

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BENITO “BO” OCHOA IV,
RESPONDENT

§
§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-32209316, SC-32210360
AND SC-32210408

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on December 13, 2022, to consider sworn complaints SC-32209316, SC-32210360, and SC-32210408. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 253.003, 253.031, 253.033, 253.035, 253.094, 254.031, 254.036, and 254.063 of the Election Code, and Section 22.19 of the Ethics Commission Rules, laws administered and enforced by the Commission. To resolve and settle these complaints without further proceedings, the Commission adopted this resolution.

II. Allegations

Sworn complaint SC-32209316 was filed on September 1, 2022. The complaint alleged that the respondent: 1) failed to timely file the January 2021 semiannual report, which was due by January 15, 2021, in violation of Section 254.063 of the Election Code; 2) failed to timely file the July 2021 semiannual report, which was due by July 15, 2021, in violation of Section 254.063 of the Election Code; 3) failed to timely file the July 2022 semiannual report, which was due by July 15, 2022, in violation of Section 254.063 of the Election Code; 4) failed to properly disclose political contributions, political expenditures, and total political contributions maintained in his January 2022 semiannual report, in violation of Sections 254.031 and 254.036(a) of the Election Code; 5) failed to properly disclose political contributions, political expenditures, and total political contributions maintained in his July 2022 semiannual report, in violation of Section 254.031 of the Election Code; 6) accepted two political contributions in cash that exceeded \$100, in violation of Section 253.033 of the Election Code; and 7) accepted four political contributions from four corporations, in violation of Sections 253.003 and 253.094 of the Election Code.

Sworn complaint SC-32210360 was filed on October 5, 2022. The complaint alleged that the respondent improperly reimbursed himself from political contributions for a \$330 political expenditure made from his personal funds that was not properly disclosed, in violation of Section 253.035(h) of the Election Code and Section 22.19 of the Ethics Commission Rules.

Sworn complaint SC-32210408 was filed on October 26, 2022. The complaint alleged that the respondent accepted campaign contributions and/or made or authorized campaign expenditures at a time when a campaign treasurer appointment was not in effect, in violation of Section 253.031(a) of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. At all times relevant to the complaints, the respondent was a Justice of the Peace, Precinct 1, for Cameron County, and was a candidate for re-election in the 2022 election cycle. The respondent was unopposed in the March 1, 2022 primary election and had an opponent on the ballot in the November 8, 2022 general election. The respondent was re-elected.
2. In response to the complaint, the respondent admitted to the violations and swore that, as a new candidate, the violations occurred due to a lack of understanding of the requirements under the Election Code and that the errors were not intended to mislead the public. The respondent swore that since the violations were brought to his attention, he immediately implemented processes to ensure future compliance.

Failure to Timely File Semiannual Reports

3. Sworn complaint SC-32209316 alleged that the respondent did not timely file the January 2021 semiannual report, which was due by January 15, 2021, the July 2021 semiannual report, which was due by July 15, 2021, and the July 2022 semiannual report, which was due by July 15, 2022.
4. Regarding the January 2021 semiannual report, records on file with Cameron County show the respondent filed the report late on January 22, 2021. The report disclosed \$0 in total political contributions and \$0 in total political expenditures.
5. Regarding the July 2021 semiannual report, records on file with Cameron County show the respondent filed the report late on July 21, 2021. The report disclosed \$0 in total political contributions and \$0 in total political expenditures.
6. Regarding the July 2022 semiannual report, records on file with Cameron County show the respondent filed the report late on August 12, 2022. The original report disclosed \$14,935 in total political contributions and \$12,964.89 in total political expenditures.
7. A candidate shall file two reports for each year. Tex. Elec. Code § 254.063(a). The first report shall be filed not later than July 15. The report covers the period beginning January 1, 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 under this subchapter, as applicable, and continuing through June 30. *Id.* § 254.063(b). The second report shall be filed not later than January 15. The report covers the period beginning July 1, 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 under this subchapter, as applicable, and continuing through December 31. *Id.* § 254.063(c).

