

Texas Ethics Commission

IN THE MATTER OF
LUTHER EDWARDS, III,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200963

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 10, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200963 filed against Luther Edwards, III, Respondent. The commission met again on May 11, 2001, to consider Sworn Complaint SC-200963. 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 violations of Sections 254.036 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. Allegations

The complainant alleges that the respondent, a successful candidate for school board trustee, failed to timely file the 30-day and 8-day before election reports for a May 6, 2000, school board election, failed to file the July 2000 semiannual report, failed to file the affidavit pages of the reports, failed to report contributions, and failed to report expenditures to pay campaign workers.

The respondent alleges that the complainant filed a frivolous complaint.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was an opposed candidate for school board trustee in a May 6, 2000, election and was also the incumbent. The respondent was successful in the election.
2. The respondent filed the three reports in question with the school district. The reports did not include page 2 of the cover sheet, which is the page that includes the affidavit.

3. The 30-day before election report was stamped as received on April 10, 2000, which is four days after the April 6 due date. The only activity disclosed in that report consisted of political expenditures made from personal funds totaling \$559.54.
4. The 8-day before election report was stamped as received on May 1, 2000, which is three days after the April 28 due date. The report did not disclose any reportable activity.
5. The July 2000 semiannual report was stamped as received on July 13, which is four days before the July 17 due date. The report disclosed one political contribution totaling \$150 and political expenditures made from personal funds totaling \$300.49, and included a page signed by the respondent designating the report as a final report.
6. The respondent submitted a sworn response in which he acknowledges that the 30-day and 8-day before election reports were filed late. He swears that it was not his intention to be late and that he accepts responsibility for not filing timely.
7. In response to this complaint, the respondent also filed with the school district page 2 of the cover sheet for each of the reports, and submitted copies to the commission. Each of the three cover sheets stated, "Please note cover sheet Page 2 wasn't given with the candidate package from the Wilmer-Hutchins ISD Election May 6, 2000."
8. As to the allegation relating to the failure to report contributions and expenditures to pay campaign workers, the respondent swears that he does not know the persons who allegedly were paid to work on his campaign.

IV. Findings and Conclusions of Law

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

1. An opposed candidate must file pre-election reports by the 30th day and the 8th day before the election. Section 254.064, Election Code. Each report must be accompanied by an affidavit. Section 254.036, Election Code.
2. The filing authority's date stamps show that the respondent failed to timely file his 30-day and 8-day before election campaign finance reports. The respondent also failed to include page 2 of each report. In response to the complaint, the respondent filed a page 2 for each report and swore that the school district did not provide that page to candidates. There is credible evidence that the reports were not filed by the due dates and were not accompanied by an affidavit page. Therefore, there is credible evidence that the respondent violated Sections 254.036 and 254.064, Election Code.

3. A candidate must file semiannual reports by January 15th and July 15th of each year. Section 254.063, Election Code. Each report must be accompanied by an affidavit. Section 254.036, Election Code. The evidence shows that the respondent filed the July 2000 semiannual report four days before the due date and that the report did not include page 2. In response to the complaint, the respondent filed page 2 and swore that the school district did not provide that page to candidates. A filer may correct a reporting error at any time by filing a corrected report. Section 18.43, Ethics Commission Rules. A corrected report, other than one correcting a report due eight days before an election, is deemed to be timely filed and no fine is imposed for the incomplete report if the filer submits an affidavit establishing that the corrected report was filed because of a good-faith error. Sections 18.49 and 18.83, Ethics Commission Rules. The respondent filed an affidavit providing the missing page 2 and swearing that the missing page was not provided by the school district. Therefore, the respondent is not subject to a late fine for failing to include the affidavit page for his July 2000 semiannual report. Additionally, there is credible evidence that the respondent filed the July 2000 semiannual report by the due date.
4. The complainant alleges that the respondent failed to report the source of income to cover reported expenses. Each report is required to include all political contributions. Section 254.031, Election Code. The complainant did not submit any evidence to support this allegation and there is no evidence available to staff to show that the respondent made political expenditures from political contributions that he accepted but failed to report. Therefore, there is no credible evidence that the respondent violated Section 254.031, Election Code, by failing to report political contributions.
5. The complainant alleges that the respondent failed to report payments to certain individuals for campaign work. Each report is required to include all political expenditures. Section 254.031, Election Code. The complainant did not submit any evidence to support this allegation. The respondent swears that he does not know the persons who the complainant alleges were paid to work on his campaign. There is no evidence that the respondent made the expenditures that the complainant alleges he failed to report. Therefore, there is no credible evidence that the respondent violated Section 254.031, Election Code, by failing to report political expenditures.
6. The respondent alleges that the complainant filed a frivolous complaint. A frivolous complaint by definition must be groundless and brought in bad faith or be groundless and brought for purposes of harassment. Section 571.176, Government Code. Since the complaint is not groundless, by definition it is not frivolous.

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. 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, Paragraph 2, 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, 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, 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 civil penalty of \$200 for the violations described under Section IV, Paragraph 2.

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-200963;
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 June 8, 2001;
and

- 4. that the executive director shall promptly refer SC-200963 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-200963 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2001.

Luther Edwards, III, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director