

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HALE ALDERMAN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220898

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 10, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220898 filed against Hale Alderman. The commission met again on May 9, 2003, to consider Sworn Complaint SC-220898. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of section 255.004 of the 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 complaint raises the allegation that the respondent violated the law by indicating in a political advertisement that the political advertising emanated from a source other than its true source.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this sworn complaint, the respondent was a county political party precinct chairman.
2. The complainant submitted a newspaper advertisement that contains a copy of a resolution in which the county executive committee for the Republican Party criticizes the performance of a Republican county commissioner and disavows any further political relationship with the county commissioner. The resolution states that the county executive committee “will withhold all support for [the county commissioner] in any current or future political endeavors.”
3. There is a disclosure statement at the bottom of the advertisement that states that the advertisement was paid for by “Citizens for Integrity.” The disclosure statement names the respondent as secretary of Citizens for Integrity.

4. The respondent submitted a sworn statement in which he states that he “placed and paid for” the advertisement to appear in a local newspaper on two separate occasions. He states, “Use of the term Citizens for Integrity was intended to be a part of the message. Such an organization did not then or ever exist.” He also states, “There was never an intent to aid the campaign of any other candidate; only to publish a resolution that would inform voters.”

IV. Findings and Conclusions of Law

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

1. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. Elec. Code § 255.004(a).
2. "Political advertising" includes a communication opposing a public officer that, in return for consideration, is published in a newspaper. Elec. Code § 251.001(16).
3. The advertising at issue here is political advertising because it is a communication opposing a public officer that was published in a newspaper in return for consideration.
4. The political advertising purports to emanate from a source other than its true source because it purports to emanate from an organization that does not in fact exist.
5. The fact that the advertising itself states that the county commissioner’s political party will withhold support from the county commissioner in any future political endeavors, indicates that the intent of the resolution, and the intent in having the resolution printed in a newspaper, was to damage the county commissioner’s prospects in future elections.
6. Therefore, the evidence supports a finding that the respondent violated section 255.004(a) of the Election Code in connection with the newspaper advertisement.

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 commits an offense under section 255.004(a) of the Election Code if, with intent to influence the result of an election, the person enters into a contract or other agreement to print, publish, or broadcast political advertising that purports to emanate from a source other than its true source. Elec. Code § 255.004(a). The respondent agrees to fully and strictly comply with this requirement of the law.

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 6.

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-220898;
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, no later than June 6, 2003; and
4. that the executive director shall promptly refer SC-220898 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-220898 as proposed in this ORDER and AGREED RESOLUTION.

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

Hale Alderman, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director