans.

Conclusions of Law

1. Disposition of this case is within the jurisdiction of the Texas Ethics Commission. GOV'T CODE § 571.061.
2. The respondent received legally sufficient notice of the hearing in this case. GOV'T CODE § 571.032 and 1 TAC § 12.21. The hearing was held in accordance with section 12.23, 1 Texas Administrative Code.

Disclosure of Required Information on Campaign Finance Reports

3. Each 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, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
4. Each report must 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. ELEC. CODE § 254.031(a)(3).
5. Each report by a candidate must include the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed. ELEC. CODE § 254.061(1).
6. The respondent's 30-day pre-election report failed to disclose complete information for political contributions totaling \$2,650, a \$500 pledge, and political expenditures totaling approximately \$1,810. The respondent's 8-day pre-election report failed to disclose

complete address information for political contributions totaling \$2,300, and political expenditures totaling \$513.35. The respondent's original 8-day pre-election report also failed to disclose approximately \$2,720 in political contributions. Therefore, there is credible evidence that the respondent violated sections 254.031(a)(1) and 254.031(a)(3) of the Election Code as to his 30-day and 8-day pre-election reports.

7. The respondent's original 30-day pre-election report did not disclose the correct office sought by the respondent. Therefore, there is credible evidence of a violation of section 254.061(1) of the Election Code.

Notarized Report

8. Each campaign finance report is required to include the cover sheet page two which includes the report totals and the affidavit and jurat. ELEC. CODE § 254.036(h).
9. Records with the local filing authority indicate that the respondent's original 30-day pre-election report did not include a cover sheet page two. The respondent filed a corrected report that included this page. Therefore, there is credible evidence of a violation of section 254.036(h) of the Election Code.

Timely Filing of Campaign Finance Reports

10. A candidate is required to file two reports for each year, the first report is required to be filed not later than July 15. ELEC. CODE § 254.063.
11. A candidate has the duty to file semiannual reports as a candidate until the candidate terminates his campaign treasurer appointment. ELEC. CODE § 254.065.
12. The respondent did not file a final report until April 8, 2010.
13. As a candidate with a campaign treasurer appointment in effect during the period at issue, the respondent was required to file semiannual reports. The respondent failed to timely file his July 2009 semiannual report. Therefore, there is credible evidence that the respondent violated section 254.063 of the Election Code.

Penalty

14. The Texas Ethics Commission may impose a sanction against the respondent of not more than \$5,000 or triple the amount at issue, whichever amount is greater. GOV'T CODE § 571.173.

Therefore, the Texas Ethics Commission orders that:

1. The respondent pay to the Texas Ethics Commission, within 30 days of the date of this order, a civil penalty in the amount of \$2,500.

Order Date: _____

FOR THE COMMISSION

David A. Reisman
Executive Director
Texas Ethics Commission