

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GEORGE FULLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3230362

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on September 27, 2023, to consider sworn complaint SC-3230362. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 255.003(a) and 255.001 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The sworn complaint alleged that the respondent: 1) as an officer or employee of a political subdivision, spent or authorized the spending of public funds or used public resources for political advertising, in violation of Section 255.003(a) of the Election Code; and 2) did not include a disclosure statement on a political advertising video, in violation of Section 255.001 of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent is and, during all times relevant to sworn complaint SC-3230362, was the mayor of McKinney, Texas.
2. The sworn complaint related to statements made by the respondent during the February 27, 2023, joint meeting of the McKinney City Council and the McKinney ISD Board of Trustees. The statements were in support of three McKinney ISD board members who were running for re-election in the May 6, 2023 general election: Amy Dankel,

Stephanie O'Dell, and Lynn Sperry. The complaint alleged that the respondent made these statements while at the McKinney ISD Stadium and Community Events Center, a property owned and managed by McKinney ISD. The complaint also alleged that the statements were video recorded using public funds, and the video was subsequently posted on the City of McKinney website and the McKinney ISD website.

3. Therefore, the sworn complaint alleged that the respondent: 1) as an officer or employee of a political subdivision, spent or authorized the spending of public funds or used public resources for political advertising; and 2) did not include a disclosure statement on the political advertising video.
4. In support of these allegations, the complaint provided links to the video on both the City of McKinney's website and the McKinney ISD website. Commission staff confirmed that the City of McKinney posted this video to its website, as well as videos of its past city council meetings going back to 2009. Commission staff also confirmed that McKinney ISD posted this same video to its website and also provides access to videos of its past board meetings going back to 2016.
5. In the video, the respondent is heard acknowledging and praising the McKinney ISD Board of Trustees for what they have accomplished despite the opposition he believes they have faced. The respondent then states:

[A]nd I know that Lynn, uh, Sperry, Amy Dankel, Stephanie O'Dell, you are running again for school board. I couldn't be happier. I am so glad that you all are running. We need you desperately to keep this ship on course. Um, and I, uh, I, I applaud you for doing it again in spite of so much negative nonsense. Um, but I will be on the campaign trail with you every step. I am so elated that you all are running and you have my full support.

6. The respondent made these comments during the portion of the meeting labeled on the agenda as "Update on Joint Stadium Event." Shortly thereafter, the McKinney ISD board members and McKinney city council members voted to adjourn the joint meeting.
7. In response to the complaint, the respondent acknowledged the allegations and stated, through his attorney:

Mayor Fuller recognizes now that his expression of full support may have violated the endorsement prohibition. He didn't intend to express an election endorsement per se. But with the benefit of hindsight, he acknowledges that he likely did so. This was a mistake rather than any conscious intent to violate the ethics rules—and one animated by sincere gratitude for hardworking officials [the McKinney ISD board members] being unfairly criticized.

8. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a).
9. For purposes of Section 255.003(a) of the Election Code, the spending of public funds includes the use of a political subdivision's resources, including money, employees' work time, facilities, and equipment. Tex. Ethics Comm'n Op. No. 552 (2020) (citing Tex. Ethics Comm'n Op. Nos. 550 (2019), 532 (2015), 516 (2014), 443 (2002), 45 (1992)).
10. "Political advertising" means, in relevant part, a communication supporting or opposing a candidate for election to a public office, that:
 - (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
 - (B) appears:
 - (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
 - (ii) on an Internet website.

Tex. Elec. Code § 251.001(16).

