

TEXAS ETHICS COMMISSION

IN THE MATTER OF
A. N. "NICK" VALLADO,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220573

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on July 12, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220573 filed against A. N. "Nick" Vallado, Respondent. The commission met again on November 15, 2002, to consider Sworn Complaint SC-220573. 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

The complainant alleges that the respondent represented on his political advertising that he held a public office that he did not hold by using the word "re-elect" on his 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 successful candidate for Los Fresnos Consolidated Independent School District school board trustee, "Place 5," in a May 4, 2002, election.
2. At the time of the election, the respondent held the "Place 6" position on the school board.
3. In support of her allegations, the complainant submitted two types of communications.
4. One communication is in the form of a newspaper advertisement that states, in part, "Re-Elect, Dr. A. N. (Nick) Vallado, Los Fresnos CISD School Trustee, Place 5."

5. The other communication is in the form of yard signs that state, in part, “Re-Elect Dr. A. N. “Nick” Vallado, For Los Fresnos CISD School Trustee, Place 5.”
6. In response to this complaint, the respondent submitted a sworn response in which he swears to the following:

I am A.N. Vallado, serving my fourth consecutive term on the Los Fresnos CISD School Board. I was recently reelected to my fourth term in the May 2002 election. I served in Place 6 the first three terms. I decided to change to Place 5 during the past election because two different candidates from two different slates chose to run in Place 6 (the place I previously held) . . . All of my political advertisements read “Reelect Dr. A. N. (Nick) Vallado, Place 5” as I simply believed that I was running for the “reelection” to Los Fresnos School Board.

Perhaps it would have been more appropriate if my political advertisement had read that I was running for reelection . . . However, I have not read in any state documents or guidelines that this clarification is required.

There were three candidates running in Place 5. The people that voted for me knew who they were voting for. It was never my intent to mislead anyone. . .

Upon consultation with a Texas Association of School Boards attorney and my own legal counsel, they could not find any reason to believe that this was inappropriate; I perused through the Election Code and did not find specificity as to the situation that is in question.

Perhaps the election code should clarify and state that an incumbent seeking reelection in a different place should state that he is changing places and thus wants to be elected to the new place and reelected to the school board.

IV. Findings and Conclusions of Law

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

1. 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.
2. Under Section 255.006, Election Code, 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.
3. A campaign communication includes a written communication relating to a campaign for election to public office. Section 251.001(17), Election Code.
 4. The newspaper advertising and the signs are campaign communications because they relate to the respondent's campaign for election to school board.
 5. The newspaper advertisement states in part, "Re-Elect, Dr. A. N. (Nick) Vallado, Los Fresnos CISD School Trustee, Place 5."
 6. The newspaper advertisement includes the words "Re-Elect" in connection with "Place 5," a position that the respondent did not hold. Furthermore, it does not include the word "for" to clarify that the respondent does not hold the office sought.
 7. Therefore, as to the newspaper advertisement, there is credible evidence that the respondent violated Section 255.006, Election Code, by using the word "Re-Elect" and by not including the word "for."
 8. The respondent's signs state in part, "Re-Elect Dr. A. N. "Nick" Vallado, For Los Fresnos CISD School Trustee, Place 5."
 9. The signs include the words "Re-Elect" in connection with "Place 5," a position that the respondent did not hold.
 10. Therefore, as to the signs, there is credible evidence that the respondent violated Section 255.006, Election Code, by using the word "Re-Elect."

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 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.
4. The respondent further acknowledges under Section 255.006, Election Code, 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.
5. 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 described under Section IV, Paragraphs 7 and 10, 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 violations that the commission has determined are 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 violations described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity of the violations, 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, and after considering the fact that in SC-220572 the commission imposed a fine for the same violations, the commission imposes no additional fine in this complaint.

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-220573;

- 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 December 13, 2002; and
- 4. that the executive director shall promptly refer SC-220573 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-220573 as proposed in this ORDER and AGREED RESOLUTION.

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

A.N. "Nick" Vallado, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director