

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RAY DOWNS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-240588

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on July 16, 2004, to consider sworn complaint SC-240588. 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 and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complaint involves an allegation that the respondent, the mayor of Rancho Viejo, failed to include a disclosure statement on political advertising, and that he spent or authorized the spending of public funds to publish and distribute political advertising.

III. Facts Supported by Credible Evidence

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

1. The complaint focuses on two letters. With respect to the first letter, the respondent signed and mailed the letter, which supports incumbent candidates for alderman in the May 15, 2004, election in Rancho Viejo.
2. Evidence indicates that the letter cost less than \$500 to publish and distribute.
3. The letter does not have a political advertising disclosure statement.
4. The complainant alleges that the respondent was responsible for mailing a second political advertising letter using public funds.
5. The letter is on stationery with a city letterhead.
6. The letter discusses various issues related to the city and states, "The present council members have been together since 2001. It is not our desire to raise your taxes." The letter

goes on to discuss the possibility of a tax increase and states, "It will not happen under the current Rancho Viejo Board of Aldermen."

7. The second letter did not include a political advertising disclosure statement.
8. The letter was mailed in May 2004 before the May 15, 2004, election.
9. The respondent swears that the letter is regularly included with the water bill in order to provide information to people in the community.
10. The respondent explains that the city and the local municipal utility district split the cost of sending the water bill and letter.

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 candidate for nomination or election to a public office that appears in a sign or similar form of written communication. ELEC. CODE § 251.001(16).
2. A person may not knowingly cause to be published or distributed political advertising containing express advocacy that does not include a political advertising disclosure statement. ELEC. CODE § 255.001.
3. A political advertising disclosure statement is not required on circulars or fliers that cost in the aggregate less than \$500 to publish and distribute. ELEC. CODE § 255.001(d)(3).
4. Texas Ethics Commission Rule 26.1(b)(3) exempts from the disclosure requirement political advertising that is printed on stationery that includes a letterhead with the name of the person who paid for the advertising.
5. The respondent was responsible for printing and mailing the first letter.
6. Although the letter does not name individual candidates, it clearly asks the reader to vote for the incumbents. Because the letter supports candidates for election to public office it is political advertising.
7. The letter cost less than \$500 to publish and distribute. A letter is similar to a circular or flier, and those that cost less than \$500 to publish and distribute do not need a disclosure statement. Therefore, there is credible evidence that the respondent did not violate section 255.001 of the Election Code with respect to the first letter.
8. 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.

9. The timing of the letter, just before the election, coupled with the subject that the incumbents would not raise taxes, is evidence that the letter was intended to support the incumbents as officeholders and as candidates in the upcoming election.
10. The letter was paid for using public funds.
11. There is credible evidence that the respondent violated section 255.003 of the Election Code with respect to the second letter.
12. With regard to the allegation that the second letter did not have a political advertising disclosure statement, the letter was on letterhead stationery so no disclosure statement was required.

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 this order and agreed resolution and waives any right to further proceedings in this matter.
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.

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, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation described under Section IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed is a final and complete resolution of SC-240588.

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

Ray Downs, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director