

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOHN ALLEN GRACE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-250589

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on July 14, 2005, to consider sworn complaint SC-250589. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001 and 255.006 of the Election Code, laws 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 represented in campaign communications that he held an office he did not hold at the time the representations were made. The complaint also alleges that the respondent failed to include the required disclosure statement in political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate in a May 7, 2005, mayoral election.
2. The respondent was responsible for signs, the text of which read "John Grace Mayor."
3. The respondent mailed postcards on which the following text appears:

Front: ELECT JOHN GRACE
MAYOR OF COLLEYVILLE

Back: VOTE FOR
JOHN GRACE
MAYOR

And Elect John Grace Mayor of Colleyville

4. At the time the signs were posted and the postcards were mailed, the respondent did not hold the office of mayor.
5. The respondent submitted an affidavit stating that on April 18, 2005, shortly after he was made aware of his violations of section 255.006 of the Election Code, he ordered and distributed “for” stickers to volunteers to correct his signs. He placed additional sticker orders on April 25th and May 2nd.
6. In his sworn response, the respondent makes no reference to any attempt to correct the wording on the postcard and states his belief that using the words “VOTE FOR” before “JOHN GRACE MAYOR” on the postcard was sufficient to avoid a violation.
7. The respondent submitted an affidavit admitting that he paid for the postcards.
8. No disclosure statement is visible on the postcards.

IV. Findings and Conclusions of Law

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

1. A person violates section 255.006(b) of the Election Code if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made.
2. Such representation occurs if the communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office. ELEC. CODE § 255.006(c)(2).
3. The signs and postcards were campaign communications because they were written communications relating to a campaign for election to public office. ELEC. CODE § 251.001(17).
4. The signs and postcards stated the office of mayor without including the word “for” before the name of the public office sought to clarify that the respondent does not hold that office.
5. Therefore, there is credible evidence that the respondent violated section 255.006 of the Election Code.
6. 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(a).

7. Political advertising that is authorized by a candidate is deemed to contain express advocacy. ELEC. CODE. § 255.001(b).
8. The postcards are political advertising because they are communications supporting a candidate for election to a public office that appear in a pamphlet, circular, flyer, billboard or other sign, bumper sticker, or similar form of written communication. ELEC. CODE § 251.001(16).
9. According to the evidence, the candidate authorized the postcards, therefore they are deemed to contain express advocacy.
10. There is no visible political advertising disclosure statement on the postcards.
11. Therefore, there is credible evidence that the respondent violated section 255.001 of the Election Code by failing to include the required disclosure statement on political advertising.

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 represent in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation was made. The respondent also 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 and strictly comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are 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 violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, 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-250589.

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

John Allen Grace, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director