

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GEORGE JULIUS FOSS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230631

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230631 filed against George Julius Foss, Respondent. The commission met again on November 13, 2003, to consider Sworn Complaint SC-230631. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of violations of sections 254.183 and 254.064 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 failed to file four campaign finance reports, a 48-hour report, a 30-day and an 8-day before election report for the May 3, 2003, city election, and an 8-day before runoff report for the May 31, 2003, city runoff election.

III. Facts Supported by Credible Evidence

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

1. On February 28, 2003, the respondent filed an application for a place on the general election ballot for the city of Palestine. The respondent sought re-election to the office of mayor in a May 3, 2003, election.
2. On or before April 8, 2003, the respondent filed a campaign treasurer appointment on which he included a declaration that he was eligible to file on the modified filing schedule and that he would be filing on the modified filing schedule, which means that he would not be filing pre-election reports.
3. On May 29, 2003, the respondent filed a report showing that he exceeded \$500 in contributions on April 23, 2003.

IV. Findings and Conclusions of Law

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

1. A candidate is eligible to file on the modified filing schedule if the candidate does not exceed \$500 in political contributions or political expenditures in connection with an election. ELEC. CODE §§ 254.181 and 254.182. If a candidate declares that he will be filing on the modified reporting schedule but then exceeds one of the \$500 thresholds, the filer is no longer eligible to file on the modified reporting schedule in connection with any election in the election cycle. ELEC. CODE § 254.183(a). If a candidate exceeds one of the thresholds after the deadline for the first pre-election report in connection with an election, the candidate must file a report within 48 hours after exceeding the threshold. ELEC. CODE § 254.183(b). The candidate must also file pre-election reports for any subsequent filing deadlines in the election cycle. ELEC. CODE § 254.183. Ethics Commission Rules § 20.217.
2. The complainant alleges that the respondent exceeded the \$500 thresholds in connection with the May 3, 2003, election and that the respondent failed to file four required reports. The evidence supports a finding that the respondent exceeded the \$500 contribution threshold on April 23, 2003.
3. The 30-day pre-election report in connection with the May 3, 2003, election was due on April 3, 2003. The respondent did not exceed the \$500 contribution threshold until after that filing deadline and was therefore not required to file a 30-day pre-election report. Because the respondent exceeded the \$500 contribution threshold on April 23, 2003, the respondent was required to file a 48-hour report by April 25, 2003. April 25, 2003, was also the filing deadline for the 8-day pre-election report. A single report would have satisfied both filing requirements. The respondent did not file a report to satisfy those filing requirements until May 29, 2003. Therefore, there is credible evidence that the respondent violated section 254.183 of the Election Code by failing to file a report for the April 25, 2003, filing deadline.
4. The respondent was also a candidate in a May 31, 2003, runoff election. Because the respondent exceeded the \$500 threshold in connection with the May 3 election, the respondent was required to file a runoff report on May 23, 2003. The respondent did not file a report to satisfy that filing requirement until May 29, 2003. Therefore, there is credible evidence that the respondent violated section 254.064 of the 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 when a candidate declares that he will be filing on the modified reporting schedule and then exceeds \$500 in political contributions or political expenditures in connection with an election after the deadline for the first pre-election report, the candidate must file a report within 48-hours after exceeding one of the thresholds. ELEC. CODE § 254.183(b). The respondent also acknowledges that the candidate must also file pre-election reports for any subsequent filing deadlines in the election cycle. *Id.* § 254.183. 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 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations and after considering the sanction necessary to deter future violations, the commission imposes a \$200 civil penalty for the violations described under Section IV.

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-230631;
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 December 11, 2003; and

4. that the executive director shall promptly set SC-230631 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230631 as proposed in this ORDER and AGREED RESOLUTION.

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

George Julius Foss, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director