

TEXAS ETHICS COMMISSION

IN THE MATTER OF

ED JOYNER,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-961010

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 10, 1997, to consider sworn complaint SC-961010 filed against Ed Joyner (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Sections 254.063 and 254.064, 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 a candidate for constable. The respondent had an opponent whose name appeared on the ballot in the November 5, 1996, general election.
2. The respondent filed an appointment of campaign treasurer on December 28, 1995.
3. The complainant alleges that the respondent did not timely file two semiannual reports that were due on January 16, 1996, and July 15, 1996, nor did he file the 30-day before election report that was due on October 7, 1996.
4. On January 17, 1996, the respondent filed a report covering the period beginning December 28, 1995, and ending December 31, 1995. The report listed \$300 in political expenditures.
5. On October 17, 1996, the respondent filed a report that covered the period beginning January 1, 1996, and ending June 30, 1996. The report listed no reportable activity.
6. On October 17, 1996, the respondent filed a report that covered the period beginning July 1, 1996, and ending September 26, 1996. The report listed \$668.17 in political expenditures.

III. Conclusions of Law

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

1. Section 254.063, Election Code, requires candidates to file two reports each year. The first semiannual report was due not later than January 16, 1996, and covered the period that began with the respondent's appointment of campaign treasurer on December 28, 1995, and that ended December 31, 1995. The second semiannual report was due not later than July 15, 1996, and covered the period that began January 1, 1996, and that ended June 30, 1996. The respondent did not timely file these semiannual reports, and therefore there is credible evidence that the respondent violated Section 254.063, Election Code.
2. Section 254.064(b), Election Code, requires candidates who have an opponent whose name appears on the ballot to file a report not later than the 30th day before the election. Because the respondent had an opponent whose name appeared on the ballot in the November 5, 1996, general election, the respondent was required to file this report not later than October 7, 1996. The respondent did not timely file this report, and therefore there is credible evidence that the respondent violated Section 254.064(b), Election Code.

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 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 alleged violations that the commission has determined would be neither technical nor *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 violations described under Sections II and III, including the nature, circumstances, consequences, extent, and gravity of the violations; 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 \$200 civil penalty for the violations described under Section III.

VII. Order

The Texas Ethics 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-961010;
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 \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than February 10, 1997; and
4. that the executive director shall promptly refer SC-961010 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-961010 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 1997.

Ed Joyner, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

DATE

Texas Ethics Commission

By:

Tom Harrison, Executive Director