

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL P. BERLANGA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31610212

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on May 17, 2017, to consider sworn complaint SC-31610212. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 255.001 and 253.031 of the Election Code, and section 571.1242 of the Government 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: 1) the respondent did not include on political advertising appearing on an Internet website a political advertising disclosure statement; and 2) the respondent accepted campaign contributions or made or authorized campaign expenditures at a time when a campaign treasurer appointment was not in effect.

III. Facts Supported by Credible Evidence

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

Political Advertising Disclosure Statement

1. The respondent was a candidate for Bexar County Tax Assessor-Collector in the March 1, 2016, primary election.
2. The complaint alleged that the respondent did not include a political advertising disclosure statement on his campaign website.
3. On October 21, 2016, the complainant visited and took screenshots of the respondent's website. The homepage of the website stated: "Michael BERLANGA, Candidate for Bexar County Tax Assessor-Collector." The screenshots indicate that the respondent did not include on his Internet website a disclosure statement. As of May 17, 2017, the respondent has not updated the website to include a political advertising disclosure statement.

Campaign Treasurer Appointment

4. The complaint alleged that the respondent accepted campaign contributions or made or authorized campaign expenditures at a time when a campaign treasurer appointment for his campaign was not in effect.
5. The respondent filed an amended campaign treasurer appointment with Bexar County on February 2, 2016. There are no records of the respondent having filed any prior campaign treasurer appointments with Bexar County.
6. The respondent's 8-day pre-election report for the March 1, 2016, election on file with Bexar County shows that the respondent made a personal loan to his campaign of \$750 and made a campaign expenditure of \$500 to the Republican Party of Bexar County, both on February 1, 2016.

Response to Notice of a Sworn Complaint

7. The sworn complaint was filed on October 26, 2016. On the same day, a member of the Commission staff spoke with the respondent by telephone and informed him of the sworn complaint. The Commission sent a notice of the sworn complaint to the respondent by delivery confirmation on November 1, 2016.
8. According to United States Postal Service (USPS) records of the delivery, the notice of this complaint was delivered to the respondent on November 3, 2016. The notice informed the respondent that the alleged violations in the sworn complaint were Category One violations, and that response to the sworn complaint was required not later than 10 business days from the date the notice was received and that failure to respond to the notice constituted a separate violation for which a separate civil penalty may be assessed. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by November 18, 2016.
9. The respondent did not submit a response to the sworn complaint but appeared at the hearing.

IV. Findings and Conclusions of Law

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

Political Advertising Disclosure Statement

1. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising; the political committee authorizing the political advertising; or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).

2. "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or on an Internet website. *Id.* § 251.001(16).
3. The website at issue is a communication that supported the respondent's election to a public office. Thus, the website constitutes political advertising and is required to have a political advertising disclosure statement. The respondent did not include a political advertising disclosure statement on his campaign website. Therefore, there is credible evidence of a violation of section 255.001 of the Election Code.

Campaign Treasurer Appointment

4. A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect. ELEC. CODE § 253.031(a).
5. The respondent's 8-day pre-election campaign finance report on file with Bexar County shows that the respondent made a personal loan to his campaign of \$750 and made a campaign expenditure of \$500 to the Republican Party of Bexar County on February 1, 2016. The respondent filed an amended campaign treasurer appointment with Bexar County on February 2, 2016.
6. The respondent made campaign expenditures at a time when a campaign treasurer appointment for his campaign was not in effect. Therefore, there is credible evidence of violations of section 253.031(a) of the Election Code.

Response to Notice of a Sworn Complaint

7. If the alleged violation in a sworn complaint is a Category One violation, the respondent must respond to the notice required by section 571.123(b) not later than the 10th business day after the date the respondent receives the notice. GOV'T CODE § 571.1242(a)(1).
8. A respondent's failure to timely respond to a sworn complaint as required by subsection (a)(1) or (b)(1) is a Category One violation. *Id.* § 571.1242(c).
9. The response required by section 571.1242 of the Government Code must: (1) be in writing; (2) admit or deny the allegations set forth in the complaint; and (3) be signed by the respondent. Ethics Commission Rules § 12.52(a).
10. According to USPS records of the delivery, the notice of this complaint was delivered to the respondent on November 3, 2016. Based on the delivery date of the notice, the respondent was required to respond to the sworn complaint by November 18, 2016.

11. The respondent did not submit a written response to the sworn complaint. Therefore, there is credible evidence of a violation of section 571.1242(c) of the Government 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: 1) a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate; 2) a candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect; and 3) a respondent must respond to a notice of a sworn complaint that contains a Category One violation within 10 business days of receiving the notice of the sworn complaint, and failure to respond to a notice of a sworn complaint within the time required is a separate Category One violation.

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 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-31610212.

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

Michael P. Berlanga, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director