

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KENNETH D. WEST,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220450

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on May 10, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220450 filed against Kenneth D. West, Respondent. The commission met again on October 11, 2002, to consider Sworn Complaint SC-220450. 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 255.001, 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, a candidate for county constable, failed to include the political advertising disclosure statement on political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for constable in the March 12, 2002, primary election in Eastland County.
2. The complainant alleges that the respondent did not put the required political advertising disclosure statement on campaign cards, campaign signs, and newspaper advertisements seeking support for the respondent's election.
3. The complainant included a copy of the campaign card, a photograph of a campaign sign, and copies of the newspaper advertisements.

4. The respondent made a sworn response through counsel that:

[a]fter receiving a letter . . . dated April 12, 2002, regarding a complaint filed against me in connection with a paid political advertisement, I realized that I had, indeed, committed this offense, however, did so unknowingly and unintentionally, and with no criminal intent to harm anyone. I have been in law enforcement for some 35 years, but I have not been involved in political campaigns in some 20 years and was simply unaware of the requirement to include a statement that this was a paid political advertisement, and assumed that the publishers knew the rules pertaining to political advertisements.

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 that supports or opposes a candidate, and that, in return for consideration, is published in a newspaper, or that appears in a pamphlet, circular, flier, sign, or similar form of written communication. Section 251.001(16), Election Code.
2. A person may not enter into a contract or agreement to print or publish political advertising that does not indicate that it is political advertising, and that does not contain the full name and address of the person who entered into the contract or agreement with the printer or publisher, or the full name and address of the person that individual represents. Section 255.001, Election Code.
3. The campaign card is political advertising because it supported the respondent's candidacy and is similar to a circular, flier or similar form of written communication.
4. The campaign signs are political advertising because they supported the respondent's candidacy in the form of a sign.
5. The newspaper advertisements are political advertising because they supported the respondent's candidacy and were published in a newspaper in return for consideration.
6. A political advertising disclosure statement was required on all the political advertising because the respondent entered into a contract or agreement to print or publish the political advertising. None of the political advertising submitted with the sworn complaint contained the political advertising disclosure statement.
7. In his sworn response, the respondent admits to violating Section 255.001, Election Code.

8. There is credible evidence that the respondent violated Section 255.001, Election Code, by failing to include the political advertising disclosure statement on political advertising.

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 a person may not enter into a contract or agreement to print or publish political advertising that does not indicate that it is political advertising, and that does not contain the full name and address of the person who entered into the contract or agreement with the printer or publisher, or the full name and address of the person that individual represents. 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 8, 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. 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 \$200 civil penalty for the violation described under Section IV, Paragraph 7.

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-220450;
- 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 \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than November 8, 2002; and
- 4. that the executive director shall promptly refer SC-220450 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-220450 as proposed in this ORDER and AGREED RESOLUTION.

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

Kenneth D. West, Respondent

EXECUTED ORIGINAL received by the commission on: _____.
Texas Ethics Commission

By: _____
Tom Harrison, Executive Director