

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOE BAIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31706115

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on September 27, 2017, to consider sworn complaint SC-31706115. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 255.001, 255.004, and 255.005 of the Election Code, laws 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: 1) did not include a political advertising disclosure statement on political advertising; 2) misrepresented the true source of political advertising or campaign communications; and 3) misrepresented his identity in political advertising or campaign communications.

III. Facts Supported by Credible Evidence

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

1. The respondent is the Mayor for the City of Lakeway, Texas.
2. The complaint relates to a May 6, 2017, joint general and special election for the City of Lakeway for two council seats and two measures.
3. In April 2017, the respondent posted multiple comments on the Internet website Nextdoor.com using the pseudonym "John Smart."

4. The first two posts at issue were directed towards a candidate and contained three questions asking about the candidate's experience in city government.
5. A third post was made in response to the questions and was critical of the candidate for not responding and allegedly not having much experience and involvement in Lakeway city government.
6. The fourth post at issue stated, in relevant part:

The current administration and the last few councils have reduced the tax rate from about 24 cents per hundred to 16.2 cents per hundred. Development along 620 has been managed and sales taxes are increasing over 10% per year. The city also uses sales tax to reduce property taxes and road maintenance – 1/4% road tax is on the ballot for reinstatement for another 4 years – it does not raise the sales tax as the (change) candidate believes.

...

Vote for [individual A] and [individual B] – they actually volunteered for the City and worked hard to make it better, unlike the other candidate that hasn't attended a council meeting for a long time nor has every [sic] done any work to try to improve the city – no committees, commissions or any other volunteer work...

7. The respondent did not include a political advertising disclosure statement on any of the four communications at issue.
8. On April 28, 2017, the respondent admitted to using the pseudonym "John Smart" online and issued a public apology.

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: (1) that it is political advertising; and (2) the full name of the person who paid for the political advertising; the political committee authorizing the political advertising; or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a).

2. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. *Id.* § 255.004(b).
3. 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. *Id.* § 255.005(a).
4. "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that, in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television, or that appears in a pamphlet, circular, flyer, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. *Id.* § 251.001(16).
5. "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. *Id.* § 251.001(17).
6. The first three posts at issue did not contain express advocacy, and therefore, were not required to include a political advertising disclosure statement. Regarding the fourth post, the post constituted political advertising because it was a communication that supported and opposed candidates for election to public office and appeared on an Internet website. The respondent was required to include a political advertising disclosure statement because the communication contained express advocacy by asking citizens to vote for two specific candidates. The respondent did not include a political advertising disclosure statement on the post. Therefore, there is credible evidence of a violation of section 255.001 of the Election Code.
7. The four posts at issue constituted campaign communications because they were written communications that related to campaigns for election to public office and a measure. Credible evidence indicates that the respondent, with intent to injure a candidate or influence the result of an election, knowingly represented in the campaign communications that the communications emanated from a source other than their true source. Therefore, there is credible evidence of violations of section 255.004(b) of the Election Code. Credible evidence also indicates that the respondent, with intent to injure a candidate or influence the result of an election, misrepresented his identity in the campaign communications or political advertising. Therefore, there is credible evidence of violations of 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 this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that: 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 the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate; 2) a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source; and 3) 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.

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 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

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 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-31706115.

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

Joe Bain, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director