11. The critical question in determining whether a communication constitutes "political advertising" is whether it is a communication supporting or opposing a candidate or public officer. Tex. Ethics Comm'n Op. No. 476 (2007) (citing Tex. Ethics Comm'n Op. No. 12 (1992)). Whether a particular communication supports or opposes a candidate or public officer is a question of fact. *Id.* In deciding the existence of political advertising, the Commission views communications "in their entirety." Tex. Ethics Comm'n Op. No. 559 (2021). "A significant factor in determining whether a particular communication is a political advertisement is whether it provides information without promotion of a public officer or measure." Tex. Ethics Comm'n Op. No. 476 (2007).
12. The U.S. Supreme Court has long recognized that mentioning a candidacy, election, a challenger or taking a position on a candidate's character, qualifications, or fitness for office are all indicia of electoral advocacy. *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 470 (2007) (opinion of C.J. Roberts & J. Alito).
13. 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. *Id.* § 255.001(a).

14. The comments made by the respondent explicitly supported the candidacy of the three McKinney ISD board members running for re-election in the May 6, 2023 election. Since the video containing these statements was then posted on the City of McKinney website and the McKinney ISD website, the statements constitute political advertising.
15. Communications that support or oppose a candidate constitute political advertising when they appear on an Internet website. Tex. Elec. Code § 251.001(16). However, the Commission noted in Ethics Advisory Opinion No. 456 that “[S]ection 255.003 was not intended to inhibit discussion of matters pending before a governmental body,” and opined that Section 255.003 does not prohibit a political subdivision from broadcasting a tape of a meeting at which such discussions were held if the broadcast is in keeping with the city’s regular practice of broadcasting meetings. Tex. Ethics Comm’n Op. No. 456 (2004); see also *In re Turner*, 558 S.W.3d 796, 801 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (embracing Ethics Advisory Opinion No. 456).
16. The exception created by Ethics Advisory Opinion No. 456 is inapplicable here because the candidacy of the three McKinney ISD board members was not a matter pending before the governmental body. Additionally, even if it could be said that the members of the board and city council had ceased discussion on all the listed agenda items when the respondent made his statements, the fact remains that this meeting had not yet adjourned. Therefore, the respondent was not allowed to turn this public meeting into a discussion of the board members’ candidacy.
17. Based on the foregoing, there is credible evidence of a violation of Section 255.003(a) of the Election Code.
18. Additionally, credible evidence indicates that it is common practice for the City to post videos of its city council meetings to its website. As the City’s mayor, the respondent would have been aware of this practice when he made his statements. Therefore, because credible evidence indicates that the respondent’s statements would constitute political advertising, the video required a political advertising disclosure statement, which it did not contain. Thus, there is credible evidence of a violation of Section 255.001(a) of the Election Code.

IV. 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 findings of fact and conclusions of law described under Section III, and consents to the entry of this order and agreed resolution solely for the purpose of resolving and settling this sworn complaint.
2. The respondent consents to this order and agreed resolution before any adversarial evidentiary hearings or argument before the Commission, and before any formal adjudication of law or fact by the Commission. The respondent waives any right to a hearing before the Commission or an administrative law judge and consents to Commission

staff presenting this order and agreed resolution to the Commission outside of the respondent's presence. The respondent further waives any right to a post-hearing procedure established or provided by law. The Commission and respondent agree that the entry of this order and agreed resolution will be a full and complete resolution of sworn complaint SC-3230362.

3. The respondent understands and agrees that the Commission will consider this order and agreed resolution in any future sworn complaint proceedings against the respondent regarding similar violations that occur after the date this agreement is executed.

V. 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.

VI. Sanction

1. The Commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the Commission, whichever amount is more, for a delay in complying with a Commission order or for violation of a law administered and enforced by the Commission. Tex. Gov't Code § 571.173.
2. The Commission shall consider the following factors in assessing a sanction: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations, and 5) any other matters that justice may require. *Id.* § 571.177.
3. Although a civil penalty is warranted in this case given the nature and circumstances surrounding the violations, the need for a substantial civil penalty in this case is lessened by the fact that the respondent has acted in good faith with Commission staff and admitted his violations once he was made aware of the present complaint.
5. Therefore, after considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 civil penalty.

VII. 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-3230362.

AGREED to by the respondent on this _____ day of _____, 2023.

George Fuller, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director