

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WAYNE CHRISTIAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2212138

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-2212138 filed against Wayne Christian. The commission met again on September 11, 2003, to consider Sworn Complaint SC-2212138. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of section 255.004 of the 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 the campaign finance law by including political advertising with materials that the respondent mailed to promote his private business.

III. Facts Supported by Credible Evidence

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

1. The respondent is a member of the Texas House of Representatives.
2. The complainant submitted copies of materials he received in the mail from the respondent. In the upper left-hand corner of the envelope is the name "AIG SunAmerica Securities." Underneath the name are the words "A SunAmerica Company." Next to the name is a return address, which reads, "SunAmerica Securities, Inc., 204 Houston Street, Center, TX 75935."
3. The envelope contained a letter about the wisdom of investing for the long term. The letterhead included the name SunAmerica Securities, Inc., and listed the respondent as an "Investment Adviser Representative." The letter was signed by the respondent as "Registered Representative."

4. The envelope also included enclosures describing various investment possibilities.
5. The envelope also included an enclosure urging the reader to re-elect the respondent to the Texas House of Representatives. That enclosure contained the text, "Pol. Ad Paid by Wayne Christian Campaign 204 Houston, Center, Texas 75935."
6. The respondent submitted a written response in which he states:

Wayne Christian and Associates is my registered D.B.A. as an independent registered representative of SunAmerica Securities, Inc. I am a sole proprietorship. While preparing a mail piece for my business, a business staff member thought it a good idea to use a supply of unused campaign cards they found available. Such card did not increase postage and those specific cards were printed in house on my business printer. . . .

The stationary used was approved for my personal business use by the compliance officers with SunAmerica Securities, Inc. as being in compliance with Texas State Securities and Federal S.E.C. regulations. . . . Quite frankly, I believe my name would do more good than theirs in my community, but, I MUST follow these federal and state regulations. This is evidently the legal method whereby I, as a sole proprietor, do not present myself to the general public as having brokerage authority. Thus, I am bound by law to use the stationary as presented.

7. He also states, "[N]o corporate funds were used and no corporation was advised or involved in this mailing."

IV. Findings and Conclusions of Law

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

Corporate Expenditure

1. As a general rule a corporation may not make a political contribution or a political expenditure. ELEC. CODE § 253.094. A candidate may not accept a contribution made in violation of that provision. *Id.* § 253.003(b).
2. The respondent states that his sole proprietorship, not SunAmerica Securities, made all of the expenses in connection with the mailing at issue here. He also states that there was no corporate involvement in the mailing. Therefore, there is credible evidence that SunAmerica did not make a corporate contribution and that the respondent did not accept a corporate contribution from SunAmerica.

Source of Campaign Communication

3. 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. ELEC. CODE § 255.004(b).
4. A "campaign communication" is "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." ELEC. CODE § 251.001(17).
5. Because the enclosure urged the reader to re-elect the respondent to the Texas House of Representatives, its clear intent was to influence the result of an election.
6. That enclosure is a campaign communication because it relates to the respondent's candidacy for election to the Texas House of Representatives.
7. The Ethics Commission has stated in an advisory opinion that an envelope is normally not a separate communication from the material contained in the envelope. Ethics Advisory Opinion No. 380 (1997).
8. Therefore, the envelope and the enclosure were both part of the campaign communication.
9. Although the enclosure makes it clear that the respondent paid for the enclosure, the envelope indicates that the sender is SunAmerica Securities. A communication "emanates" from a particular source if that source sent the communication, regardless of whether that source paid for the communication.
10. Therefore, there is credible evidence that the respondent, with intent to influence the result of an election, knowingly represented in a campaign communication that the communication emanated from a source other than its true source in violation of section 255.004 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 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 title 15 of the Election Code prohibits a person from, with intent to injure a candidate or influence the result of an election, knowingly representing in a campaign communication that the communication emanates from a source other than its true source.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violation described under Section 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

The commission imposes a civil penalty of \$500.

VIII. Order

The commission hereby ORDERS:

1. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-2212138;
2. 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 \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than October 9, 2003; and
3. that the executive director shall promptly refer SC-2212138 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-2212138 as proposed in this ORDER and AGREED RESOLUTION.

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

Wayne Christian, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director