

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SOFIA BENAVIDES,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31109217

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 30, 2012, to consider sworn complaint SC-31109217. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 254.031 of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules, 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 the respondent did not properly disclose political contributions and political expenditures in a campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent is a commissioner of Cameron County and was an opposed incumbent candidate in the May 29, 2012, primary election. The complaint alleged that the respondent did not properly disclose political contributions and political expenditures in a semiannual campaign finance report due on July 15, 2011.
2. The complaint included a copy of the report, which disclosed the following:
 - \$4,231.04 in total political contributions of \$50 or less
 - \$29,300 in total political contributions
 - Total political expenditures of \$50 or less was blank
 - \$21,589.35 in total political expenditures
 - \$11,941.69 in total political contributions maintained
 - Total principal amount of outstanding loans was blank

3. The report bore a stamp of the Cameron County Department of Elections and Voter Registration that indicated it was received on July 15, 2011, at 3:15 P.M. The section on the cover page to specify the total number of pages filed was blank.
4. The complaint alleged that, “The Cameron County Elections office verified it only had 2 pages filed by [the respondent] on July 15, 2011,” and that the respondent did not properly itemize political contributions and political expenditures in the report.
5. A copy of the respondent’s July 2011 semiannual report filed with the Cameron County Elections Administrator consisted of only two cover pages. The respondent’s corrected July 2011 semiannual report included two cover pages and additional schedules that disclosed political contributions and political expenditures.
6. In response to the allegations, the respondent swore, in pertinent part:

With respect to the allegation that I did not file a complete July 15, 2011, campaign finance report, I will state that I in fact DID file a complete finance report which included 11 pages of Schedule A, listing all Contributions, and 22 pages of Exhibit F, listing all Expenditures. I have attached a copy of the complete report that I actually filed on the required date. As you can see, the copy of the report that I filed has the time and date stamp from the Cameron County Elections Administrator’s office. Additionally, the report that I filed includes all of the required Schedules listing Contributions and Expenditures.

For reasons unknown to me, the report that you obtained from the Elections Administrator’s office, or the complainant, is missing a substantial number of pages from the report that was actually filed with the Election’s office. Those missing pages were either misplaced, lost or removed by the Elections Administrator’s office or by someone with improper or illegal access to the files of that office.

...

I timely filed a complete campaign finance report as required by law. The report that you make reference to in your [sworn complaint notice] is not the complete report which I filed. The Cameron County Elections Administrator’s office either misplaced, lost or removed those parts or pages in the report that you assert were required, under State law, to be part of the report in order that it may be in compliance with State Law. I have brought this omission or error to the attention of the Cameron County Elections Administrator’s Office. I have always filed all of my reports in a timely and correct manner and the July 15, 2011, report is no exception.

7. The respondent filed a corrected report on December 15, 2011, and indicated in the correction affidavit that she filed the report not later than the 14th business day after the date she learned that the report as originally filed was inaccurate or incomplete, and that any error or omission in the report as originally filed was made in good faith. The affidavit included with the complaint stated:

Please note that this re-filing of the report is being made because, for reasons unknown to me, the report which I filed on July 15, 2011, is missing numerous pages in Schedules A and F, which were in fact contained in and filed with my Report on July 15, 2011. The re-filing of this previously filed report in no way reflects an admission that I did not file a complete and timely report on July 15, 2011. I am only re-filing the report due to suggestions by the Texas Ethics Commission that a complete report needs to be on file with the Elections Administrators Office. In fact, I did timely file a complete report and any part of that report which is not contained in your current files is missing, lost or removed through no fault of my own or of my staff. As with my original filing on July 15, 2011, this re-filed report consists of 37 pages and my affidavit and that of my secretary.

8. The respondent also submitted an affidavit from an individual described as the respondent's secretary that stated, in pertinent part:

I timely filed a complete Campaign Finance Report for Commissioner Sofia C. Benavides with the Cameron County Election's Administrators office. The report that I filed contained a complete report of Commissioner Benavides' Contributions and Expenditure [sic], including 11 pages in Schedule A, listing all Contributions, and 22 pages in Schedule F, listing all Expenditures. The Report which is attached to Commissioner Sofia Benavides affidavit is a copy of the complete report which I filed on July 15, 2011, with the Elections Administrator's office, and it consisted of a total of 35 pages and was stamp filed by a staff member of the Election Administrator's office.

I'm not aware of why certain pages from Schedules A and F are missing from the Report in the Elections office. They were in fact filed by me on the indicated date.

