

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DONNA KELLY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31803112

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 26, 2018, to consider sworn complaint SC-31803112. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of section 255.003 of the Election Code, a law administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission 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.

III. Facts Supported by Credible Evidence

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

1. The respondent is the Erath County Treasurer.
2. The complaint alleged that the respondent used county resources to prepare a letter that endorsed a candidate for Erath County Treasurer in the March 6, 2018, primary election.
3. Credible evidence indicates that in February 2018 the respondent prepared a letter on Erath County letterhead and presented the letter to a candidate running for Erath County Treasurer. The letter was presented to the candidate in front of the Erath County courthouse. The respondent stated in the letter that she was endorsing the candidate and was writing the letter to show her support for the campaign.
4. In response to the complaint, the respondent acknowledged that she endorsed the candidate and used county letterhead. The respondent provided a copy of a receipt showing that she reimbursed the county \$5.00 for the paper and ink that was used to prepare the letter.

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 knowingly spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003(a).
2. For the purposes of section 255.003(a), the "spending of public funds" includes the use of a political subdivision's resources. Ethics Advisory Opinion No. 532 (2015). "Spending of public funds" includes use of equipment and staff work time, Ethics Advisory Opinion No. 45 (1992), and use of facilities maintained by a political subdivision, Ethics Advisory Opinion No. 443 (2002).
3. "Political advertising" means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or on an Internet website. ELEC. CODE § 251.001(16).
4. Credible evidence indicates that the respondent used county resources for political advertising. Therefore, there is credible evidence of a violation of section 255.003 of the Election Code. Credible evidence shows the respondent reimbursed the county.

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 acknowledges that section 255.003 of the Election Code states that an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. The "spending of public funds" includes the use of a political subdivision's resources. The respondent agrees to fully and strictly comply with this requirement of 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. Sanction

After considering the nature, circumstances, and consequences of the violation described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$250 civil penalty.

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-31803112.

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

Donna Kelly, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director