

TEXAS ETHICS COMMISSION

IN THE MATTER OF

LYLES M. FOX,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-220682

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220682 filed against Lyles M. Fox, Respondent. The commission met again on October 11, 2002, to consider Sworn Complaint SC-220682. 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 a violation of Section 253.062, 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. Allegations

The complainant alleges that the respondent made direct expenditures exceeding \$100 and failed to file campaign finance reports of those expenditures.

III. Facts Supported by Credible Evidence

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

1. The respondent resides in Dickinson, Texas. This complaint concerns a municipal election that was held on May 4, 2002.
2. In support of his allegations, the complainant submitted a copy of a flier sent to the complainant's home address before the May 4, 2002, election.
3. The flier supports a candidate for mayor and three candidates for city council, and states that these candidates are supported by the local police officers association. The flier includes a disclosure statement that states that it is political advertising paid for by the respondent. The statement also includes the respondent's address.

4. The respondent submitted a sworn response in which he states:

I am a avid supporter of the Dickinson Police Department and I decided to send out a mail-out supporting Veta Winick for Mayor and also the three candidates running for council positions in the city election. I did this because the Dickinson Police had endorsed these candidates and I believed it was for the good of the city that these candidates should be supported and a mail-out was done by me.

5. The respondent also submitted a receipt from Kinko's, dated April 28, 2002, for \$95.26. The respondent also submitted a note disclosing that the four reams of paper used to make the fliers cost \$21.50 and that the postage to mail the 1,600 fliers cost \$592. The note states that the respondent made total expenditures of \$708.78 for mailing the fliers.
6. The respondent also submitted a copy of a campaign finance report that is date stamped July 11, 2002. The respondent used the specific-purpose committee campaign finance form (Form SPAC).
7. On the campaign finance report, the respondent states that the period covered was from January 1 to June 30, 2002. The report also discloses that the respondent made political expenditures totaling \$708.78. The report does not include an itemization of any of the political expenditures.
8. On August 21, 2002, the respondent submitted a corrected Form SPAC report. The corrected report discloses the same amount of political expenditures (\$708.78) as the original report. The corrected report also itemizes the political expenditures in the same manner as the note the respondent submitted with his sworn response. The respondent also marked the corrected report as both a July 2002 semiannual report and as a final report.
9. On September 30, 2002, the respondent submitted a correction affidavit to accompany the corrected Form SPAC report.
10. The respondent also stated that he made the mailing on April 28 in conjunction with only the May 4, 2002, election.

IV. Findings and Conclusions of Law

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

1. An individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 if the individual complies with Chapter 254, Election Code, as if the individual were a campaign treasurer of a political committee, and if the individual receives no reimbursement for the expenditures. Section 253.062, Election Code.

2. The campaign treasurer of a political committee shall file semiannual reports not later than January 15 and July 15 each year. Section 254.123, Election Code. The campaign treasurer of a political committee shall also file 30-day and 8-day before election reports for each election in which the committee supports or opposes a candidate. Section 254.124, Election Code. If the committee supports or opposes a candidate after the reporting period for the 30-day and 8-day before election reports, the campaign treasurer shall file the first report not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. *Id.*
3. The respondent made political expenditures totaling over \$100 in connection with the municipal election. Therefore, the respondent was required to file campaign finance reports. The respondent submitted copies of the reports he filed with the local filing authority.
4. The municipal election was held on May 4, 2002. Any 30-day and 8-day before election reports were required to be filed by April 4 and April 26, 2002, respectively.
5. The evidence shows that the respondent made his political expenditures on April 28, which is after the reporting periods for the 30-day and 8-day before election reports. Therefore, the respondent was not required to file the 30-day and 8-day before election reports.
6. The first report required to be filed by the respondent was the July semiannual report, which was due by July 15, 2002. The respondent filed the July semiannual report on July 11, 2002. Therefore, there is credible evidence that the respondent filed the report before the reporting deadline.
7. A 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 the expenditures are made, and the dates and purposes of the expenditures. Section 254.031(a)(3), Election Code. The respondent's July semiannual report was incomplete because it did not disclose any of the required payee information.
8. A filer may correct a reporting error at anytime by filing a corrected report. Section 18.9, Ethics Commission Rules. The late fine for a corrected semiannual report is waived if the original report was timely filed, the corrected report is complete and accurate, and the filer submits an affidavit establishing that the original report was incomplete or incorrect because of a good-faith error. *Id.* However, under Rule 18.27, the Ethics Commission is not required to waive the fine for a respondent in a sworn complaint who files a corrected report, but may consider the correction to be a mitigating factor in determining the amount of any fine.
9. The respondent's original July semiannual report was incomplete because it did not disclose the required payee information. Accordingly, the report is late because it was incomplete when originally filed, and thus there is credible evidence that the respondent violated Section 253.062, 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 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 the expenditures are made, and the dates and purposes of the expenditures. The respondent agrees to fully and strictly comply with this requirement 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 violation described under Section IV, Paragraph 9, 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 not 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 commission.

VII. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes no civil penalty for the violation described under Section IV, Paragraph 9.

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-220682;
- 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 November 8, 2002; and
- 4. that the executive director shall promptly refer SC-220682 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-220682 as proposed in this ORDER and AGREED RESOLUTION.

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

Lyles M. Fox, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director