9. The corrected report included 11 Schedule A pages and 22 Schedule F pages. The Schedule A pages disclosed approximately \$29,300 in political contributions, all of which were from persons who gave over \$50 during the reporting period. The contributions were disclosed without the following information:

- All of the contributions were missing either a state, a zip code, or both.
 - Approximately \$1,400 in contributions also included an abbreviated city for the contributor, such as “Harl.,” “S.P.I.,” or “B’ville.”
 - Approximately \$300 in contributions included a city and state, but did not include a street address.
10. The Schedule F pages disclosed approximately \$21,590 in political expenditures. The respondent disclosed a category of goods or services for each expenditure, but did not include a description for any expenditure. Approximately \$740 in expenditures were \$50 or less, and it did not appear from the face of the report that the respondent paid an aggregate of more than \$50 to any of the payees during the reporting period. Approximately \$1,310 in expenditures were disclosed with an incomplete street address and no zip code.
 11. Approximately \$2,410 in expenditures were disclosed with no street address, city, state, or zip code.
 12. Approximately \$280 in expenditures were disclosed with a street address, but did not include a city, state, and zip code.
 13. Approximately \$16,840 in expenditures were disclosed with a street address, but did not include a state, a zip code, or both.
 14. The respondent filed a campaign treasurer appointment on January 3, 2007. The respondent’s campaign finance reports covering the period from July 1, 2007, to June 30, 2011, did not disclose any political expenditures made from personal funds or any loans from the respondent.

IV. Findings and Conclusions of Law

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

1. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 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. ELEC. CODE § 254.031(a)(1).
2. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3).

3. Political expenditures made out of personal funds by a staff member of an officeholder, a candidate, or a political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee that in the aggregate do not exceed \$5,000 during the reporting period may be reported as follows if the reimbursement occurs during the same reporting period that the initial expenditure was made: the amount of political expenditures that in the aggregate exceed \$50 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; and included with the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period. Except as provided above, a political expenditure made out of personal funds by a staff member of an officeholder, a candidate, or political committee with the intent to seek reimbursement from the officeholder, candidate, or political committee must be reported as follows: the aggregate amount of the expenditures made by the staff member as of the last day of the reporting period is reported as a loan to the officeholder, candidate, or political committee; the expenditure made by the staff member is reported as a political expenditure by the officeholder, candidate, or political committee; and the reimbursement to the staff member to repay the loan is reported as a political expenditure by the officeholder, candidate, or political committee. Ethics Commission Rules § 20.62.
4. The report of a political expenditure for goods or services must describe the categories of goods or services received in exchange for the expenditure. *Id.* § 20.61(a). The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which the expenditure is made does not adequately describe the purpose of an expenditure. *Id.* § 20.61(a)(2).
5. The complaint alleged that the respondent's July 2011 semiannual report did not include any Schedule A pages to disclose contributions or Schedule F or G pages to disclose political expenditures. Based on the available evidence, it cannot be determined whether the respondent's report included any schedules when it was originally filed. However, if the reports were originally filed with the schedules included with the corrected report, the issue is whether the schedules properly disclosed political contributions and political expenditures.

Contributor Addresses

6. The corrected report disclosed approximately \$29,300 in political contributions, all of which were required to be itemized. Approximately \$27,600 of the contributions were missing either a state, a zip code, or both and approximately \$1,400 in contributions were disclosed with an abbreviated city, such as "Harl.," "B'ville," or "S.P.I.," and were missing either a state, a zip code, or both. Approximately \$300 in contributions were disclosed with a city, but did not include a street address or zip code. The omissions on the report did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(1) of the Election Code with respect to disclosure of the city, state, and zip code information.

Payee Names and Addresses

7. The corrected report also disclosed approximately \$21,590 in political expenditures, of which approximately \$20,840 in expenditures were required to be itemized. Of the expenditures required to be itemized, an expenditure of \$250 to “Democratic Party” for “Advertisement” was disclosed with no payee address. The exact payee of the expenditure cannot be determined from the report. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code in connection with the expenditure regarding the payee name and address.
8. The expenditures required to be itemized also included approximately \$2,160 in expenditures that were disclosed with no address. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code with respect to disclosure of the payee addresses for approximately \$2,160 in expenditures.
9. The expenditures required to be itemized also included approximately \$1,310 in expenditures with a partial street address and no zip code; approximately \$280 in expenditures with a street address and no city, state, and zip code; and approximately \$16,840 in expenditures that were disclosed with a street address, but were missing either a state, a zip code, or both. The omissions on the report did not substantially affect disclosure. Therefore, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(3) of the Election Code with respect to disclosure of the payee addresses for approximately \$18,430 in expenditures.

