

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WILLIAM W. RUTH,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2211132

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 13, 2002, and voted to accept jurisdiction of Sworn Complaint SC-2211132 filed against William W. Ruth. The commission met again on April 11, 2003, to consider Sworn Complaint SC-2211132. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 254.063 and 254.064 of the Election Code and credible evidence of a technical or *de minimis* violation of section 255.006 of the 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. Allegations

The complainant alleges that the respondent, a candidate for election to the office of justice of the peace, failed to file two semiannual and two pre-election campaign finance reports, one of which was an 8-day pre-election report. The complainant also alleges that the respondent misrepresented that he held a public office that he did not hold by failing to use the word *for* in his political advertising.

III. Facts Supported by Credible Evidence

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

1. The complainant alleges that the respondent, a candidate for election to the office of justice of the peace, failed to file two semiannual and two pre-election campaign finance reports, one of which was an 8-day pre-election report. The complainant also alleges that the respondent misrepresented that he held a public office that he did not hold by failing to use the word *for* in his political advertising.

Failure to Timely File Campaign Finance Reports:

2. The respondent was an unsuccessful candidate for justice of the peace, in a county with a population of 37,674. He ran unopposed in the March 12, 2002, primary election and opposed in the November 5, 2002, general election. The respondent filed a campaign

treasurer appointment and a modified reporting declaration with the county clerk on November 8, 2001, and he filed a single campaign finance report with the county clerk on November 13, 2002. The cover sheet indicated that the campaign finance report covered a period beginning on September 27, 2002, and ending on November 5, 2002, but the report included a political expenditure that was made on September 5, 2002, before the beginning of that period. The report disclosed no political contributions, and it disclosed total political expenditures in the amount of \$5,187.42. The report also disclosed that all of the respondent's political expenditures were made from his personal funds and that the respondent exceeded \$500 in political expenditures on September 5, 2002.

3. The respondent filed an affidavit in response to this complaint in which he swears that the complainant filed this complaint because she is currently a defendant in litigation involving the respondent; that he thought that his campaign manager had filed the report and was not aware until election day that the report had not been filed; and that this was his first campaign and he has had no experience dealing with election laws and campaign finance reporting.

Failure to Use the Word *for* in Political Advertising:

4. The respondent was a non-incumbent candidate for justice of the peace. The complainant submitted copies of signs that include the respondent's name and the name of the office he was seeking but do not include the word *for*. The complainant also submitted copies of other signs that include the respondent's name and the name of the office he was seeking and do include the word *for*. The complainant swears that the respondent's political party asked the respondent to correct his signs because they did not include the word *for* and further swears that the respondent corrected some of the signs but not all of them. The respondent states that he discovered that his signs did not include the word *for* in conversations with another candidate and that he corrected the signs within six hours. The complaint is directed only to the uncorrected signs.

IV. Findings and Conclusions of Law

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

Failure to Timely File Campaign Finance Reports:

1. A candidate must file semiannual reports due twice a year in January and July. Elec. Code § 254.063. The respondent's January 2002 semiannual report was due by January 15, 2002, and his July 2002 semiannual report was due by July 15, 2002. The respondent's single campaign finance report was filed on November 13, 2002, and it did not purport to cover the period that would have been covered by the January or July 2002 semiannual reports, *viz.*, November 8, 2001, through December 31, 2001, and January 1, 2002, through June 30, 2002. Thus, there is credible evidence that the respondent did not timely file the January and July 2002 semiannual reports. A person filing with the Ethics Commission would be subject to an administrative penalty of \$100 for each of the late semiannual reports. Ethics Commission Rules § 18.13. The commission may consider, but is not bound by, the amount

of those penalties in determining the amount of the fine to be assessed in a sworn complaint. *Id.* § 18.15.

