

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BILL CALDWELL,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-250436

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 12, 2006, to consider sworn complaint SC-250436. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 571.1242 of the Government 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. Allegation

The complaint alleges that the respondent failed to include the right-of-way notice on political advertising signs.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for re-election as mayor in a May 7, 2005, city election.
2. After the complainant submitted the complaint, he submitted a photograph of one side of one of the signs. The sign states "Re-Elect Bill Caldwell Mayor." There is no right-of-way notice visible in the photograph of the sign. The political advertising disclosure statement on the sign states that it was paid for by the "Committee to Re-Elect Bill Caldwell Mayor."
3. The complainant also submitted photographs of the other side of the sign. There is no right-of-way notice present.

4. The respondent refused to sign for the notice of the sworn complaint so staff mailed a copy of the sworn complaint to the respondent by first class mail with a request for delivery confirmation. Confirmation was received that it was delivered on May 28, 2005.
5. The respondent submitted a sworn response on December 15, 2005, stating that he did not have anything to do with the purchase or the placement of the signs. The respondent was required to file a response by June 13, 2005. The respondent's response states that he thought he had responded to the complaint as requested.

IV. Findings and Conclusions of Law

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

1. The signs at issue are political advertising because they support a candidate for election to a public office. ELEC. CODE § 251.001(16).
2. Because the signs are political advertising signs designed to be seen from a road, they were required to include the following notice on the signs.

"NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY."

ELEC. CODE § 255.007(a).

3. The evidence indicates that there was no right-of-way notice on the signs. The respondent swears that he did not have anything to do with the purchase or the placement of the signs. There is no evidence to contradict the respondent's assertion. Therefore, there is insufficient evidence that the respondent violated section 255.007 of the Election Code.
4. With respect to the respondent's failure to respond to the sworn complaint notice, three complaints were filed against the respondent. The commission received the respondent's response for SC-250423 on April 29, 2005. That response was dated April 27, 2005. There is no record that he filed responses in this complaint or in the third complaint, SC-250450. The respondent states that he thought he had responded to all of the sworn complaints. However, he did not receive the sworn complaint notice for SC-250450 until April 29, 2005, or for this complaint until May 28, 2005, after his response to the first sworn complaint.
5. A response must be made by the deadline and must be in writing. GOV'T CODE § 571.1242; Ethics Commission Rules § 12.52. A failure to respond is itself a violation. GOV'T CODE § 571.1242. The evidence indicates that the respondent did not file a timely response.

Therefore, there is credible evidence that the respondent violated section 571.1242 of the Government 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 respondent is required to file a response to a sworn complaint by the deadline and that the response must be in writing. The respondent agrees to 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 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-250436.

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

Bill Caldwell, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director