

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHNNY SCOGGINS, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-200312

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 16, 2000, and voted to accept jurisdiction of and to consider Sworn Complaint SC-200312 filed against Johnny Scoggins, Jr., Respondent. A quorum of the commission was present. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 255.006, Election Code, a law 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 county commissioner, represented in campaign communications that he held a public office that he did not hold.

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 a candidate in the March 14, 2000, primary election for the Democratic nomination for county commissioner. The respondent was successful in the primary election.
2. The complainant submitted a copy of a card and a newspaper advertisement that state in pertinent part: VOTE FOR JOHNNY SCOGGINS, COUNTY COMMISSIONER PRECINCT 1, HASKELL COUNTY Pd. Pol. Adv. Pd. For By Johnny Scoggins.
3. The complainant also submitted a copy of a flier with an individual's picture that states in pertinent part: Vote Johnny Scoggins, Commissioner Precinct #1 Pd. Pol. Adv. Pd. For By Johnny Scoggins.

4. The complainant states that the respondent “never made an effort to correct this at any point in the campaign. He received the same directions as all candidates do in the form of the flier (Political Advertising, What you need to know) put out by the Texas Ethics Commission. In doing this I feel that Mr. Scoggins influenced some of the voters to believe that he was the incumbent in the race. In a race where 601 votes were cast and he won by 29 votes or less than 4%.”
5. The respondent filed an affidavit admitting that he had failed to put the word “for” on his campaign communications before February 15, 2000. He states that on that date, he received a copy of the Ethics Commission political advertising brochure and realized that it was required.
6. The respondent further states that once he realized that the word “for” was required, he ordered a stamp with the word “for” and added the word to the fliers that he mailed on March 7, 8, and 9. He submitted copies of the corrected communications and a receipt for the stamp.

IV. Findings and Conclusions of Law

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

1. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. For purposes of this prohibition, a person represents that a candidate holds a public office that the candidate does not hold if:
 - (1) the candidate does not hold the office that the candidate seeks; and
 - (2) 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. Section 255.006, Election Code.
2. “Campaign communication” is defined in relevant part as a written communication relating to a campaign for election to public office. The cards, fliers and newspaper advertisement constitute campaign communications because they are written communications relating to a campaign for election to public office. The respondent’s campaign communications neglect to use the word “for” in connection with the position sought, and thus there is credible evidence that the respondent violated Section 255.006, 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. 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 violation 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 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, 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, consequences, extent, and gravity of the violation, 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 no civil penalty for the violation 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-200312;
5. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than July 14, 2000; and

6. that the executive director shall promptly refer SC-200312 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-200312 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2000.

Johnny Scoggins, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director