

TEXAS ETHICS COMMISSION

IN THE MATTER OF
EDUARDO GAMBOA,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-260122

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on September 21, 2006, to consider sworn complaint SC-260122. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.006(b) 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 resolution to the respondent.

II. Allegation

The complaint alleges that the respondent represented in a campaign communication that he held a public office that he did not hold at the time the representation was made.

III. Facts Supported by Credible Evidence

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

1. The respondent is a candidate for county probate court.
2. On July 31, 1995, the respondent was appointed as "Master," to hear probable cause hearings, final hearings, and medication hearings as a Mental Health Associate Judge.
3. The complaint is based on the respondent's billboard that states, "ELECT JUDGE EDUARDO GAMBOA DEMOCRAT PROBATE COURT #2 10 Years Experience as a Judge."
4. The respondent states that before he authorized the billboard in question, he contacted the Texas Ethics Commission and based on that conversation he believed he could use the word "Judge" in his political advertising.

5. The evidence shows that when the billboard was displayed the word "FOR" was omitted from the billboard. The respondent later added the word "FOR".

IV. Findings and Conclusions of Law

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

1. A person commits an offense by knowingly entering into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made. ELEC. CODE § 255.006(a).
2. Political advertising means, in pertinent part, a communication supporting or opposing a candidate for nomination or election to a public office that appears in a billboard. ELEC. CODE § 251.001(16).
3. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b).
4. A campaign communication means, in pertinent part, a written communication relating to a campaign for nomination or election to public office. ELEC. CODE § 251.001(17).
5. For purposes of section 255.006 of the Election Code, a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising or campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. ELEC. CODE § 255.006(c).
6. The billboard at issue was political advertising because it was a billboard that supported the respondent as a candidate for public office. The billboard was also a campaign communication because it was a written communication relating to the respondent's campaign for election to public office.
7. In Ethics Advisory Opinion No. 303, the commission stated that the use of "Elect Judge John Smith 10000th District Court" by a retired judge who hears cases by assignments does not, by itself, represent that the former judge holds an office he does not hold. Ethics Advisory Opinion No. 303 (1996). The commission also stated that the use of the title "Judge" by an incumbent seeking a higher judicial office does not, by itself, violate section 255.006 of the Election Code. *Id.*
8. At the time relevant to the complaint, the respondent was not a Probate Court Judge or a retired judge and did not hold an elective public office. The respondent stated that the

position he held was "Mental Health Associate Judge." It was appropriate for the respondent to call himself "Associate Judge" but not "Judge."

9. The evidence indicates that the respondent asked the Ethics Commission if he could use the word "Judge" since he held the position Associate Judge and believed it was permissible to do so.
10. The respondent has sworn that he did not intend to mislead anybody. He states that during his forums he informed people of what he did in his capacity as Associate Judge. There is no evidence provided by the complainant that the respondent had such intent at the time he entered into the agreement to print the billboard. There is insufficient evidence that the respondent intended to represent to an ordinary and prudent person that he held the title of "Judge" at the time he displayed the billboard. Therefore, there is insufficient evidence that the respondent violated section 255.006(a) of the Election Code.
11. Section 255.006(b) of the Election Code is based on a different standard than section 255.006(a). A person violates section 255.006(b) of the Election Code by knowingly representing in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. There is no need to show the person's intent at the time the agreement is made to print or publish the communication.
12. The respondent was not the incumbent in the judicial office he was seeking. The political advertising identified the respondent as "Judge," stated the public office sought, but did not include the word "for" to clarify that the candidate did not hold the office. Therefore, there is credible evidence that the respondent violated section 255.006(b) 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 also acknowledges that a person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made.
4. The respondent agrees to comply with these requirements of the law.

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. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes no civil penalty for the violation described under Sections III and IV.

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-260122.

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

Eduardo Gamboa, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director