

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DAVID BOWMAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-240218

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on May 7, 2004, to consider Sworn Complaint SC-240218. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.003 and 255.004 of the Election Code, laws 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 alleged that the respondent violated section 255.003 of the Election Code by authorizing the use of public funds for political advertising; that the respondent violated section 255.004 of the Election Code by representing in a campaign communication that the communication emanated from a source other than its true source; and that the respondent violated section 255.005 of the Election Code by misrepresenting his identity in a campaign communication.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to the complaint, the respondent was the president of the board of an emergency services district, and the complainant was the secretary of the district.
2. On February 5, 2004, a letter was published in the Hillsboro Reporter as an advertisement. The respondent's name is at the end of the letter, and the letter urges readers to vote in favor of a proposed property tax increase to support the emergency services district. Below the letter is a disclosure statement that the advertisement is a political ad paid for by the emergency services district.

3. On February 6, 2004, a letter appeared in the Itasca Paw Print Press that urged readers to vote in favor of the proposed property tax increase. The text of the letter is the same as the text of the letter in the advertisement that appeared in the Hillsboro Reporter. The respondent's name and the names of four other members of the board of the emergency services district are listed at the end of the letter.
4. The respondent submitted a sworn response that includes the following statements:

I hurriedly put the letter together on District letterhead so people could see who was on the Board. . . . I never thought about needing to get the other Board members permission before I ran the letter nor did I think this indicated that they were in support of the election.

I personally paid for the ad on February 9, 2004 after I realized there would be a problem with the District paying for it.

I have resigned from the Board and I do apologize for anything that I unknowingly might have done wrong.

IV. Findings and Conclusions of Law

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

1. An officer of a political subdivision may not spend or authorize the spending of public funds for political advertising. ELEC. CODE § 253.003. The term "political advertising" includes a communication supporting a ballot measure that, in return for consideration, is published in a newspaper, magazine, or other periodical. *Id.* § 251.001(16).
2. The letter that appeared in an advertisement in the Hillsboro Reporter is political advertising because it supports a ballot measure and because it was published in a newspaper in exchange for consideration. Although the respondent ultimately paid for the advertisement himself, he acknowledges that he used district letterhead to submit the letter. The Ethics Commission has concluded that section 255.003 of the Election Code prohibits the use of a political subdivision's resources for political advertising. Ethics Advisory Opinion No. 45 (1991). Therefore, there is credible evidence that the respondent violated section 255.003 of the Election Code by using emergency services district letterhead for political advertising.
3. There is no evidence that the letter that appeared in the Itasca Paw Print Press was published in exchange for consideration. Therefore, there is no evidence to support a finding that the letter was political advertising. Because there is no evidence that the letter was political advertising, the evidence does not support a finding that the respondent violated section 255.003 of the Election Code by submitting the letter to the Itasca Paw Print Press on emergency services district letterhead.

4. Section 255.004 of the Election Code prohibits a person from representing in a campaign communication, with intent to injure a candidate or influence the result of an election, that the communication emanates from a source other than its true source. A campaign communication is “a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.” ELEC. CODE § 255.001(17).
5. The letter that appeared in the Itasca Paw Print Press is a campaign communication because it is a written communication that relates to a campaign on a measure. The respondent acknowledges that he was the source of the campaign communication. By listing the names of other board members at the end of the letter, the respondent misrepresented that the campaign communication emanated from those board members as well as from himself. The fact that the letter urges voters to support the measure shows an intent to influence the result of an election. Therefore, there is credible evidence that the respondent violated section 255.004 of the Election Code.
6. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person’s identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent’s principal, in political advertising or a campaign communication. ELEC. CODE § 255.005.
7. The commission has taken the position that a misrepresentation of identity for purposes of section 255.005 of the Election Code is a misrepresentation other than the kind of misrepresentation covered by section 255.004 of the Election Code. Therefore, there is credible evidence that the respondent did not violate section 255.005 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 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 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 of a political subdivision may not spend or authorize the spending of public funds for political advertising and that a person may not represent in a campaign communication, with intent to injure a candidate or influence the

result of an election, that the communication emanates from a source other than its true source. The respondent agrees to fully comply with these requirements of the law.

VI. Confidentiality

This ORDER and AGREED RESOLUTION describes violations that the commission has determined are 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

The commission imposes a \$300 civil penalty for the violations described under Section IV.

VIII. Order

The commission hereby ORDERS that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-240218.

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

David Bowman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director