

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CARY A. ISRAEL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210964

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 12, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210964 filed against Cary A. Israel, Respondent. The commission met again on March 8, 2002, to consider Sworn Complaint SC-210964. 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 a violation of Section 255.003, 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, the president of a community college district, violated Section 255.003, Election Code, by authorizing the use of public funds to publish political advertising.

III. Facts Supported by Credible Evidence

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

1. This case involves allegations related to a bond referendum election held November 6, 2001, by the Collin County Community College District. The respondent is the president of the community college district.
2. The respondent, as president of the community college district, authorized the use of \$27,156 in public funds to prepare and distribute a newsletter that, in part, discussed the bond referendum.
3. The community college district's website also contained information that discussed the bond referendum.

4. Both the newsletter and the article on the web page state, in bold type at the beginning of the materials, that the board "Seeks Voter Approval."
5. The newsletter contained a quote attributed to the respondent that stated "[w]e want to sustain the excellence. And we are now asking voters if they too want to sustain the excellence." The web page contained a similar quote attributed to the respondent that stated "[w]e want to sustain the excellence. And we are now asking voters if they too want excellence."
6. The respondent swears that the board was required to seek voter approval of the proposed bonds, and that the intent of the community college board was to make a factual statement that the board had called an election and placed the measure on the ballot. The respondent swears the board hired legal counsel to review the materials at issue and that counsel assured the board that the advertising complied with Section 255.003, Election Code.

IV. Findings and Conclusions of Law

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

1. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. Section 255.003(a), Election Code.
2. The prohibition does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure. Section 255.003(b), Election Code.
3. A "measure" is a question or proposal submitted in an election for an expression of the voters' will. Section 251.001(19).
4. In the election pertaining to this complaint, the voters were being asked to express their will with regard to a bond referendum, and thus the proposal submitted to the voters constitutes a measure.
5. "Political advertising" is defined in relevant part as a communication that supports a measure and that, in return for consideration, is published in a newspaper, magazine, or other periodical, or that appears in a pamphlet, circular, flier, sign, or similar form of written communication. Section 251.001(16), Election Code.
6. Whether a violation of Section 255.003, Election Code, has occurred depends on an examination of the overall content of the advertising.
7. The prominent display in bold type of the appeal that the board of trustees "Seeks Voter Approval," coupled with the statements by the respondent, and the overall context of the advertising, is simply another way of asking voters to approve, or vote yes for, the bonds. Therefore, the materials go beyond merely factually stating the purpose of the measure and advocate its passage.

8. The newsletter is political advertising because it is a periodical that supports a measure and was published in exchange for consideration.
9. The web page is political advertising because it is the functional equivalent of a flier and supports a measure.
10. The respondent, as president of the community college district, authorized the use of public funds for the political advertising. Therefore, there is credible evidence that the respondent violated Section 255.003, 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 an officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. The respondent agrees to fully and strictly comply with this requirement 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 violation described under Section IV, Paragraph 10, 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, 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 a \$300 civil penalty for the violation described under Section IV, Paragraph 10.

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-210964;
- 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 \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than April 5, 2002; and
- 4. that the executive director shall promptly refer SC-210964 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-210964 as proposed in this ORDER and AGREED RESOLUTION.

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

Cary A. Israel, Respondent

EXECUTED ORIGINAL received by the commission on: _____
Texas Ethics Commission

By: _____
Tom Harrison, Executive Director