Reimbursements

10. Of the expenditures required to be itemized, approximately \$420 in expenditures were disclosed as reimbursements to individuals. The corrected report did not disclose the names or addresses of the vendors who ultimately received the payments or the expenditure purposes. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and sections 20.61 and 20.62 of the Ethics Commission Rules in connection with approximately \$420 in expenditures.
11. The report also disclosed an expenditure of \$1,218.87 to the respondent as a reimbursement. According to campaign treasurer appointments filed with the county, the respondent has been a candidate for county commissioner since January 3, 2007, and has filed reports with the county to disclose political contributions and political expenditures since July 1, 2007. None of the respondent’s reports disclosed that the respondent had made political expenditures with personal funds. Thus, the respondent made the expenditure to reimburse herself for the use of personal funds to make a campaign expenditure. None of the respondent’s reports disclosed the actual payee or purpose of the expenditure. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules in connection with the \$1,218.87 expenditure.

Purposes of Expenditures

12. Approximately \$19,200 in expenditures (not including reimbursements) were disclosed with a category of goods or services, but were not disclosed with a description. The expenditures included the following, totaling approximately \$6,240:
- Approximately \$360 in expenditures to individuals and a flower shop for “Donation”
 - \$45 to a flower shop for “Donation/Memorial Expense”
 - \$410.03 to a retail business for “Donation/Ramp”
 - \$111 to a club for “fees”
 - Approximately \$2,890 to restaurants, a bowling alley, a machine shop, retail stores, AT&T, and an individual for “event,” “expense,” and “Event Expense”
 - Approximately \$430 to businesses for “Office Expense”
 - \$2,000 to an individual for “Transportation, Equipment, repair of trailer.”
13. The categories of “Donation,” “Donation/Memorial Expense,” and “Donation/Ramp” are not sufficiently specific because it is unclear whether the expenditures were for monetary donations or to purchase items that were subsequently donated. The category of “fees” did not disclose the purpose of the fees. The categories of “event,” “expense,” and “Event Expense” are not sufficiently specific because it is unclear whether the expenditures were for admission to events, donations, or some other purposes. The categories of the expenditures for “office expense” did not clearly indicate their purposes and the expenditure of \$2,000 for “Transportation, Equipment, repair of trailer” did not indicate whether it was for contract labor or purchases for the respondent’s campaign. Therefore, there is credible evidence that the respondent violated section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules in connection with the purposes of approximately \$6,240 in expenditures.
14. The expenditures at issue also included the following expenditures, totaling approximately \$12,960:
- Approximately \$7,550 to individuals, businesses, and entities for “Advertisement,” “Advertising,” “Advertising/Graphics,” and “Advertising/Printing”
 - Approximately \$2,810 to an individual website designer for “Consultant,” “Consulting,” and “Consulting Expense”
 - \$59 to a copying business for “Printing”
 - Approximately \$810 in expenditures to charitable entities and a high school for “Donation”
 - \$377 to a telephone company for “Telephone & Service”
 - \$147.94 to a retail business for “Food/Beverage Expense”

- Approximately \$690 to restaurants for “Meeting” and “Meeting/Food/Beverage expense”
 - Approximately \$520 to a retail business for “Material for greenhouse, community garden” and “Material for greenhouse”
15. The preceding expenditures were disclosed with categories, but did not include descriptions of their purposes. In the context of the expenditures with categories related to “Advertising,” “Printing,” “Consulting,” “Telephone & Service,” “Food/Beverage Expense,” “Meeting,” “Meeting/Food/Beverage expense,” and “Material for greenhouse,” the category and payee information were sufficiently clear to disclose the goods or services the respondent purchased. In addition, it appears that the expenditures for “Donation” were monetary donations to charitable entities and a high school. Therefore, although the disclosures did not comply with the disclosure requirements, there is credible evidence of technical or *de minimis* violations of section 254.031(a)(3) of the Election Code and section 20.61 of the Ethics Commission Rules in connection with those expenditures.

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 campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 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; 2) a campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 (\$50 until September 28, 2011) and that are made during the reporting period, the full name and address of the persons to whom political expenditures are made, and the dates and purposes of the expenditures; 3) political expenditures made out of personal funds by a staff member of a candidate or officeholder with the intent to seek reimbursement from the candidate or officeholder must be reported in accordance with section 20.62 of the Ethics Commission Rules; and 4) the purpose of an expenditure means a description of goods, services, or other thing of value and must include a brief statement or description of the candidate, officeholder, or political committee activity that is conducted by making the expenditure. The brief statement or description must include the item or service purchased and must be sufficiently specific, when considered within the context of the description of the category, to make the reason for the expenditure clear. Merely disclosing the category of goods, services, or other thing of value for which

the expenditure is made does not adequately describe the purpose of an expenditure. 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes an \$800 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-31109217.

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

Sofia Benavides, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director