

TEXAS ETHICS COMMISSION

IN THE MATTER OF

DALE BERRY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-240461

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 10, 2004, to consider sworn complaint SC-240461. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.001 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 resolution to the respondent.

II. Allegations

The complaint alleges that the respondent, a pastor of a church, violated section 255.001 of the Election Code, which prohibits a person from causing political advertising containing express advocacy but not containing a disclosure statement to be published or distributed. The complaint also alleges that the respondent violated section 255.007 of the Election Code, which prohibits a person from knowingly entering into a contract to print or make a political advertising sign that does not contain a right-of-way notice and from instructing another person to place a political advertising sign that does not contain a right-of-way notice.

III. Facts Supported by Credible Evidence

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

1. The respondent is a pastor of a church.
2. In support of her allegations, the complainant submitted photographs of a sign at five different locations, including one on the property of the respondent's church. The sign says, "Vote NO! Beer & Wine Sales May 15th 'Our Future Depends on it.'" The side of the sign shown in the photographs does not include a political advertising disclosure statement or a right-of-way notice.

3. The respondent submitted an affidavit in which he states that he did not enter into any contract to print or make the signs in question and that he did not instruct anyone to place the signs in question. He states that he did place three of the signs on church property.

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 cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person, candidate, or political committee who paid for it. ELEC. CODE § 255.001. The signs in question urge voters to vote against a measure and are therefore political advertising containing express advocacy. *Id.* § 255.001(16) (defining “political advertising”); *Osterberg v. Peca*, 12 S.W. 3rd 2000 (Tex. 2000) (discussing the meaning of “express advocacy”). By placing the signs in question on church property the respondent caused the signs to be distributed. Because the signs did not contain a political advertising disclosure statement, there is credible evidence that the respondent violated section 255.001 of the Election Code.
2. A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the right-of-way notice or if the person instructs another person to place a political advertising sign that does not contain notice that it is illegal to place the sign in the right-of-way of a highway. ELEC. CODE § 255.007(b). The respondent swears that he did not enter into a contract to print or make the political advertising signs at issue and that he did not instruct another person to place the signs. Thus, there is credible evidence that the respondent did not violate section 255.007 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 nor denies the facts described under Section III or 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 this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person, candidate, or political committee who paid for it. The respondent agrees to fully 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. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes no civil penalty for the violation described under Section IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-240461.

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

Dale Berry, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director