

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SHERRY LYLE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2604132

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on November 28, 2006, to consider sworn complaint SC-2604132. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.006 and 255.007 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 failed to include the right-of-way notice on political advertising, represented in political advertising that she held a public office that she did not hold at the time the representation was made, and misrepresented her identity 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 an unsuccessful candidate for Tye City Council. The respondent was not the incumbent at the time she ran for office.
2. The respondent's campaign signs did not include a "right-of-way" notice.
3. The respondent distributed campaign signs stating "Elect Sherry Lyle Tye City Council." The signs did not include the word "for."
4. The respondent published political advertising in a newsletter asking readers to "Vote Sherry Lyle City Council Place 2." The advertisement did not include the word "for."

5. Prior to the election, the respondent placed an advertisement in the Tye Chamber of Commerce newsletter listing a hotline readers could call for help. The advertisement urged readers to “Vote Sherry Lyle City Council Place 2” and listed the “call-for-help hotline” number. The brochure indicates that it was paid for by “SHERRY LYLE FOR CITY COUNCIL CAMPAIGN.”
6. The respondent established the hotline through her church in 1986. The respondent decided to publicize the hotline on the brochure she handed out in connection with her campaign for office in April 2005 because people did not know about the hotline.
7. The commission sent the respondent an Assurance of Voluntary Compliance to settle the complaint on September 13, 2006, via certified mail. The letter was returned to the commission because the respondent failed to pick it up. On October 4, 2006, the respondent told commission staff that she was unable to pick up the letter from the post office and asked that the item be sent regular mail. The letter was sent delivery confirmation and delivered to the respondent on October 7, 2006. The respondent did not return the Assurance of Voluntary Compliance by the deadline and has failed to return multiple phone calls from commission staff.

IV. Findings and Conclusions of Law

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

1. The Election Code provides that the following notice must be written on each political advertising sign: “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).
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 the right-of-way notice. *Id.* § 255.007(b).
3. The respondent’s signs are political advertising signs because they are communications supporting a candidate for election to a public office that appeared on a sign and were designed to be seen from a road. ELEC. CODE §§ 251.001(16)(b), 255.007(e). Thus, a right-of-way notice was required on the signs.
4. The respondent did not include the right-of-way notice on political advertising signs. Therefore, there is credible evidence of a violation of section 255.007 of the Election Code.

5. 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 is made. ELEC. CODE § 255.006(b).
6. A person represents that a candidate holds a public office the candidate does not hold if the candidate does not hold the office the candidate seeks, and the campaign 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 to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
7. The signs and the newsletter are campaign communications because they are written communications relating to a campaign for public office. ELEC. CODE § 251.001(17).
8. The respondent was not the incumbent in the election and she failed to include the word “for” in her campaign communications. Therefore, there is credible evidence that the respondent violated section 255.006 of the Election Code.
9. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person’s identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent’s principal, in political advertising or a campaign communication. ELEC. CODE § 255.005.
10. The respondent clearly identified herself as the candidate for city council in her newsletter. Additionally, the newsletter included a statement indicating that the advertisement was paid for by the respondent. Therefore, there is credible evidence that the respondent did not violate section 255.005 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 represent in a campaign communication that a candidate holds a public office the candidate does not hold at the time the representation is made. The respondent further acknowledges that under section 255.006 of the Election Code, a person represents that a candidate holds a public office the candidate does not hold if the candidate does not hold the office that the candidate seeks, and the campaign communication states the public office sought but does not use the word “for” in a

type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. The respondent also acknowledges that each political advertising sign designed to be seen from a road must include a right-of-way notice. The respondent agrees to 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 violations 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-2604132.

AGREED to by the respondent on this _____ day of _____, 2006.

Sherry Lyle, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director