

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LEROY G. FOLEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3200239

FINAL ORDER

The Texas Ethics Commission (Commission), having heard this case and voting to find violations of laws under its jurisdiction, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact and Conclusions of Law

Credible evidence available to the Commission supports the following findings of fact and conclusions of law:

1. The respondent is Leroy G. Foley, who was an unsuccessful non-incumbent candidate for Callahan County Sheriff in the March 3, 2020, primary election. The sworn complaint was filed against the respondent on February 4, 2020. The first notice of hearing was sent to the respondent on May 4, 2020, by email and United States Postal Service (USPS) delivery confirmation. A second Notice of Hearing was sent to the respondent by email and delivery confirmation on May 19, 2020. All notices were sent to the email and mailing addresses provided to the Commission by the respondent on February 4, 2020, when Commission staff notified the respondent by telephone of the sworn complaint. The respondent's last known mailing address is 8157 Interstate 20 W., Clyde, Texas 79510-3247.
2. The preliminary review hearing was held remotely by video teleconference on June 18, 2020.
3. The respondent did not respond to the notices of hearing or appear at the hearing.
4. The complaint alleged that the respondent: 1) failed to include a political advertising disclosure statement on political advertising signs, in violation of Section 255.001 of the Election Code; and 2) represented he held a public office that he does not hold by failing to include the word "for" on political advertising signs, in violation of Section 255.006 of the Election Code.
5. Shortly after the filing of the sworn complaint, the respondent was offered an Assurance of Voluntary Compliance with no civil penalty to resolve the complaint, but the respondent did not sign the agreement.

6. The Commission shall administer and enforce, among other laws, Title 15 of the Election Code. Tex. Gov't Code § 571.061(a). Disposition of this case is within the jurisdiction of the Commission.
7. A notice required to be sent to a respondent under Chapter 571 of the Government Code shall be sent to the address provided by the complainant or to the address most recently provided by the respondent. 1 Tex. Admin. Code § 12.21(b).
8. The respondent received legally sufficient notice of the sworn complaint and the June 18, 2020, preliminary review hearing in this case.
9. If a respondent fails to appear at a hearing, the Commission may proceed in the respondent's absence and may find credible evidence of the violations alleged in the complaint and may issue a final order imposing a civil penalty. *Id.* § 12.23. The June 18, 2020, preliminary review hearing was held in accordance with Section 12.23 of the Texas Administrative Code.

Political Advertising Disclosure Statement

10. The complaint alleged that the respondent failed to include a political advertising disclosure statement on campaign signs. The complaint included pictures of some of the respondent's political advertising signs. The signs were missing the political advertising disclosure statement.
11. In response to the complaint the respondent stated that he was withdrawing both the signs and his candidacy. Despite this statement, the respondent appeared on the ballot in the primary election and did receive votes. The respondent did not respond to Commission staff's attempts to resolve the complaint.
12. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising: 1) that it is political advertising; and 2) the full name of either the person who paid for the political advertising, or the candidate if the political advertising is authorized by the candidate. Tex. Elec. Code § 255.001(a).
13. The respondent's political advertising signs lacked the political advertising disclosure statement. Therefore, there is credible evidence of a violation of Section 255.001 of the Election Code.

Failure of a Non-Incumbent to Include the Word "For"

14. The complaint alleged that the respondent did not include the word "for" on his political advertising signs.

15. The complaint included a picture of one of the respondent's campaign signs. The sign stated "Elect Leroy Foley Sheriff" and was missing the word "for."
16. In response to the complaint the respondent stated that he was withdrawing both the signs and his candidacy. Despite this statement, the respondent appeared on the ballot in the primary election and did receive votes. The respondent did not respond to Commission staff's attempts to resolve the complaint.
17. A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. Tex. Elec. Code § 255.006(a).
18. A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that 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 the office. *Id.* § 255.006(c).
19. The respondent was not the incumbent and failed to include the word "for" on one of his political advertising signs. Therefore, there is credible evidence of a violation of Section 255.006(c) of the Election Code.

Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, include actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.
3. The respondent's lack of good faith is relevant to the appropriate penalty for this sworn complaint. In particular, the respondent's failure to participate in the preliminary review hearing, disregard for the offered Assurance of Voluntary Compliance, and failure to end his campaign despite stating he was withdrawing are factors that the Commission considers in assessing the civil penalty. *See id.*

4. Therefore, the Texas Ethics Commission orders that the respondent pay to the Commission, within 30 days of the date of this order, a civil penalty in the amount of \$250. If the respondent does not pay the \$250 civil penalty within 30 days of the date of this order, then the civil penalty is increased to \$2,500 and the matter of the collection of the civil penalty will be referred to the Office of the Attorney General of Texas.

Order Date: _____

FOR THE COMMISSION

Anne Temple Peters
Executive Director
Texas Ethics Commission