

TEXAS ETHICS COMMISSION

IN THE MATTER OF
STEPHEN P. ODOM,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220462

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220462 filed against Stephen P. Odom, Respondent. The commission met again on August 16, 2002, to consider Sworn Complaint SC-220462. 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 255.006, 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 represented on his political advertising 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. The respondent was a candidate for justice of the peace in Callahan County.
2. The complainant submitted copies of two pieces of the respondent's communications: a business card and a flier. The business card states, "Thanks for Your Vote and Influence, Steve Odom, Callahan County, Precinct 3, Justice of the Peace, March 12, 2002." The flier states "The New Option, Vote April 9th, Odom, Justice of the Peace, Precinct 3. I will be a fair, hardworking, full time J.P. Thanks for your vote."
3. In neither communication does the respondent use the word "for" to indicate that he is not the incumbent.

4. The respondent submitted a response in which he swears that his political advertising was not misleading.
5. The respondent swears that in his political advertising there “is no reference or intentional mention that I was the incumbent.”
6. The respondent swears that the incumbent had signs in the same locations as the respondent’s signs.
7. The respondent also swears that the incumbent’s signs said to reelect the incumbent, while the respondent’s signs said “The New Option!”
8. The respondent further swears that only 400 to 500 people vote for the office he sought, and that everyone knows the incumbent is the incumbent.

IV. Findings and Conclusions of Law

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

1. A person may not enter into a contract or other agreement to print political advertising with the intent to represent that the person holds a public office that the person does not hold at the time the agreement is made. Section 255.006(a), Election Code.
2. A person represents that a candidate holds a public office that the candidate seeks and the political advertising 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(c), Election Code.
3. Political advertising is defined in relevant part as a communication supporting a candidate for election to a public office that appears in a flier or sign. Section 251.001(16), Election Code.
4. The respondent’s communications constitute political advertising because they are communications supporting a candidate for election to a public office that appear in a sign or flier.
5. The respondent appears to contend that his use of the phrase “The New Option” on his signs is sufficient to clarify that he does not currently hold the office sought.
6. Section 255.006(c), Election Code, mandates the use of “for” to clarify that the candidate does not hold the office sought.
7. The respondent’s political advertising at issue does not include the word “for” in a way that clarifies that the candidate does not hold the office sought.

8. There is credible evidence that the respondent violated Section 255.006, Election Code, by failing to use the word “for” before the office sought.

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 a candidate is required to use the word “for” in his political advertising to clarify that he does not hold the office sought. 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 8, 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 not technical or *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. No 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 8.

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-220462;
3. 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 September 13, 2002; and
4. that the executive director shall promptly refer SC-220462 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-220462 as proposed in this ORDER and AGREED RESOLUTION.

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

Stephen P. Odom, Respondent

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

By: _____
Tom Harrison, Executive Director