

TEXAS ETHICS COMMISSION

IN THE MATTER OF

BENNIE R. MARBERRY, JR.,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-970312

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 9, 1997, to consider sworn complaint SC-970312 filed against Bennie R. Marberry, Jr. (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by the commission staff, the commission determined there was credible evidence of a violation of Section 254.063, Election Code, a law 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 city council in the May 4, 1996, election. The respondent selected the "Modified Reporting Declaration" on the appointment of campaign treasurer form.
2. On November 14, 1996, the respondent filed a report covering the period of the respondent's candidacy, from March 19, 1996, through November 14, 1996. The report listed no reportable activity.
3. The complainant alleges that the respondent did not timely file a semiannual report that was due not later than July 15, 1996.

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 semiannual reports. Section 254.184(b), Election Code, provides that a candidate who elects modified reporting is not required to file any campaign finance reports other than the semiannual reports. The respondent, a candidate who had elected modified reporting, was required to file a semiannual report that was due not later than July 15, 1996.
2. The respondent did not timely file this report, and therefore there is credible evidence that the respondent violated Section 254.063, 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, Paragraph 2, 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; that the respondent had no reportable campaign finance activity; and after considering the sanction deemed necessary to deter future violations, the commission imposes no civil penalty for the violations described under Section III, Paragraph 2.

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-970312;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than June 6, 1997; and
4. that the executive director shall promptly refer SC-970312 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-970312 as proposed in this ORDER and AGREED RESOLUTION.

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

Bennie R. Marberry, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director