

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SAMUEL L. NEAL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210426

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 11, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210426 filed against Samuel L. Neal, Respondent. The commission met again on August 10, 2001, to consider Sworn Complaint SC-210426. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of a violation of Section 255.003, Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegation

The complainant alleges that the respondent violated Section 255.003, Election Code, by using city staff and equipment for political advertising.

III. Facts Supported by Credible Evidence

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

1. The allegations in this case arose out of a referendum that was part of a municipal election held April 7, 2001, in Corpus Christi, Texas. The respondent is mayor of the city.
2. The complainant alleged that on March 20, 2001, the respondent authorized the use of public funds to prepare and distribute a media release by directing his secretary, who was a city employee, to type and distribute the media release using city supplies while the secretary was on city time.

3. The complainant alleged that the media release constituted political advertising because it asked people to vote for a specific result in a referendum concerning a city ordinance establishing a reinvestment zone.
4. Later in the day on March 20, 2001, the respondent, through his campaign office, issued another media release in which he stated that the first media release had inadvertently contained a statement seeking support for the referendum, and acknowledging that the first media release was improper. In the second media release the respondent stated that he would reimburse the city for any costs involved in sending out the first media release.
5. The respondent submitted a sworn response in which he states that he authorized the media release. The respondent swore that after authorizing the release he became aware that the release violated the Texas Election Code because the last line asked for support of the referendum. The respondent swore that in a second media release he acknowledged his mistake, and apologized to the community. The respondent swore that the following day he reimbursed the city \$18.38 for the costs involved with the first media release. He submitted a copy of his check and a receipt from the city for that amount.

IV. Findings and Conclusions of Law

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

1. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. Section 255.003(a), Election Code. The prohibition does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure. Section 255.003(b), Election Code.
2. A "measure" is a question or proposal submitted in an election for an expression of the voters' will. Section 251.001(19), Election Code. The referendum constituted a measure because the election was held so that voters could express their will with regard to a city ordinance.
3. "Political advertising" is defined in relevant part as a communication that supports a measure and that appears in a pamphlet, circular, flier, sign, or similar form of written communication. Section 251.001(16), Election Code.
4. The media release at issue falls within the definition of political advertising because it is a form of written communication similar to a circular or flier, and seeks support for a measure.

- 5 The respondent authorized the use of public funds to prepare and distribute the media release. Therefore, there is credible evidence that the respondent violated Section 255.003, 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order 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 further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that an officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. The respondent agrees to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the findings of fact and conclusions of law described in Section III and IV if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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. Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission and the respondent took

immediate steps to address the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$400 civil penalty for the violation described under Section IV, Paragraph 5.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-210426;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$ 400 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than September 7, 2001; and
4. that the executive director shall promptly refer SC-210426 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-210426 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this ____ day of _____, 2001.

Samuel L. Neal, Respondent

EXECUTED ORIGINAL received by the commission on: _____
Texas Ethics Commission

By: _____
Tom Harrison, Executive Director