2. In addition to semiannual reports, an opposed candidate must file pre-election reports due 30 days and 8 days before an election, unless the candidate chooses modified reporting and does not exceed \$500 in contributions or \$500 in expenditures in connection with the election. Elec. Code §§ 254.064 and 254.181. The respondent was not required to file pre-election reports for the March 12, 2002, primary election because he was unopposed in that election. The respondent was, however, required to file pre-election reports for the November 5, 2002, general election because he was opposed in that election and he exceeded \$500 in expenditures in connection with the election.
3. The respondent's 30-day pre-election report was due by October 7, 2002, and his 8-day pre-election report was due by October 28, 2002. As noted above, the respondent's single campaign finance report was filed on November 13, 2002. The period covered by that report did not purport to include the period that would have been covered by the 30-day before election report, *viz.*, July 1, 2002, through September 26, 2002, but it did include the period that would have been covered by the 8-day before election report, *viz.*, September 27, 2002, through October 26, 2002. The report did, however, include itemized expenditures that were made in each of the periods that should have been covered in the pre-election reports. The itemized expenditures that fell within the period covered by the 30-day pre-election report totaled \$3,681.50, and the itemized expenditures that fell within the period covered by the 8-day pre-election report totaled \$505.92.
4. Thus, there is credible evidence that the respondent did not timely file the 30-day and 8-day pre-election reports for the general election. A person filing with the Ethics Commission would be subject to an administrative penalty of \$100 for the late 30-day pre-election report and an administrative penalty of \$1,600 for the late 8-day pre-election report (\$100 for each day that the 8-day report was late). Ethics Commission Rules § 18.13. The commission may consider, but is not bound by, the amount of those penalties in determining the amount of the fine to be assessed in a sworn complaint. *Id.* § 18.15.
5. The respondent filed a corrected report on March 13, 2003, covering November 8, 2001 through November 13, 2002. The respondent's correction affidavit submitted with this report included the following statement: "Full disclosure was made but a correction was needed to cover filing periods for expenditures. No contributions were received at any time. All activity previously reported[.] Correcting periods covered and report type."

Failure to Use the Word *for* in Political Advertising:

6. A person may not enter into a contract or other agreement to print political advertising with the intent to represent that a candidate holds a public office that the candidate does not hold at the time the agreement is made. Elec. Code § 255.006(a). A person may not represent in a campaign communication that a candidate holds a public office that the candidate does not hold at the time that the representation is made. *Id.* § 255.006(a).

7. “Political advertising” includes a communication that supports a candidate for election to a public office and that appears in a sign or similar form of written communication. *Id.* § 251.001(16). “Campaign communication” includes a written communication relating to a campaign for a public office. *Id.* § 251.001(17).
8. A person represents that a candidate holds a public office the candidate does not hold if the candidate does not hold the office the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word *for* in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
9. The communications contained in the respondent’s signs that did not contain the word *for* are political advertising because they support the respondent’s candidacy for the office of Justice of the Peace, Precinct 1, and they appear in a sign or similar form of written communication. They are also campaign communications because they are in writing and they relate to the respondent’s candidacy for that office. The respondent does not deny that he is responsible for the representations made in these signs. Thus, there is credible evidence that the respondent committed a technical or *de minimis* violation of section 255.006 of the Election Code by failing to include the word *for* in some of his signs.

V. Representations and Agreement by Respondent

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

1. The respondent 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. The respondent further states as follows:

The respondent disagrees with the complainant’s statement that “the respondent’s political party asked the respondent to correct his signs because they did not include the word ‘for’ and further swears that the respondent corrected some of the signs but not all of them.” This statement is not credible and is blatantly untrue. The fact of the matter is that a fellow candidate brought this matter to the respondent’s attention, and, when it was realized that the signs needed to be corrected, all signs were corrected within a 6 hour period. The respondent believes strongly that once the complainant observed that a “for” sticker was placed on all signs, she realized that the correction was needed and looked up the rule concerning the matter. The stickers could easily be removed. Consequently, the respondent believes the complainant took one off in order to take the photograph.

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 candidate must file semiannual reports due twice a year in January and July and that an opposed candidate must file pre-election reports due 30 days and 8 days before an election, unless the candidate chooses modified reporting and does not exceed \$500 in contributions and \$500 in expenditures in connection with the election. The respondent agrees to fully and strictly comply with these requirements 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 violations described under Section IV, Paragraphs 1, 4, and 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 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 nature, circumstances, consequences, extent, and gravity of the violations described under Sections III and IV, 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 a \$500 civil penalty for the violations described under Section IV, Paragraphs 1 and 4, and 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-2211132;
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 \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later May 9, 2003; and

4. that the executive director shall promptly refer SC-2211132 either to 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-2211132 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2003.

William W. Ruth, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director