

# TEXAS ETHICS COMMISSION

IN THE MATTER OF

BOB MORGAN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-210541

## 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-210541 filed against Bob Morgan, Respondent. The commission met again on August 10, 2001, to consider Sworn Complaint SC-210541. 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, 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 violated Section 255.003, Election Code, by using school district personnel and the school district's internal mail system to distribute political advertising.

### III. Facts Supported by Credible Evidence

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

1. The respondent is a member of the board of trustees of the Lindale Independent School District and he was a candidate for re-election to that office in the May 5, 2001, election.
2. In support of her allegations, the complainant submitted two letters written by the respondent. In the letters, the respondent encourages school employees to vote for him in the May 5, 2001, election.
3. In response to this complaint, the respondent submitted a statement in which he swears to the following:

In seeking re-election to the LISD Board of Trustees, I wrote two letters to the employees of the school district. One letter was to the educators and the other to the non-certified personnel of LISD. One of the five campuses had me place the letter in the internal mailboxes. This was the result of asking permission of the Superintendent of LISD. Mr. Richard Tedder checked the Texas Education Code and found no reason not to permit the use of the internal mail system. Mr. Tedder called the other candidates and invited them to have the same opportunity.

No school resources were used as my printing of the letters and the copies made were done by VGS, a local printing company. The school's internal mail system has been used by the Justice of the Peace and the Constable of this precinct in prior elections.

My letters were placed in each mailbox, some by me and the others at the request of the office clerks. No letters were attached to an employee's time card to my knowledge, nor would I have allowed this.

There was no attempt to be improper in my effort, only to reach each employee without electioneering on campus. I would never have done this had anyone voiced a concern or complained.

Since this complaint has been filed with the Texas Ethics Commission, the trustees are developing a local policy prohibiting any type of election campaigning on school property during school hours.

I am a retired person attempting to serve our school district in order to provide our children with the best educational and development opportunities. I have no relatives involved with the school district. Only desiring to serve as a concerned citizen.

#### **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.
2. 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).
3. 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. The letters at issue were widely distributed and thus are

fliers. The fliers constitute political advertising because they support the respondent as a candidate for school district trustee.

4. The respondent admits that either he or school employees placed the letters at issue in the school district's internal mail system for distribution to school employees. There is credible evidence that the respondent authorized an indirect expenditure from public funds by using school employees and school equipment to distribute political advertising in violation of Section 255.003, 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. The respondent acknowledges that an officer of a school district may not spend or authorize the spending of public funds for political advertising. The respondent further acknowledges that the prohibition extends to the use of school district employees on school district time or the use of school district equipment to distribute political advertising. The respondent agrees to fully and strictly comply with this requirement of the law.
4. 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 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 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, 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 this respondent are known to the commission, after considering that the respondent received the superintendent's approval to distribute the political advertising, and after considering the sanction necessary to deter future violations, the commission does not impose a civil penalty for the violation described under Section IV, Paragraph 4.

## 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-210541;
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 September 7, 2001; and
4. that the executive director shall promptly refer SC-210541 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-210541 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Bob Morgan, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Tom Harrison, Executive Director