8. Records on file with Cameron County show the respondent filed the January 2021, July 2021, and July 2022 semiannual reports late. Therefore, there is credible evidence of violations of Section 254.063 of the Election Code.

Failure to Properly Disclose Political Contributions and Expenditures

9. Sworn complaint SC-32209316 alleged that the respondent failed to properly disclose and itemize political contributions, political expenditures, and total political contributions maintained in his January 2022 and July 2022 semiannual campaign finance reports.
10. Regarding the January 2022 semiannual report, the respondent disclosed \$9,735 in total political contributions and \$2,158.17 in total political expenditures. The respondent left the section blank for disclosing total political contributions maintained and did not enter any information on the schedules for itemizing political contributions and political expenditures. The respondent attached to the report a bank account statement showing a transaction history for the period of November 15, 2021 through January 10, 2022. The respondent also attached to the report a copy of each contribution check that had been deposited.
11. Regarding the July 2022 semiannual report, the report consisted only of the first two cover sheet pages and disclosed \$14,935 in total political contributions and \$12,964.89 in total political expenditures. The respondent left the section blank for disclosing total political contributions maintained and did not attach any schedules for itemizing political contributions and political expenditures.
12. In response to the complaint, on September 28, 2022, the respondent corrected the reports to disclose total political contributions maintained and to itemize his contributions and expenditures on the appropriate reporting schedules.
13. Each report filed under this chapter with an authority other than the Commission must be in a format prescribed by the Commission. Tex. Elec. Code § 254.036(a).
14. Each campaign finance report must include the amount of political contributions, other than political contributions described by Subdivision (1-a), from each person that in the aggregate exceed \$50 (\$90 as of January 1, 2021) and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. Tex. Elec. Code § 254.031(a)(1); 1 Tex. Admin. Code § 18.31.
15. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$180 as of January 1, 2021; \$190 as of January 1, 2022) 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. Tex. Elec. Code § 254.031(a)(3); 1 Tex. Admin. Code § 18.31.

16. Each campaign finance report must include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period. Tex. Elec. Code § 254.031(a)(6).
17. Each campaign finance report must 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. *Id.* § 254.031(a)(8).
18. Credible evidence shows the respondent did not properly disclose political contributions, political expenditures, and total political contributions maintained in the January 2022 and July 2022 semiannual reports at issue. Therefore, there is credible evidence of violations of Sections 254.031(a)(1), 254.031(a)(3), 254.031(a)(6), and 254.031(a)(8) of the Election Code. Regarding the January 2022 semiannual report, the respondent did not disclose his political contributions and political expenditures on the itemization schedules prescribed by the Commission. Therefore, there is credible evidence of a violation of Section 254.036(a) of the Election Code.

Cash Contributions

19. Sworn complaint SC-32209316 alleged that the respondent accepted two political contributions in cash that exceeded \$100. The respondent attached to his January 2022 semiannual report copies of contribution checks that had been deposited. One of the pages contained a handwritten notation stating “12/13/21 \$300 cash - Luis Villarreal,” and “11/10/21 \$600 cash – Bennie Ochoa III.”
20. A candidate, officeholder, or specific-purpose committee may not knowingly accept from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. Tex. Elec. Code § 253.033(a).
21. Credible evidence shows the respondent accepted two political contributions in cash totaling \$900. Each contribution exceeded \$100. Therefore, there is credible evidence of violations of Section 253.033(a) of the Election Code.

