

TEXAS ETHICS COMMISSION

IN THE MATTER OF
EVELYN LORD,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230963

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on January 9, 2004 to consider Sworn Complaint SC-230963. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.003 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. Allegations

The complainant alleges that the Mayor of Beaumont spent or authorized the spending of public funds for political advertising in violation of section 255.003 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The City of Beaumont held a city charter amendment election on September 13, 2003.
2. Before the election, the respondent, along with the city manager, city clerk, and city attorney, participated in the taping of a television program in which they discussed the proposed charter amendments.
3. The complainant alleges that the television program was political advertising and that the respondent spent or authorized the use of public funds for it.
4. During the program the city officials discuss the proposed charter amendments and the effects of passing those amendments.
5. In regard to several amendments, the respondent makes arguments in favor of the amendments.

6. At one point the respondent reminds the other participants that they should not advocate a vote for passage but that they would appreciate the voters approving the amendments.
7. There was a contract between the city and Lamar University for the university to provide video production services to the city council. That contract provided for the production and broadcast on cable television of an "informational talk show" at no additional charge to the city.

IV. Findings and Conclusions of Law

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

1. "Political advertising" is defined, in relevant part, as a communication supporting or opposing a measure that in return for consideration is broadcast by television. ELEC. CODE § 251.001(16).
2. The program was broadcast pursuant to a contract between the city and Lamar University for which consideration was given by the city.
3. The television program constitutes political advertising.
4. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003(a). The commission has interpreted the prohibition to apply to the use of a political subdivision's resources for political advertising. Ethics Advisory Opinion No. 45 (1992).
5. The respondent herself made comments supporting passage of certain amendments. Therefore, there is credible evidence that the respondent violated section 255.003 of the Election Code by using the city's resources for political advertising.

Frivolous Complaint

6. The respondent alleges that the complainant filed a frivolous complaint.
7. A frivolous complaint is a complaint that is groundless and brought in bad faith or is groundless and brought for purposes of harassment. GOV'T CODE § 571.176.
8. The complaint is not groundless because there is credible evidence that the respondent violated section 255.003 of the Election Code. Since the complaint is not groundless, by definition it is not frivolous.

V. Representations and Agreement by Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits or denies the facts described under Section III or 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 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 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, 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 \$500 civil penalty for the violation described under Sections III and 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-230963;
- 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 \$500 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-230963 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230963 as proposed in this ORDER and AGREED RESOLUTION.

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

Evelyn Lord, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director