

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL BUNCH,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-200530

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 14, 2000, and voted to accept jurisdiction of Sworn Complaint SC-200530 filed against Michael Bunch, Respondent. The commission met again on September 8, 2000, to consider Sworn Complaint SC-200530. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is 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

1. The complainant alleges that the respondent represented that he held an office that he did not hold by failing to include the word “for” in political advertising.
2. The complainant also alleges that the respondent failed to include a political advertising disclosure statement in political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unopposed candidate for state representative, District 145, in the 2000 primary election and is an opposed candidate in the 2000 general election.
2. The respondent does not currently hold the office that he is seeking.
3. The complainant submitted two documents that the complainant swears were mailed or hand-delivered to residences in the district in which the respondent is running for office.

The first document is a postcard that on one side includes the statement "Vote a BUNCH." On the other side of the postcard in the upper left-hand corner (where return addresses are customarily placed) is printed "Vote A BUNCH," followed on successive lines by "State Representative District 145, Michael Bunch, Republican, 3319 Signal Hill Drive, Friendswood, Texas 77549," and the statement "Paid for by the Bunch for Representative Campaign Micah Dial Campaign Treasurer."

4. The second document is a letter that is printed on letterhead stationary. The letterhead includes the same slogan that appeared on the postcard, followed on successive lines by the respondent's name, "State Representative District 145," and an address. At the bottom of the letter is the statement "Paid for by Bunch for Representative Campaign Michah Dial Campaign Treasurer."
5. In response to this complaint, the respondent submitted a statement in which he states that the letter had "an extremely limited distribution of less than 100" and that the documents at issue in this complaint represent a small amount of the documents printed and used by the respondent's campaign. The respondent states that the documents at issue include the name and address of the individual who entered into the contract for publication. The respondent states that the omission of the word "for" on the documents at issue was "the result of a manufacturing error on the rubber stamp used for the return address and a printing error." The respondent submitted samples of other letters and postcards supporting the respondent's candidacy that include the word "for" where the respondent's name is used in connection with the office sought. The respondent states that these documents "indicate that there is no intent to inappropriately use the term state representative." The respondent describes the documents at issue in this complaint as an "anomaly [that] represents a minor technical error, which any prudent individual might expect could occur in the process of printing vast quantities of printed materials." The respondent also states that the "manufacturing error has been corrected. The offending stamp is no longer being used. The corrections were made months before the complaint was filed."

IV. Findings and Conclusions of Law

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

1. "Political advertising" is defined, in relevant part, as a communication supporting or opposing a candidate for public office that appears in a pamphlet, circular, flier, or similar form of written communication. Section 251.001(16), Election Code.
2. The postcard and the letter submitted with this complaint constitute political advertising because they support the respondent as a candidate for public office and appear in a circular, flier, or similar form of written communication.

3. A person may not knowingly enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and provide the name and address of the person who entered into the contract or agreement to print the advertising, or provide the name and address of the person that individual represents. Section 255.001, Election Code.
4. An Ethics Commission rule excepts from the disclosure requirement “political advertising printed on letterhead stationery if the letterhead contains the (name and address of the person who had the political advertising printed).” Section 26.5, Ethics Commission Rules. The commission has determined in a past sworn complaint that a postcard constitutes “letterhead stationery” within the meaning of the rule.
5. Because the postcard and letter contain the name and address of the person who entered into the contract or agreement to print the advertising, or the name and address of the person that individual represents, there is credible evidence that the respondent did not violate Section 255.001, Election Code.
6. A campaign communication is defined, in relevant part, as a written communication relating to a campaign for election to public office. Section 251.001(17), Election Code.
7. The postcard and the letter submitted with this complaint constitute campaign communications because they are written communications relating to the respondent’s campaign for election to state representative.
8. A person may not knowingly represent in a campaign communication that a candidate holds a public office the candidate does not hold at the time the representation is made. Section 255.006(b), Election Code. Under this provision, a person represents that a candidate holds a public office the candidate does not hold if: (1) the candidate does not hold the office that the candidate seeks; and (2) the campaign communication states the public office sought but does not use 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. Section 255.006(c), Election Code.
9. Because the respondent does not currently hold the office that he is seeking and because the respondent made campaign communications that stated the office sought but did not include the word “for” to clarify that the respondent did not hold that office, there is credible evidence that the respondent violated Section 255.006, 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order 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, 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 violation described under Section IV, Paragraph 9, 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 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 seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violation, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violation described under Section IV, Paragraph 9.

VIII. Order

The 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-200530;

- 3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711; and
- 4. that the executive director shall promptly refer SC-200530 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-200530 as proposed in this ORDER and AGREED RESOLUTION.

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

Michael Bunch, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director