

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CAROLYN GOLSON AND
TINA BROWN,
RESPONDENTS

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210101

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on June 8, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210101 filed against Carolyn Golson and Tina Brown, Respondents. The commission met again on October 12, 2001, to consider Sworn Complaint SC-210101. 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 255.003(a), 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 respondents.

II. Allegations

The complaint alleges that the respondents, employees of an independent school district, were responsible for creating, copying, and distributing two political advertising fliers using school district equipment on school district work time.

III. Facts Supported by Credible Evidence

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

1. The respondent Carolyn Golson is a middle school secretary and the respondent Tina Brown is a middle school teacher. Both respondents are employed by the Jim Ned Consolidated Independent School District in Tuscola, Texas.
2. The two fliers at issue name and advocate the election of three incumbent candidates for school board in the May 6, 2000, election. The respondents signed their names to one of the

fliers. The other flier is unsigned. The complaint alleges that both fliers were distributed to all school district employees at all four school district campuses.

3. The school district superintendent (Kent LeFevre) investigated the flier signed by the respondents and swears as follows in an affidavit summarizing the results of his investigation:

In the spring of 2000, one morning before the . . . school board election, I became aware of the political flyer in question. I immediately phoned all four campuses and asked if the flyer had been distributed. I found that the flyer had been placed on the principal desk at Lawn Elementary, but she had not distributed it The flyer had not been sent to Buffalo Gap Elementary The flyers had been placed in the teacher's mailboxes at the Middle School and High School, but were removed immediately by my direction. Most flyers were still in the mailboxes because only a few of the teachers had checked their mail by that time. The flyers that had been picked up by teachers were retrieved and destroyed No flyers were distributed to maintenance or transportation personnel. It was estimated at the time of the incident, long before this complaint was filed, that the flyer was distributed to fewer than ten people, not counting the personnel who signed it. . . .

After all flyers were retrieved, I personally called the Texas Ethics Commission and informed them of everything that had happened. I was told that I had handled the situation properly.

During my investigation of the incident, I found that the flyer was created by Carolyn Golson (Middle School secretary) and Tina Brown (Middle School teacher . . .). They incorrectly assumed that, if the document was created before their work hours and if they paid for the copies, there was nothing wrong with what they did. . . . They were not authorized by the school or any school official to create or distribute the documents. The others who signed the document, did just that, they signed a document. . . .

. . . I, nor any other school official in authority, knew about the flyer until after it was produced. When I did learn of the improprieties, I took immediate steps to correct them and then reported all actions to the Texas Ethics Commission.

4. Respondent Tina Brown swears as follows in her affidavit submitted in response to the complaint:

The school district, administration, and trustees did NOT know anything about the flyer. The flyer was NOT passed out to all campuses—Buffalo Gap

campus never received, —Middle School & High School were collected and destroyed immediately when we were informed by Mr. LeFevre it was unethical, —Lawn campus was sent for approval but was not handed out. All copies were collected and destroyed immediately. The copies were paid for by a check written by Carolyn Golson. The school district took action immediately and everyone who was involved was reprimanded. The district conducted all this before we were ever notified about the filed sworn complaint by “the concerned taxpayers”.

(Emphasis in original.)

5. Respondent Carolyn Golson swears as follows in her affidavit submitted in response to the complaint:

—I am fully aware now that what I did in the Spring of 2000 was unethical. At the time I did this my only intentions were to encourage my co workers to get out and vote and to show support for the administration and board members that always had supported us. These poor men were being crucified in the newspaper, in my church, everywhere. These “concerned citizens” did not want to hear or read the true facts. They would put articles in the paper and even twist the truth.

—No one asked or encouraged me to do this. I felt that I was only giving positive support. I have been with [the school district] for 11 years, and I would never knowingly jeopardize [*sic*] my job. I was reprimanded by the district, and I will lose my job should I ever do this again.

—Teachers never received the faxed paper work in the boxes at Lawn Campus because Mrs. Bowden never approved it. Mr. Turner never saw the paper work because Mr. LeFevre found out and stopped my “good intention” immediately. The papers were pulled from the middle school boxes and high school boxes. I personally paid for all copies, and I personally destroyed all copies. In my opinion I really didn’t do or cause any damage for or to the people who filed this complaint.

(Emphasis in original.)

6. The affidavits of the superintendent, Respondent Carolyn Golson, and Respondent Tina Brown are corroborated by questionnaires furnished by other school district employees in connection with the superintendent’s investigation.
7. According to the affidavits and questionnaires, the flier signed by the respondents was created in the school computer lab and copied on the school copy machine before school

began; one hundred twenty copies were made and the school district was reimbursed five cents per copy; and only Respondent Carolyn Golson and Respondent Tina Brown were responsible for creating and copying the flier.

8. The complaint alleges that the respondents were also responsible for the unsigned flier, but it does not state how each of the respondents was responsible for that flier. One part-time school district employee stated that she did not know who put out the unsigned flier, and none of the school district employees was asked about this flier in the school district questionnaires.

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 spend or authorize the spending of public funds for political advertising. Section 255.003(a), Election Code. A school district is a political subdivision as that term is used in the Election Code. Section 1.005(13), Election Code. The prohibition extends to direct or indirect expenditures for the distribution of political advertising. Any method of distribution that involves the use of school district employees on school district time or the use of school district equipment is considered an indirect expenditure for purposes of the prohibition. Ethics Advisory Opinion No. 45 (1992).
2. Political advertising is defined in relevant part as a communication that supports a candidate and that appears in a pamphlet, circular, flier, or similar form of written communication. Section 251.001(16), Election Code.
3. The unsigned flier is political advertising because it supports school board candidates and appears in a flier. There is no evidence, however, that any of the respondents were responsible for preparing or distributing the flier. Thus, there is no credible evidence that the respondents violated Section 255.003(a), Election Code, as to this flier.
4. The flier signed by the respondents is political advertising because it supports school board candidates and appears in a flier. There is credible evidence that the respondents were responsible for creating and copying the flier using school district equipment. There is credible evidence that Respondent Carolyn Golson made copies of the flier and paid for them.
5. Thus, as to the flier signed by the respondents there is credible evidence of a violation of Section 255.003(a), Election Code.

V. Representations and Agreement by Respondents

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

1. The respondents neither admit nor deny the facts described under Section III and the commission's findings and conclusions of law described under Section IV, and consent to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of resolving and settling this sworn complaint.
2. The respondents consent 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 respondents waive any right to a hearing before the commission or an administrative law judge, and further waive any right to a post-hearing procedure established or provided by law.
3. The respondents acknowledge that an officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. The respondents agree to fully and strictly comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondents understand and agree that the commission will consider the respondents to have committed the violation described under Section IV, Paragraph 5, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondents.

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. No 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 these respondents are known to the commission, after considering the sanction necessary to deter future violations, and after considering the fact that the respondents were reprimanded by the school district before this complaint was filed, the commission imposes no civil penalty for the violation described under Section IV, Paragraph 5.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondents;
2. that if the respondents consent to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-210101;
3. that the respondents 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 November 9, 2001; and
4. that the executive director shall promptly refer SC-210101 either to 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 respondents do not agree to the resolution of SC-210101 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondents on this _____ day of _____, 200____.

Carolyn Golson, Respondent

Tina Brown, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director