

TEXAS ETHICS COMMISSION

IN THE MATTER OF § **BEFORE THE**
ROD BARGER, § **TEXAS ETHICS COMMISSION**
RESPONDENT § **SC-980439**
§

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 10, 1998, to consider sworn complaint SC-980439 filed against Rod Barger (the respondent). A quorum of the commission was present. The commission voted to accept jurisdiction of this complaint. Based on the investigation conducted by commission staff, the commission determined there was credible evidence of a violation of Section 255.006, 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. Allegations

The complainant alleges that the respondent, an opposed candidate for county commissioner, violated the Election Code by failing to use the word “for” in his campaign literature.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission would support the following findings of fact:

1. At all times relevant to this complaint, the respondent was an opposed candidate for county commissioner in the primary election held on March 10, 1998, and primary runoff election held on April 14, 1998. The respondent was not the incumbent
2. One of the respondent’s campaign cards contained his last name in bold letters with the name of the office sought as well as the dates of the primary and primary runoff elections and early voting locations. The word “for” did not appear on the card.

IV. Conclusions of Law

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

1. Political advertising is defined in part as a communication that supports or opposes a candidate for election to public office and that appears in a flier or similar form of written communication. Section 251.001(16), Election Code.
2. The communication at issue constitutes political advertising because it supports the respondent's candidacy for county commissioner and appears in a campaign card.
3. A person may not represent in political advertising that a candidate holds a public office the candidate does not hold at the time the representation is made. A person represents that a candidate holds a public office the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising states the public office sought but does not use the word "for" to clarify that the candidate does not hold that office. Section 255.006, Election Code.
4. Because the respondent did not hold the public office he was seeking and because the respondent's campaign card stated the office sought but did not include the word "for" preceding that office, there is credible evidence that the respondent violated Section 255.006, Election Code.

V. Representations and Agreement by the Respondent

By signing this ORDER and AGREED RESOLUTION and returning it to the commission:

1. The respondent neither admits nor denies the facts detailed under Section III and the commission's findings and conclusions of law detailed 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 and AGREED RESOLUTION 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 appointed by the commission, and further waives any right to a post-hearing procedure established or provided by law.
3. 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 violations detailed in Section IV, Paragraph 4, 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 an alleged violation that the commission has determined would be neither technical nor *de minimis*. Accordingly, this ORDER and AGREED RESOLUTION is not confidential under Section 571.140, Government Code, and may be disclosed by members and staff of the Texas Ethics Commission.

VII. Sanction

After considering the seriousness of the violations described under Section IV, Paragraph 4, including the nature, circumstances, consequences, extent, and gravity of the violations; that no previous violations by this respondent are known to the commission; and after considering the sanction deemed necessary to deter future violations, the commission imposes no civil penalty for the violation described under Section IV, Paragraph 4.

VIII. Order

The Texas Ethics Commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;
2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-980439;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than August 7, 1998; and
4. that the executive director shall promptly refer SC-980439 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-980439 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on: _____.

DATE

Rod Barger

EXECUTED ORIGINAL received by the commission on: _____.
DATE

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director