

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MARCUS M. FERNANDEZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3120241

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 29, 2012, to consider sworn complaint SC-3120241. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 253.003 and 253.094 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 accepted political contributions from corporations or labor organizations.

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 Big Spring City Council in the May 2011 election. The complaint alleged that the respondent accepted political contributions from corporations or labor unions. The contributions at issue were originally disclosed on the respondent's 30-day pre-election report for the May 2011 election.
2. On February 22, 2011, the respondent filed a campaign treasurer appointment with the City of Big Spring. On his campaign treasurer appointment, the respondent signed the statement stating that he was aware of the restrictions in Title 15 of the Election Code on contributions from corporations or labor organizations.
3. On his 30-day pre-election report for the May 14, 2011, election, the respondent disclosed that on March 3, 2011, he accepted a \$200 contribution from Hydro Dynamics and that on March 10, 2011, he accepted a \$1,000 contribution from Quad A, Inc. Records from the Texas Secretary of State show that both contributors are registered as domestic for-profit corporations. In response to the complaint, the respondent swore that

he discovered that the contributions were accepted after directing his campaign treasurer to conduct a review and audit of all contributions made to his campaign. The respondent further swore that he did not knowingly accept the contributions at issue, and that he returned them upon discovering that they were accepted. Along with his response, the respondent submitted copies of the original contribution checks, on which the entity designation of "Inc." appears after each payor's name. The endorsement on the back of the check from Quad A, Inc., appears to be the respondent's signature. The respondent disclosed that on April 10, 2011, he returned the corporate contributions. The returns are disclosed on his July 2011 semiannual report. The respondent also submitted bank statements reflecting the return of the contributions. The contributions were returned before the complaint was filed.

IV. Findings and Conclusions of Law

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

1. A person may not knowingly accept a political contribution that the person knows was made in violation of chapter 253 of the Election Code. ELEC. CODE § 253.003.
2. A corporation may not make a political contribution or political expenditure that is not authorized by subchapter D, chapter 253, Election Code. ELEC. CODE § 253.094.
3. The prohibition applies to corporations that are organized under the Texas Business Corporation Act, the Texas For-Profit Corporation Law, the Texas Non-Profit Corporation Act, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation. ELEC. CODE § 253.091.
4. In order to show a violation of section 253.003 of the Election Code, the evidence must show that the contributor was a corporation, that at the time the respondent accepted the contribution he knew that corporate contributions were illegal, and that the respondent knew the particular contribution at issue was from a corporation.
5. On February 22, 2011, the respondent filed a campaign treasurer appointment with the City of Big Spring. On his campaign treasurer appointment, the respondent signed a statement stating that he was aware of the restrictions in Title 15 of the Election Code on contributions from corporations or labor organizations. Nevertheless, on March 3, 2011, and on March 10, 2011, the respondent accepted two contributions from corporations, totaling \$1,200. The contributors were identified as incorporated entities on the contribution checks at issue. The respondent endorsed one of the checks. There is credible evidence of violations of sections 253.003 and 253.094 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 a corporation may not make a political contribution or political expenditure that is not authorized by chapter 253 of the Election Code, and that chapter does not authorize a political contribution to a candidate by a corporation. The respondent further acknowledges that a person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code. 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 the sanction necessary to deter future violations, the commission imposes a \$200 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-3120241.

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

Marcus M. Fernandez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director