Corporate Contributions

22. Sworn complaint SC-32209316 alleged that the respondent accepted four political contributions from four corporations. The respondent attached to his January 2022 semiannual report copies of contribution checks that had been deposited. The report included the following checks:
 - \$500 from R & D Contracting, Inc., Operating Account, on December 14, 2021
 - \$50 from Johnny Rodriguez Insurance Agency Inc., General Account, on December 14, 2021

- \$100 from Blue Marlin Supermarket, a division of Meschi’s Minimax, Inc., on December 14, 2021
 - \$100 from Padres Island Brewing Co., Inc. on December 15, 2021
23. The respondent filed a Campaign Treasurer Appointment form on December 11, 2017. The respondent signed the form under the pre-printed statement: “I am aware of the restriction in title 15 of the Election Code on contributions from corporations and labor organizations.”
24. 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. Tex. Elec. Code § 253.003(b). Under Section 253.094 of the Election Code, a corporation may not make a political contribution that is not authorized by Chapter 253, Subchapter D, of the Election Code. *Id.* § 253.094(a).
25. Chapter 253, Subchapter D, of the Election Code applies only 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. *Id.* § 253.091.
26. A “political contribution” is a campaign contribution or an officeholder contribution. *Id.* § 251.001(5). “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(3).
27. In order to find the respondent violated Sections 253.003(b) and 253.094 of the Election Code, there must be credible evidence to show the respondent: a) knowingly accepted a political contribution from an entity that the respondent knew was a corporation; and b) knew that the law prohibited corporations from making political contributions.
28. Records on file with the Texas Secretary of State show that each of the four entities at issue is a domestic for-profit corporation.
29. The respondent signed a campaign treasurer appointment form in which he acknowledged he was aware of the restrictions on political contributions from corporations. Each contribution check contained the abbreviation of “Inc.” which identified each contributor as a corporation. There is credible evidence that the respondent knowingly accepted four political contributions totaling \$750 from four corporations in violation of Sections 253.003(b) and 253.094 of the Election Code.

Improper Reimbursement

30. Sworn complaint SC-32210360 alleged that the respondent improperly reimbursed himself from political contributions for a \$330 political expenditure made from his personal funds that was not properly disclosed.

31. In the original January 2022 semiannual report, the respondent did not enter any information on the schedules for itemizing political contributions and political expenditures. The respondent attached to the report a campaign account bank statement showing a transaction history for the period of November 15, 2021 through January 10, 2022, which included a \$330 online transfer to the respondent's personal account on November 24, 2021. In the corrected January 2022 semiannual report filed on September 28, 2022, the respondent disclosed on Schedule G (used to disclose political expenditures from personal funds) a \$330 expenditure to Toucan Graphics on November 24, 2021. The respondent checked the box to indicate that he intended to reimburse himself from political contributions. In the same corrected report, the respondent disclosed on Schedule F1 (used to disclose political expenditures from political contributions) a \$330 expenditure to himself on November 24, 2021 for the reimbursement. The complaint alleged that, since the expenditure from the respondent's personal funds was not properly disclosed in the original report, the respondent was not eligible to be reimbursed for the expenditure.
32. A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if: (1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and (2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement. Tex. Elec. Code § 253.035(h); *see also* 1 Tex. Admin. Code § 22.19(d). A candidate's failure to comply with these requirements may not be cured by filing a corrected report after the report deadline has passed. 1 Tex. Admin. Code § 22.19(e).
33. Credible evidence shows the respondent used political contributions to reimburse himself for a \$330 political expenditure from his personal funds that was not properly disclosed. Therefore, there is credible evidence of a violation of Section 253.035(h) of the Election Code and Section 22.19 of the Ethics Commission Rules.

Failure to File Campaign Treasurer Appointment

34. Sworn complaint SC-32210408 alleged that the respondent failed to file an amended campaign treasurer appointment and accepted political contributions and made political expenditures at a time when a campaign treasurer appointment was not in effect. The respondent filed his initial campaign treasurer appointment with Cameron County on December 11, 2017. The complaint allegation was based on campaign finance reports filed by the respondent between January 31, 2018 and October 10, 2022, in which the respondent listed two different individuals as his campaign treasurer. However, the respondent did not file an amended campaign treasurer appointment form with Cameron County to officially appoint either of the new treasurers.

