

Ck# 147
Amount \$500.00
Receipt# SC06252401
Payment Rec'd 6-25-2024

TEXAS ETHICS COMMISSION

MHP

IN THE MATTER OF
LINA HIDALGO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-32311310

RECEIVED
MAY 28 2024
Texas Ethics Commission

ORDER
and
AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (TEC) met on June 18, 2024, to consider sworn complaint SC-32311310. A quorum of the TEC was present. The TEC determined that there is credible evidence of violations of Section 255.003(a) of the Election Code, a law administered and enforced by the TEC. To resolve and settle this complaint without further proceedings, the TEC adopted this resolution.

II. Allegation

The complaint alleged that the respondent, as an officer or employee of a political subdivision, knowingly spent or authorized the spending of public funds for political advertising, in violation of Section 255.003(a) of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent was elected as the Harris County Judge in the November 6, 2018 general election. The respondent was subsequently re-elected in November 2022 and currently holds the office.
2. On November 10, 2023, the respondent held a press conference at the Harris County Administration Building at 1001 Preston Street in Houston, Texas. The press conference was filmed in the lobby or vestibule of the respondent's department headquarters, where the respondent appeared at a podium with the county seal in the background. The recording begins with the title: "Live Stream: Starting Soon," and was recorded and broadcast by at least five Houston media outlets, as can be seen by the microphones attached to the podium.
3. The respondent spoke for at least 30-minutes using prepared remarks about various issues related to the upcoming March 2024 primary election for Harris County District Attorney.

The respondent made statements in opposition of the incumbent District Attorney of Harris County, Kim Ogg, who had been in office since January 1, 2017. The respondent also made statements supporting the opponent of Kim Ogg in the March 5, 2024 primary election, Sean Teare. The video recording of the press conference was subsequently posted to the respondent's social media accounts on youtube.com (@harriscountyjudgelinahidal9973), twitter.com (@HarrisCoJudge), and facebook.com/LinaHidalgo, immediately following the press conference.

4. The respondent made the following statements during portions of the press conference (approximate elapsed time in parentheses):
 - (10:40) in her opening remarks, the respondent says she has done this before, and “let’s at least change the background.”
 - (11:17) recent polls showed Ogg “was losing to her primary opponent.”
 - (12:31) “This is the same dirty politics she’s been playing at for years!”
 - (12:51, 13:10) how she had been working that very week on the endorsement of Sean Teare, who was the primary opponent of Kim Ogg, stating “I literally spent the day yesterday, before [description] – working on the endorsement of him...”
 - (13:31) that “80-precinct chairs were calling for her formal admonishment [of the DA] by the local Democratic Party... abusing the office the people entrusted her with.”
 - (14:17) that she was “calling-out [the DA]” in these remarks broadcast that day.
 - (14:30) “I want to endorse Sean Teare.”
 - (17:17) “She abuses the power of her office, in the way a bully would use size in the playground.”
 - (19:50) [What the DA is doing] “is not an investigative exercise; it is a political exercise.”
 - (21:05) how she was ready to “take her on” at the March 5th primary,
 - (21:16) “it’s how we fight in politics – at the ballot box!”
 - (21:25) “we’re not supposed to use the people’s funding for political ends,”
 - (22:26) “we’re not gonna let a thug run her office in this way,”
 - (22:58) “at the end of the day, the voters are more powerful.”
 - [Spanish comments begin at 23:14 in the video recording, and are not translated]
 - [Q & A with members of the press begins at 30:24]
 - (42:29) how clearly this is about “politics” – “the interest here is not truth, it’s not justice, it’s politics!”
 - (43:20) [Kim Ogg] “has a very difficult relationship with the truth.”
 - (43:51) “caught telling lies.”
 - (47:12) as the credits roll ending the event, public contact information is provided for the respondent in her official role as County Judge, the chief public officer of the political subdivision of Harris County. *See* Tex. Elec. Code § 255.003(a).
5. In response to TEC staff’s written questions, the respondent confirmed that the press conference was filmed in the public space inside the administration building at 1001 Preston Street, and that six county employees on her executive staff worked to schedule,

stage, and produce the press conference. The respondent swore that approximately two-hours of combined county employee time was used. The respondent also stated that the area used for the press conference was in a public hallway that was not specially prepared for her alone, and that the area could have been used by anyone going through the lobby entrance on regular business. The respondent stated that the county office was open to the public during normal business hours, when the press conference was filmed. The respondent claims that no other county resources were utilized for the press conference, including the subsequent posting of the video recording online.

6. 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).
7. In order to find a violation of Section 255.003(a) of the Election Code, the TEC must determine that:
 - 1) the respondent was an officer or employee of a political subdivision;
 - 2) the respondent knowingly spent or authorized the spending of public funds (or the use of public resources) for the press conference; and
 - 3) the press conference constituted or contained political advertising.

Tex. Elec. Code § 255.003(a).

