

TEXAS ETHICS COMMISSION

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| IN THE MATTER OF | § | BEFORE THE |
| SANTOS BENAVIDES, | § | TEXAS ETHICS COMMISSION |
| RESPONDENT | § | SC-990303 |

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 14, 1999, and voted to accept jurisdiction of Sworn Complaint SC-990303 filed against Santos Benavides, Respondent. The commission met again on October 8, 1999, to consider Sworn Complaint SC-990303. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 254.036 and 254.063, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleged that the respondent failed to timely file the July 1998 and January 1999 semiannual reports. The complainant further alleged that the respondent failed to accurately report all political contributions or expenditures on these reports and that these reports were not verified.

III. Facts Supported by Credible Evidence

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

1. The respondent is currently a justice of the peace who was re-elected in 1998. The respondent filed his campaign treasurer appointment on November 17, 1989, and has held the office since January 1991.
2. On February 18, 1999, the county clerk received the respondent's July 1998 and January 1999 semiannual reports. Both reports disclosed that the respondent did not accept any political contributions or make any political expenditures during the applicable reporting

periods. Both reports appear to be signed by the respondent, and neither report has a notary stamp or other verification.

IV. Findings and Conclusions of Law

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

1. A candidate is required to file semiannual reports by January 15 and July 15 of each year. Section 254.063, Election Code. Each report is required to be accompanied by an affidavit executed by the candidate. Section 254.036, Election Code. This means the report must be confirmed by oath or affirmation of the candidate taken before a notary or other person with the authority to administer such an oath or affirmation.
2. The county clerk received the July 1998 and January 1999 semiannual reports on February 18, 1999, as evidenced by the county clerk's date stamp. These reports were not notarized. Therefore, there is credible evidence that the respondent violated Sections 254.036 and 254.063, Election Code.
3. A candidate is required to report political contributions accepted and political expenditures made during a reporting period. Section 254.031, Election Code. The respondent reported that he did not accept any political contributions or make any political expenditures during the two reporting periods in question. The only evidence submitted by the complainant to support this allegation is his sworn assertion that the respondent had political signs posted throughout the area, that he had T-shirts, bumper stickers, and radio advertisements, and that several political parties were hosted for the respondent. Therefore, there is insufficient evidence of a violation of Section 254.031, 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.

3. The respondent acknowledges that a candidate is required to file timely campaign finance reports and that the reports must be verified. The respondent agrees to fully and strictly comply with these requirements of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraph 2, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes a violation that the commission has determined is 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the violations described under Section IV, Paragraph 2.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-990303;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 5, 1999; and

4. that the executive director shall promptly refer SC-990303 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-990303 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 199__.

Santos Benavides, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director