

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN EDWIN MARTIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-231075

ORDER and AGREED RESOLUTION

I. Recitals

Sworn Complaint SC-231075 was filed with the Texas Ethics Commission (the commission) against John Edwin Martin on October 28, 2003. The executive director of the commission accepted jurisdiction of Sworn Complaint SC-231075 on November 3, 2003. The commission met on January 9, 2004, to consider Sworn Complaint SC-231075. A quorum of the commission was present at the meeting. The commission determined that there is credible evidence of a violation of section 254.063 of the Election Code, a law administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegation

The complainant alleged that the respondent failed to file a semiannual campaign finance report.

III. Facts Supported by Credible Evidence

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

1. The respondent was a non-incumbent candidate for councilmember at large in a May 3, 2003, City of Lucas election.
2. The complainant alleges that the respondent failed to file a semiannual campaign finance report. The city secretary stated in an October 30, 2003, telephone conversation with staff that the respondent had filed a campaign treasurer appointment that the city secretary received on March 17, 2003. She further stated that she had not received any campaign finance reports from the respondent as of the date of that conversation.
3. The city secretary stated in a December 11, 2003, telephone conversation with staff that the respondent had filed his July 2003 semiannual campaign finance report by United States mail and that she received it on November 24, 2003. She further stated that the report was properly addressed with postage prepaid, bearing a cancellation mark dated November 21,

2003. Staff asked the city secretary to fax a copy of the respondent's report together with a copy of the envelope in which it was mailed. The information contained in the faxed report, including the file date, is consistent with the information the city secretary provided by telephone.

4. The respondent filed an affidavit in response to the complaint on November 24, 2003. In his affidavit, he swears:

I was led to believe that if expenditures were less than \$500, no report was necessary, since this was not done in the past. The complaint filed by [the complainant] is retaliation against me for supporting his opponent (who filed a complaint against [the complainant] for unethical campaign practices). After the letter was sent from the City of Lucas requesting the financial report, [the complainant's] opponent filed the report with the TEC and it was sent back to him. After finding this out, I didn't file. I have requested information from the City of Lucas to verify this and other claims & will file amended report when received[.]

5. Attached to the respondent's affidavit is a copy of the respondent's July 2003 semiannual campaign finance report. The report is not file marked. It was notarized on November 21, 2003, the same day that the respondent's affidavit in response to this complaint was notarized. The report discloses no contributions and total expenditures in the amount of \$486.85, and it appears to be identical to the report the respondent filed with the city secretary.

IV. Findings and Conclusions of Law

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

1. A candidate who files an appointment of a campaign treasurer must file semiannual campaign finance reports due twice a year in January and July. ELEC. CODE § 254.063. If the candidate is seeking a city office, the reports must be filed with the city clerk or city secretary. ELEC. CODE §§ 254.063 and 254.066.
2. A candidate may file a campaign finance report by first-class United States mail. ELEC. CODE § 251.007. A campaign finance report filed by first-class United States mail is timely if the report is properly addressed with postage prepaid, and bears a post office cancellation mark indicating a time within the period for filing the report. *Id.*
3. There is credible evidence that the respondent filed his campaign treasurer appointment with the city secretary on March 17, 2003. Thus, there is credible evidence the respondent was required to file the semiannual campaign finance report due by July 15, 2003.

4. Additionally, there is credible evidence that the respondent swore to that report on November 21, 2003, and mailed it to the city secretary on the same day. Thus, there is credible evidence that the respondent filed the report with the city secretary, but there is also credible evidence that he filed it after the due date. Therefore, there is credible evidence that the respondent violated section 254.063 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 this sworn complaint.
2. The respondent consents to the entry of this ORDER and AGREED RESOLUTION before any adversarial evidentiary hearings before the commission, and before any formal adjudication 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 provided by law.
3. The respondent acknowledges that a candidate who files an appointment of a campaign treasurer must file semiannual campaign finance reports due twice a year in January and July. The respondent agrees to fully comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent agrees that the commission will consider the respondent to have committed the violation 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 a violation that the commission has determined is 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 violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation 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-231075.
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 \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than February 6, 2004; and
4. that the executive director shall promptly set SC-231075 for a preliminary review hearing if the respondent does not agree to the resolution of SC-231075 as proposed in this ORDER and AGREED RESOLUTION.

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

John Edwin Martin, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director