

- courthouse on the bench and in his chambers. The clips portrayed the respondent in his judicial robe performing official duties as a Justice of the Peace.
3. In response to the complaint, the respondent acknowledged that he published the video on his Facebook page and that the video contained clips of him appearing in his Justice of the Peace chambers. The respondent stated that, besides using the judicial chambers in the video, no other public funds or resources were used to produce the video. The respondent swore that he was unaware that using his chambers in such a way constituted a violation of Texas law and that he would implement measures to ensure future compliance.
 4. In response to written questions submitted by Commission staff, the respondent stated that the filming was done on or around October 28, 2021 at 4 p.m., and that no county personnel assisted with the filming. The respondent further stated that the filming within the county facilities took approximately five minutes and that the courtroom was open to the public during the time of filming.
 5. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a).
 6. In order to find a violation of Section 255.003(a) of the Election Code, the Commission must determine:
 - 1) the respondent was an officer or employee of a political subdivision;
 - 2) the respondent knowingly spent or authorized the spending of public funds (or the use of public resources) for the video; and
 - 3) the video constitutes political advertising.
 7. The “spending” of public funds includes the use of a political subdivision employee’s work time or a political subdivision’s equipment or facilities. *See, e.g.*, Tex. Ethics Comm’n Op. No. 443 (2002) (placement of campaign flyers in a school district teachers’ lounge would involve the spending of public funds where school district employees were required to transport the flyers to an area of the school that was not accessible to the public); Tex. Ethics Comm’n Op. No. 45 (1992) (distribution of political advertising using school district equipment or school district employees on school district time would be the spending of public funds where an already existing internal mail system was used); Attorney General Opinion No. KP-177 (2018) (statute prohibits the use of school district staff, facilities, or other resources where school districts electronically distributed links to Internet websites that were partisan in nature).
 8. Ethics Advisory Opinion No. 550 concludes that Section 39.02(a)(2) of the Penal Code prohibits a public officer from using government resources, of which the officer has custody or possession, to create a photograph, video, or other communication for political advertising. In addition, Section 255.003(a) of the Election Code prohibits a public officer, who is also an officer of a political subdivision, from using government resources, such as restricted areas of government facilities, for political advertising. Tex. Ethics Comm’n Op. No. 550 (2019). Conversely, a “public area of a government facility” that is “equally

accessible” to everyone is not in the “custody or possession” of a public officer for purposes of the Penal Code, and thus may be used for political advertisements. *Id.* For purposes of Section 255.003(a) of the Election Code, the use of a facility maintained by a political subdivision for political advertising, in an area that is restricted to its employees, requires government resources to operate while in that restricted area, and therefore would violate Section 255.003(a) of the Election Code. *Id.*

9. “Political advertising” is defined, in relevant part, as a communication supporting or opposing a candidate for election to a public office, or a public officer, that appears on an Internet website. Tex. Elec. Code § 251.001(16).
10. It is undisputed that the respondent is an officer or employee of a political subdivision and that the respondent used the courtroom bench and his chambers to create a portion of the video. The video constitutes political advertising because it supports the respondent as a public officer and as a candidate for re-election. As noted above, an officer’s use of government facilities, which are restricted to the custody or possession of that officer, to produce political advertising constitutes a spending of public funds in violation of Section 255.003(a) of the Election Code. The courtroom bench and judicial chambers are government facilities that were restricted to the respondent’s custody or possession as a Justice of the Peace. The respondent used the facilities for political advertising. Therefore, there is credible evidence of a violation of Section 255.003(a) 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 an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds or use public resources for political advertising. The respondent agrees to comply with this requirement of the law.

V. 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.

VI. Sanction

After considering the nature, circumstances, and consequences of the violation described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 civil penalty.

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-32209322.

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

Benito "Bo" Ochoa IV, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director