

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GERRY DAVIS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2410190

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on March 10, 2005, to consider sworn complaint SC-2410190. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.003 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 spent or authorized the spending of public funds for political advertising and that the respondent failed to include a required 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 is a member of the Saginaw, Texas, city council.
2. The complaint involves a postcard urging voters to vote “no” in an election regarding the adoption of the Texas civil service law for the Saginaw police department. The mayor and the city council members all signed copies of the card and mailed it to city voters.
3. The evidence shows that the respondent prepared a draft of the postcard and forwarded it to the city manager at her city e-mail address, asking her for feedback. The city manager reviewed the postcard and indicated to the respondent that she would direct the police chief to do the same. Later the same day, the city manager contacted the police chief on his city e-mail address regarding the message contained on the postcard. The police chief responded by proposing changes to the postcard. The city manager forwarded the police chief’s proposals to the respondent with a general endorsement of the police chief’s work.

4. The respondent swears that she intended the city manager to check for factual accuracy. The city manager swears that she understood that the respondent intended her to check for factual accuracy. She also swears that she directed the police chief to review the card for factual accuracy. The police chief swears that the city manager asked him to review the postcard for factual accuracy.
5. The postcard was not printed or mailed at city expense.
6. The postcard does not contain a political advertising disclosure statement.

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 city may not authorize the use of city resources for political advertising. ELEC. CODE § 255.003(a); Ethics Advisory Opinion No. 45 (1992).
2. The term “political advertising” includes a communication supporting or opposing a measure that appears in a pamphlet, circular, flier, or similar form of written communication. *Id.* § 251.001(16). The postcard opposes the election and it was distributed as a circular or flier. Therefore, it is political advertising.
3. The e-mail communications described in Section III support a finding that the respondent requested assistance from the city manager in making the postcard more effective. The city e-mail and the paid time of the city manager are city resources. Therefore, there is credible evidence that the respondent violated section 255.003 of the Election Code by authorizing the use of city resources for political advertising.
4. A person may not cause political advertising containing express advocacy to be published or distributed if the political advertising does not include certain disclosure information. ELEC. CODE § 255.001(a). That requirement does not apply to political advertising in the form of circulars or fliers that cost in the aggregate less than \$500 to publish and distribute. The evidence shows that it cost less than \$500 to publish and distribute the postcards in question. Therefore, the evidence does not support a finding that the respondent violated section 255.001 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 section 255.003 of the Election Code prohibits the use of city resources for political advertising. 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. Sanction

The commission imposes a \$200 civil penalty for the violation described under Sections III and 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-2410196.

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

Gerry Davis, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director