

TEXAS ETHICS COMMISSION

IN THE MATTER OF

JERRY HART,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3220289

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on September 28, 2022, to consider sworn complaint SC-3220289. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of Sections 255.001, 255.006, and 259.001 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The sworn complaint alleged that, as a candidate for Knox County Judge, the respondent: 1) failed to include a political advertising disclosure statement on his campaign signs, in violation of Section 255.001 of the Election Code; 2) failed to include the word “for” on his campaign signs, in violation of Section 255.006 of the Election Code; and 3) failed to include a highway right-of-way notice on his campaign signs, in violation of Section 259.001 of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent was an unsuccessful opposed non-incumbent candidate for Knox County Judge in the March 1, 2022, primary election.
2. The sworn complaint included images of a yard sign and a large banner, both of which read “Elect Jerry Hart Knox County Judge,” but neither of which included a political advertising disclosure statement, highway right-of-way notice, or the word “for” before the position sought by the respondent.
3. The sworn complaint was filed on February 18, 2022. In response to the complaint, on March 7, 2022, the respondent filed a sworn affidavit in which he averred that he had corrected every sign the day after he was informed by a “county chairperson” that his signs did not have the required language. Included in the response were photographs of one of the

respondent's signs and the banner, to which the respondent had appended, in his handwriting, the words "Paid for by Jerry Hart" by way of a political advertising disclosure statement, and the word "for" to indicate that he was not the incumbent county judge. However, the additional sign of which the complainant provided a photograph on March 15, 2022, did not appear to have the political advertising disclosure statement or the word "for" written on it by the respondent.

4. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising: 1) that it is political advertising; and 2) the full name of the person who paid for the political advertising, the political committee authorizing the political advertising or the candidate or specific purpose committee supporting the candidate if the political advertising is authorized by the candidate. Tex. Elec. Code § 255.001(a).
5. 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. A person represents that a candidate holds a public office that the candidate does not hold if: (1) the candidate does not hold the office that the candidate seeks; and (2) 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. Tex. Elec. Code § 255.006(a), -(c).
6. Political advertising signs that are designed to be seen from a road must contain the following notice: "IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY." A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the above notice, or instructs another person to place a political advertising sign that does not contain the required notice. *See* Tex. Elec. Code § 259.001(a), -(b).
7. As noted above, as originally distributed, the respondent's signs did not contain a political advertising disclosure statement. There is therefore credible evidence of violations of Section 255.001 of the Election Code.
8. Further, the respondent's signs stated the office sought, county judge, but did not include the word "for." Therefore, there is credible evidence of violations of Section 255.006 of the Election Code.
9. Finally, according to the photographs included with the sworn complaint, the respondent's signs did not include the required highway right-of-way notice. In his sworn response, the respondent did not deny that the highway right-of-way notice was missing from his signs. There is therefore credible evidence of violations of Section 259.001 of the Election Code.

IV. 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 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: 1) a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate that it is political advertising as well as the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate; 2) a person represents that a candidate holds an office that the candidate does not hold, in violation of Section 255.006 of the Election Code, 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; and 3) a person may not knowingly enter into a contract to print or make a political advertising sign that does not contain the highway right-of-way notice required under Section 259.001 of the Election Code.
4. The respondent agrees to fully and strictly comply with the above requirements of law.

V. Confidentiality

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

VI. Sanction

Section 571.177 of the Government Code provides that the Commission shall consider the following factors when assessing a civil penalty: 1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation; 2) the history and extent of previous violations; 3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation; 4) the penalty necessary to deter future violations; and 5) any other matters that justice may require.

While the respondent has no prior violations on record, and the harm to disclosure from an ordinary political sign violation of the kind found here is modest, other factors require imposition of a civil penalty. Specifically, Section 571.177 directs the Commission to consider the violator's good faith (or, by implication, the violator's bad faith) and the penalty necessary to deter future violations in assessing a civil penalty. When the respondent was notified of the sworn complaint, he posted threats against the complainant and others involved in the sworn complaint, including threats of defamation liability and of referral to federal law enforcement authorities for unspecified crimes. While the respondent did correct some of his signs, attempts to intimidate or threaten a complainant for filing a sworn complaint with the Commission constitute serious bad-faith interference with the sworn complaint process. Therefore, the respondent's lack of good faith in responding to the complaint and the need to ensure the respondent's future compliance require imposition of a civil penalty.

Therefore, after considering the nature, circumstances, and consequences of the violations described under Section III, as well as the actions of the respondent in response to the complaint, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,000 civil penalty that, if not paid within 30 days of the date of this order and agreed resolution, will increase to \$2,500 and will be referred to the Office of the Attorney General of Texas for collection.

VII. 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-3220289.

AGREED to by the Respondent on this _____ day of _____, 2022.

Jerry Hart, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director