

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SAMUEL V. SANCHEZ
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-96038

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (“commission”) met on August 16, 1996, to consider sworn complaint SC-96038 filed against Samuel V. Sanchez (the “respondent”). A quorum of the commission was present. The commission voted to accept jurisdiction of allegations of violations of Sections 253.001, 254.063, 254.064, and 254.093, Election Code, and to refuse jurisdiction of allegations of violations of Sections 253.033, 254.062, and 254.096, Election Code. Based on the investigation conducted by commission staff to date, the commission determined there was credible evidence of violations of Sections 254.064 and 254.093, 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. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. At all times relevant to this complaint, the respondent was either a county commissioner or a candidate for county commissioner.
2. The respondent lost in the primary runoff election held on April 9, 1996.
3. The respondent filed a campaign treasurer appointment on July 3, 1991, and as of April 26, 1996, the date the complaint was filed, he had not filed a final report.
4. The complainant alleges that the respondent lists contributors who did not make contributions to him, that the respondent accepted \$48,000 in cash to run his 1991-1992 campaign, and that the respondent has not filed all the required contribution and expenditure reports.

III. Conclusions of Law

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

1. Section 253.001, Election Code, prohibits a person from knowingly making a political expenditure or a political contribution in the name of another unless the person discloses the other's name for the proper disclosure to be made. There is no credible evidence that the respondent violated Section 253.001, Election Code.
2. Section 253.033, Election Code, prohibits a candidate or officeholder from knowingly accepting from a contributor in a reporting period political contributions in cash that in the aggregate exceed \$100. The complainant alleges that the respondent accepted \$48,000 in cash to run his 1991-1992 campaign in violation of Section 253.033, Election Code. An offense under that section is a misdemeanor, subject to a two-year statute of limitations. *See* § 254.041, Election Code; art. 12.02, Code of Criminal Procedure. The commission does not have jurisdiction over this allegation because it is based on facts that occurred more than two years before the complaint was filed. *See* 1 T.A.C. § 12.5(3).
3. Sections 254.063 and 254.093, Election Code, require all candidates and certain officeholders to file semiannual reports. The respondent filed a campaign treasurer appointment on July 3, 1991, and has never filed a final report. Thus, for filing purposes, the respondent has been a candidate since that date. The respondent failed to file timely semiannual reports in January and July 1993 and 1994 and in January 1995 (a total of five reports), but has done so in response to this complaint. The failure to file a timely report is a misdemeanor, subject to a two-year statute of limitations. *See* § 254.041, Election Code; art. 12.02, Code of Criminal Procedure. The commission does not have jurisdiction over the January and July 1993 and the January 1994 reports because the reports were due more than two years before the complaint was filed. *See* 1 T.A.C. § 12.5(3). Ethics Commission rules authorize the commission to consider fine amounts established by rule to determine the amount of a fine assessed in a sworn complaint. *See* 1 T.A.C. § 18.95(b). A person filing with the Ethics Commission would be subject to a fine of \$200, \$100 for each of the two reports within the commission's jurisdiction.
4. Section 254.064, Election Code, requires opposed candidates to file pre-election reports. The respondent failed to file a timely 8-day before election report for the primary runoff. The report was due on April 1, 1996, and was filed 84 days later in response to this complaint. The report discloses expenditures totaling \$2,201.99 and contributions totaling \$4,450. Ethics Commission rules authorize the commission to consider fine amounts established by rule to determine the amount of a fine assessed in a sworn complaint. *See* 1 T.A.C. § 18.95(b). A person filing with the Ethics Commission would be subject to a fine of \$8,400 for this report.
5. Sections 254.062 and 254.096, Election Code, apply to an officeholder who becomes a candidate. The allegations are based on the respondent's filing of a campaign treasurer appointment on July 3, 1991, an event that occurred more than three years before the date the sworn complaint was filed. Therefore, the allegations are not within the commission's jurisdiction. *See* 1 T.A.C. § 12.5(4).

IV. Representations and Agreement by the Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts detailed under Section II and the commission's findings and conclusions of law detailed under Section III, 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 appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. 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 detailed in Section III, Paragraphs 3 and 4, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

V. Confidentiality

This ORDER and AGREED RESOLUTION describes an alleged violation that the commission has determined would be neither technical or *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the Texas Ethics Commission.

VI. Sanction

After considering the seriousness of the violation described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violation; that no previous violations by this respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes a \$500 civil penalty for the violations described under Section III, Paragraphs 3 and 4.

VII. Order

The Texas Ethics Commission hereby ORDERS:

1. that the portions of this sworn complaint that allege violations under Section III, Paragraphs 1, 2, and 5, are dismissed;
2. that this proposed AGREED RESOLUTION be presented to the respondent;
3. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-96038;

4. 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 September 16, 1996; and
5. that the executive director shall promptly refer SC-96038 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-96038 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1996.

Samuel V. Sanchez, Respondent

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director