35. In response to the complaint, the respondent acknowledged the error and promptly filed a campaign treasurer appointment form on October 28, 2022. The respondent stated that all identifying campaign treasurer information required by the campaign treasurer appointment form was disclosed on the campaign finance reports, and that it was his intent that the individuals disclosed on his campaign finance reports be appointed as his campaign treasurer during each reporting period.
36. Credible evidence indicates the respondent changed campaign treasurers on or around January 31, 2018. The respondent did not file a new campaign treasurer appointment until October 28, 2022.¹ The respondent disclosed \$0 in total political contributions and \$0 in total political expenditures in his January 2021 and July 2021 semiannual campaign finance reports. Reports filed by the respondent in 2022 show the respondent accepted political contributions totaling \$23,485 and made political expenditures totaling \$21,049.18 during the period of July 1, 2021 through October 27, 2022.
37. Each candidate and each political committee shall appoint a campaign treasurer as provided by Chapter 252 of the Election Code. Tex. Elec. Code § 252.001.
38. A campaign treasurer appointment takes effect at the time it is filed with the authority specified by Chapter 252 of the Election Code. *Id.* § 252.011(a). A campaign treasurer appointment continues in effect until terminated. *Id.* § 252.011(b).
39. A campaign treasurer appointed under this chapter may be removed at any time by the appointing authority by filing the written appointment of a successor in the same manner as the original appointment. *Id.* § 252.011(a). The appointment of a successor terminates the appointment of the campaign treasurer who is removed. *Id.* § 252.012(b).
40. If a campaign treasurer resigns or otherwise vacates the position, the appointment is terminated at the time the vacancy occurs. *Id.* § 252.013(a).
41. 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. *Id.* § 253.031(a).
42. A campaign treasurer appointment must be in writing and include: (1) the campaign treasurer's name; (2) the campaign treasurer's residence or business street address; (3) the campaign treasurer's telephone number; and (4) the name of the person making the appointment. *Id.* § 252.002(a).

¹ The statute of limitations for violations of Section 253.031 of the Election Code is two years. Tex. Elec. Code § 253.031(f); Tex. Code Crim. Proc. § 12.02(a); 1 Tex. Admin. Code § 12.5. Therefore, the Commission cannot consider the allegation with respect to political contributions accepted and political expenditures made before October 26, 2020, two years before the date the complaint was filed.

43. In addition to the information required by Section 252.002, a campaign treasurer appointment by a candidate must include: (1) the candidate's telephone number; and (2) a statement, signed by the candidate, that the candidate is aware of the nepotism law, chapter 573, Government Code. *Id.* § 252.0032(a).
44. Section 254.061 of the Election Code states, in pertinent part, that in addition to the contents required by Section 254.031, each report by a candidate must include: (1) the candidate's full name and address, the office sought, and the identity and date of the election for which the report is filed; and (2) the campaign treasurer's name, residence or business street address, and telephone number. *Id.* § 254.061.
45. The information required to be included in a campaign treasurer appointment form is different than the information required to be disclosed in a campaign finance report. *Compare* Tex. Elec. Code §§ 252.002, 252.0032 *with id.* § 254.061.
46. Credible evidence indicates that the respondent accepted political contributions totaling \$23,485 and made political expenditures totaling \$21,049.18 during a period when a campaign treasurer appointment was not in effect. Therefore, there is credible evidence of violations of Section 253.031(a) of the Election Code.

IV. 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 findings of fact and conclusions of law described under Section III, and consents to the entry of this order and agreed resolution solely for the purpose of resolving these sworn complaints.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in these matters.
3. The respondent acknowledges the legal requirements and restrictions under Sections 253.003, 253.031, 253.033, 253.035, 253.094, 254.031, 254.036, and 254.063 of the Election Code, and Section 22.19 of the Ethics Commission Rules, and the respondent agrees to comply with these requirements of the law.

V. 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$5,000 civil penalty.

VII. 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-32209316, SC-32210360, and SC-32210408.

AGREED to by the respondent on this _____ day of _____, 2022.

Benito "Bo" Ochoa IV, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director