

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TOM GLENN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230205

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230205 filed against Tom Glenn. The commission met again on November 13, 2003, to consider Sworn Complaint SC-230205. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence that the respondent violated section 255.003 of the Election Code, a law enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent authorized the use of public funds for political advertising in violation of section 255.003 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The respondent is the Superintendent of Schools of the Leander Independent School District.
2. The allegations relate to a February 1, 2003, Leander School District school bond election. The bond measure passed.
3. The complainant alleges that the respondent authorized spending school district funds to produce and mail a brochure supporting approval of the bond measure in violation of section 255.003 of the Election Code.
4. The respondent filed an affidavit in response to the allegations. He swears that it is his job to review and approve of written communications that the Leander Independent School District distributes to the public.

5. The respondent approved the communication at issue in this complaint.

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. ELEC. CODE § 255.003(a). The prohibition does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure. ELEC. CODE § 255.003(b).
2. The respondent approved the expenditure of public funds for the communication at issue.
3. Whether or not the respondent violated section 255.003 of the Election Code, depends on whether the communication constituted political advertising. In order to constitute political advertising as the complainant alleges, the communication must have advocated the passage of the school bonds.
4. The statute at issue allows a communication to contain a factual description of the purpose of a measure. However, although the communication at issue factually describes the purpose of the bond election, when considered in its entirety, it also advocates a vote for the bonds.
5. Because the communication advocates the passage of the bonds and because the respondent authorized its publication, there is credible evidence that he violated section 255.003 of the 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 or 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 this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings before the commission, and before any formal adjudication 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 provided by law.
3. The respondent acknowledges that an officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. The respondent agrees to fully comply with this requirement of the law.

4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent agrees that the commission will consider the respondent to have committed the violation described under Section IV 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 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, and consequences 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 \$500 civil penalty for the violation described under Section IV.

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-230205;
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 \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than December 11, 2003; and
4. that the executive director shall promptly set SC-230205 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230205 as proposed in this ORDER and AGREED RESOLUTION.

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

Tom Glenn, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director