8. The “spending” of public funds includes the use of a political subdivision employee’s work time or a political subdivision’s equipment or facilities. *See, e.g.*, Tex. Ethics Comm’n Op. No. 443 (2002) (placement of campaign flyers in a school district teachers’ lounge would involve the spending of public funds where school district employees were required to transport the flyers to an area of the school that was not accessible to the public); Tex. Ethics Comm’n Op. No. 45 (1992) (distribution of political advertising using school district equipment or school district employees on school district time would be the spending of public funds where an already existing internal mail system was used); Attorney General Opinion No. KP-177 (2018) (statute prohibits the use of school district staff, facilities, or other resources where school districts electronically distributed links to Internet websites that were partisan in nature).
9. Ethics Advisory Opinion No. 550 concludes that a public officer’s “use of a facility maintained by a political subdivision [for political advertising], in an area that was restricted to its employees, required government resources to operate while in that restricted area” and would therefore violate Section 255.003 of the Election Code. Tex. Ethics Comm’n Op. No. 550 (2019). Further, the TEC observed that it had “found violations of Section 255.003(a) of the Election Code on numerous occasions since the statute was enacted where public officers controlled the access to certain government resources.” *Id.* Conversely, however, Section 255.003 does not prohibit a public officer “from using government resources that are equally accessible to the public for political advertising.” *Id.*

10. “Political advertising” means, in relevant part, a communication supporting or opposing a candidate for election to a public office, or a public officer, that appears in various forms of written communications or on an Internet website. Tex. Elec. Code § 251.001(16).
11. Whether a particular communication supports or opposes a candidate or a public officer is a fact question. Tex. Ethics Comm’n Op. No. 476 (2007). “The critical issue in determining whether an advertisement is ‘political advertising’ is whether it is a communication supporting or opposing a candidate, or a public officer.” *Id.* (citing Tex. Ethics Comm’n Op. No. 102 (1992)).
12. Political advertising includes a communication that merely “supports or opposes” a candidate for election or a public officer, regardless of whether it contains express advocacy or its functional equivalent. *See, e.g., In re Smith Purcell*, SC-31804181 (2018). Unlike the requirement that “political advertising *containing express advocacy*” include a disclosure statement, Section 255.003 restricts the spending of public funds for “political advertising” without reference to express advocacy or its functional equivalent. *Compare* Tex. Elec. Code § 255.003 *with id.* § 255.001. Therefore, the TEC has rejected an “express advocacy” standard that would limit the definition of political advertising to communications that include certain words or phrases like “vote for,” “support,” “vote against,” “defeat,” “reject,” or “cast your ballot for.” *See* Tex. Ethics Comm’n Op. Nos. 559 (2021), 560 (2021).
13. This lower standard is constitutionally sound because under the First Amendment “government speech” is generally not afforded First Amendment protection. *See, e.g., Walker v. Sons of Confederate Veterans*, 576 U.S. 200, 207 (2015); *Pleasant Grove City v. Summum*, 555 U.S. 460, 467-68 (2009); *see also Vargas v. City of Salinas*, 205 P.3d 207, 209 (Cal. 2009) (holding a communication can “support or oppose” a measure in an election even without express advocacy when the “style, tenor and timing” of communication demonstrates the communication constitutes traditional campaign activity); *cf. Sweetman v. State Elections Enforcement Comm’n*, 732 A.2d 144, 160-162 (Conn. 1999); *Anderson v. Boston*, 380 N.E.2d 628 (Mass. 1978); *Smith v. Dorsey*, 599 So.2d 529, 540-544 (Miss. 1992); *Burt v. Blumenauer*, 699 P.2d 168, 171-181 (Ore. 1985); *Dollar v. Town of Cary*, 569 S.E.2d 731, 734 (N.C. App. 2002) (upholding restrictions on use of public funds for political advertising based on a lower standard than “express advocacy”).
14. Further, 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 “express advocacy”. *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 470 (2007) (opinion of C.J. Roberts & J. Alito).
15. The respondent is an officer or employee of Harris County, a political subdivision. The respondent used her county office building vestibule, which is an area of a government facility, for the press conference at issue. The area of the government facility contained a podium with a backdrop of the county seal and was the same area that the respondent and other officials routinely use for official Harris County press conferences. While it is an area

that was accessible to the general public, it was not accessible to the general public for use in the same manner as the respondent used it. In addition, county employees who report to the respondent were authorized on county work time to schedule and stage the press conference and to produce a video recording of the press conference that was later posted to internet websites.

16. The statements made by the respondent during the press conference were made in both opposition to Harris County DA Kim Ogg as a public officer and candidate for re-election, and in support of the opponent of Kim Ogg in the March 2024 primary election. Throughout the entire press conference, the respondent made specific positive comments about the challenger's qualities and took a strong position in opposition to the incumbent's character, qualifications, and fitness for office, all of which are indicia of express advocacy. The evidence shows at the beginning of the video, that the press conference was live-streamed to the Internet, recorded, and subsequently posted to YouTube, Facebook, and Twitter/X. The definition of political advertising includes any communication supporting or opposing a candidate for election or a public officer that appears on an Internet website. *See* Tex. Elec. Code § 251.001(16). Therefore, the press conference constituted political advertising. Credible evidence shows the respondent used public resources of Harris County for the press conference, held in a county facility at her direction. Therefore, there is credible evidence of violations of Section 255.003(a) of the Election Code.

IV. Representation 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 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 knowingly spend or authorize the spending of public funds or use public resources for political advertising. The respondent agrees to comply with this requirement of the law.

V. Confidentiality

This order and agreed resolution describes violations that the TEC 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 TEC.

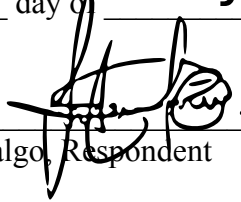
VI. Sanction

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 TEC imposes a \$500 civil penalty.

VII. Order

The TEC hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-32311310.

AGREED to by the respondent on this 22 day of May, 2024.



Lina Hidalgo, Respondent

EXECUTED by the TEC on: June 25, 2024.

Texas Ethics Commission

By: J.R. Johnson
J. R. Johnson, Executive Director