

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JIM WADE,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2905107

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2905107. A quorum of the commission was present. The commission determined that there is credible evidence of violations 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 proposed this resolution to the respondent.

### II. Allegations

The complaint alleged that the respondent represented in campaign communications that he held a public office that he did not hold at the time the representations were made. The complaint also alleged that the respondent failed to include a disclosure statement on political advertising.

### III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for mayor of the Town of Sunnyvale, Texas in an election held on May 9, 2009.
2. At issue in the complaint are 66 signs that were alleged to have been distributed throughout Sunnyvale. The complaint included a list of the locations of the signs and photographs of five signs that were submitted as representative samples of the signs. The signs in the photographs stated:

Elect Jim  
Wade  
Mayor

3. Two of the signs in the photographs did not appear to have a disclosure statement, but the quality of the photographs was also poor. Three of the signs appeared to include illegible lines of text at the bottom edge.
4. The complaint alleged that the respondent misrepresented himself as the mayor on his Internet website, [www.jimwade.com](http://www.jimwade.com). The complaint included copies of four pages from the website, each displaying an image in the upper-left corner of the page that is similar to one of the respondent's signs. The image included a photograph of the respondent and stated:

Elect Jim  
Wade  
Mayor

5. The bottom of each page on the website stated:

Political Ad Paid for by Jim Wade for Mayor, Barbara and Walt Thomas,  
Treasurer.
6. One page of the website listed the offices and positions that the respondent held in Sunnyvale and Sunnyvale ISD from 1990 to 2009. The positions included "Mayor, 1993-1999," and the most recent position was "Director – Friends of Sunnyvale Public Library, 2009." Another page of the website stated:

As I have for 20 years, it will be a pleasure to continue to serve you and  
our great Town as your Mayor.
7. According to the registration information for the website, the respondent is the registrant for the website and the domain name "jimwade.com" was created on May 6, 2003.
8. The respondent denied the allegations and swore that the current mayor had been mayor for the past ten years, that he was well known in Sunnyvale as the mayor, that there was no insinuation in the advertising that the respondent was the mayor, and that there was no attempt to influence the mayoral election. The respondent submitted a copy of a flyer that he swore was used prior to the election day that listed his offices and positions held in Sunnyvale and Sunnyvale ISD from 1990 to 2009, similar to the list posted on his website. Regarding the statement about serving for "20 years," he swore:

I am making a statement that just as I have for twenty years I would consider  
it a pleasure to continue that service, now as the Mayor – your Mayor when  
our citizens are reading that statement.

9. Regarding the word “for” in his political advertising, the respondent swore that he did not intentionally omit the word “for.” He swore that he discovered the requirement to include the word “for” in political advertising on May 6, 2009, and that he subsequently corrected some of his political advertising that was unrelated to the complaint. He also swore that he learned on the same day that his signs “were in violation of this ‘for’ requirement,” but that the signs could not be reprinted or “respectfully removed without any explanation to any supporters that I might have.” He further swore:

The application of the word “for” written onto the signs with a Scripto marker was possible, however, after only doing eight signs, this task was going to be impossible with the time remaining and the weather that was occurring during this time. Since, at this time, there had been no complaints or allegations of anything misleading, it was determined that we had made a good faith effort after discovering the violation and nothing further could be done.

10. Regarding the website, the respondent swore that the website “went online” on April 13, 2009, and that he did not think about correcting the website after learning of the requirement to include “for” in political advertising and that he did not realize that there was any error on the website.
11. Regarding the political advertising disclosure statement on his signs, the respondent swore that all of the signs included a disclosure statement. He submitted a copy of the “proof” of his campaign signs, which he swore were the only signs that he had and that they were printed by the same person at three different times. The proof included three images and text that appeared to be identical to the photographed signs submitted by the complainant. Two of the images included the following text at the bottom, in pertinent part, “Pol. Adv. paid for by Jim Wade, Candidate for Mayor of Sunnyvale TX, 2009.”
12. The third image also included what appeared to be text at the bottom that was illegible due to a small font size. The respondent also alleged that some of the photographs submitted with the complaint were edited by the complainant to exclude the disclosure statements.

#### **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 knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and, in pertinent part, the full name of the person who paid for the political advertising. ELEC. CODE § 255.001(a).

2. “Political advertising” means, in pertinent part, a communication supporting or opposing a candidate for nomination or election to a public office that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or on an Internet website. *Id.* § 251.001(16).
3. Regarding the allegation that the respondent’s signs did not include a disclosure statement, the respondent was responsible for the signs and they expressly advocated a vote for him as a candidate for mayor. Thus, the signs were political advertising required to include a disclosure statement.
4. The respondent swore that disclosure statements were included on each sign and submitted what he swore to be proofs of the signs that included disclosure statements. The proofs appeared to be identical to the signs at issue in the complaint and there is no reliable evidence that contradicts the respondent’s sworn statements. Therefore, there is credible evidence that the respondent did not violate section 255.001(a) of the Election Code in connection with the signs.
5. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. *Id.* § 255.006(b). For purposes of this section, 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. *Id.* § 255.006(c).
6. “Campaign communication” means, in pertinent part, a written communication relating to a campaign for election to public office or office. *Id.* § 251.001(17).
7. Regarding the allegation that the respondent misrepresented that he held the office of mayor in his signs, it is clear that the respondent was not the mayor of Sunnyvale at the time the signs were printed or distributed. It is also clear that the signs were campaign communications that did not include the word “for” before the word “Mayor” to clarify that he did not hold the office. Therefore, there is credible evidence that the respondent violated section 255.006(b) of the Election Code.
8. Regarding the allegation that the respondent misrepresented that he held the office of mayor on his website, the website was a campaign communication that supported the respondent as a candidate. Each page of the website included the statement, “Elect Jim Wade Mayor.” The word “for” was not included in the statement. In addition, the website stated, “As I have for 20 years, it will be a pleasure to continue to serve you and our great Town as your Mayor.”

9. The website misrepresented that the respondent held the office of mayor at the time it was available for viewing on the Internet. Furthermore, the statement regarding the respondent's previous term as mayor did not sufficiently clarify that the respondent was not the mayor, in part because the statement was on a different section of the website as the "continue to serve" statement. Therefore, there is credible evidence that the respondent violated section 255.006(b) of the Election Code in connection with the website.

### **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 commits an offense if the person knowingly represents 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 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 violations 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 violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$200 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-2905107.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Jim Wade, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director