

TEXAS ETHICS COMMISSION

IN THE MATTER OF

HOC E. NGUYEN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31310194

FINAL ORDER

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

Findings of Fact

1. The respondent is Hoc Etienne Nguyen (Hoc Thai Nguyen), whose last known mailing address is 10307 Sand Dollar Drive, Houston, Texas 77065. A sworn complaint was filed with the Texas Ethics Commission against the respondent on October 31, 2013. The Notice of Hearing was mailed to the respondent on January 12, 2015, by certified mail, return receipt requested, restricted delivery, and delivery confirmation. United States Postal Service records indicate that the respondent received the Notice of Hearing on January 14, 2015.
2. The preliminary review hearing was held on February 12, 2015, 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 Houston City Council, District F, in the November 8, 2011, joint election.

Campaign Treasurer Appointment

5. The complaint alleged that, as a candidate for Houston City Council, the respondent did not file a campaign treasurer appointment. The allegation was based on the fact that the City of Houston's website did not contain any filings for the respondent.
6. According to records on file with the City of Houston, the respondent filed a campaign treasurer appointment with the Houston city secretary on May 6, 2011.

Filing of Campaign Finance Report

7. The complaint alleged that the respondent did not file an 8-day pre-election report for the November 8, 2011, joint election, in which the respondent was an opposed candidate for Houston City Council, District F. On May 6, 2011, the respondent filed a campaign treasurer appointment with the Houston city secretary. The respondent did not indicate on the second page of the treasurer appointment that he would file campaign finance reports under the modified reporting schedule. On July 26, 2011, the respondent filed an amended campaign treasurer appointment with the Houston city secretary. The respondent did not submit the modified reporting page with the amended treasurer appointment. Accordingly, the respondent was required to file an 8-day pre-election report for the November 2011 election by October 31, 2011.
8. In his response to the complaint, the respondent swore that he had just come home from a long trip and needed more time to look for his financial reports with the City of Houston. The respondent did not provide any campaign finance reports with his response.
9. According to records on file with the City of Houston, the respondent did not file any campaign finance reports.

Misleading Use of Office Title

10. The complaint alleged that the respondent, as a non-incumbent candidate for Houston City Council, represented that he held the office by not using the word “for” on political advertising signs and business cards.
11. The evidence submitted with the complaint included pictures of some of the respondent’s campaign signs and a copy of the respondent’s business card. One of the signs at issue appeared to be announcing the respondent’s appointment to the Texas State Board of Examiners of Professional Counselors. It is unclear whether the sign is a communication supporting the respondent’s campaign for Houston City Council. In his response to the complaint, the respondent swore that the sign was posted by a supporter over whom he has no control.
12. One of the signs at issue included the respondent’s last name, directly followed by “City Council – District F.” The respondent did not address the sign in his written response. The relevant portion of the business card that was submitted with the complaint stated, “Elect Nguyen Thai Hoc – City Council – District F.” In his response to the complaint, the respondent swore that the campaign card without the word “for” was a printing mistake.

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.

Campaign Treasurer Appointment

3. Each candidate and each political committee shall appoint a campaign treasurer as provided by chapter 252 of the Election Code. ELEC. CODE § 252.001.
4. Credible evidence indicates that on May 6, 2011, the respondent filed a campaign treasurer appointment with the Houston city secretary. Therefore, there is credible evidence of no violation of section 252.001 of the Election Code.

Filing of Campaign Finance Report

5. 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. ELEC. CODE § 254.064(a). 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. *Id.* § 254.064(c).
6. The respondent had an opponent on the ballot in the November 8, 2011, uniform election and did not elect to file on the modified reporting schedule. Accordingly, the respondent was required to file an 8-day pre-election report by October 31, 2011. The respondent did not file that report. Therefore, there is credible evidence of a violation of section 254.064(c) of the Election Code.

Misleading Use of Office Title

7. A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. ELEC. CODE § 255.006(a).
8. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. *Id.* § 255.006(b). For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks; and the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).

9. Regarding the sign related to the respondent's appointment to the Texas State Board of Examiners of Professional Counselors, there is insufficient evidence of a violation of section 255.006 of the Election Code.
10. Regarding the campaign sign and business card at issue, both communications stated the public office sought but did not include the word "for" to clarify that the respondent did not hold that office. Therefore, there is credible evidence of a violation of section 255.006 of the Election Code.
11. 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 Commission, within 30 days of the date of this order, a civil penalty in the amount of \$2,500.

Order Date: _____

FOR THE COMMISSION

Natalia Luna Ashley
Executive Director
Texas Ethics Commission