

TEXAS ETHICS COMMISSION

IN THE MATTER OF
EDWIN "BUD" HENRY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-280269

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-280269. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.006 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. Allegation

The complaint alleges that the respondent represented in campaign communications that he held an elective public office that he did not hold at the time the representations were made.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful non-incumbent candidate for Henderson County Commissioner, in the March 4, 2008, primary election.
2. The complaint includes a photograph of a sign that states, "Elect Bud Henry Commissioner, Pct 1." The photograph is dated February 20, 2008.
3. The complaint includes a copy of a letter with an overlay that states in part, "VOTE BUD HENRY County Commissioner, Precinct 1."

4. The respondent filed a sworn response in which he acknowledges that the word “for” was inadvertently left off of his campaign road signs and campaign yard signs. He states that he denies “any intent to misrepresent my identity in political advertising or in any campaign communication, or to mislead anyone about who I was in regards to the elected office that I was seeking or in any other manner.” The respondent states that he ordered signs from two different companies and that he did not know that the word “for” was required. He states that he familiarized himself with campaign finance law at the beginning of his campaign. He swears that he first became aware of a problem with his signs when informed by the media that a sworn complaint had been filed against him. He swears he immediately took action to correct the signs and submitted photographs showing signs with the word “for” included. He states that the complaint was politically motivated, that the “complainant personally delivered copies of his sworn complaint against me to the local newspapers and to the local radio station a mere two hours before I was scheduled to participate in a live interview at the radio station and before the Texas Ethics Commission had time to contact me.” He swears that, “I would never intentionally violate our election laws or attempt to harm the election process in any way. I lost the election by 1,091 votes to 1,048 votes and I accept the results. I respectfully request that the Texas Ethics Commission dismiss complaint SC-280269 without further proceedings.”

IV. Findings and Conclusions of Law

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

1. A person is prohibited from knowingly representing in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b). A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication 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. ELEC. CODE § 255.006(c).
2. “Campaign communication” means 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 § 251.001(17).
3. The sign and letter at issue support a candidate for election to a public office. Thus, the sign and letter constitute campaign communications.

4. The evidence indicates that the respondent did not hold the office that he was seeking and that he failed to include the word “for” on his campaign communications to clarify that he did not hold the office that he was seeking. Therefore, there is credible evidence that the respondent violated section 255.006(b) 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 this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a person is prohibited from knowingly representing in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. The respondent also acknowledges that a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the political advertising or campaign communication 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. The respondent agrees to comply with these requirements 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. No 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 no civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-280269.

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

Edwin "Bud" Henry, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director