

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
JANET R. LINDSEY,  
RESPONDENT

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BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-2803133

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (the commission) met on December 4, 2008, to consider sworn complaint SC-2803133. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001, 255.006, and 255.007 of the Election Code, laws administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondent.

### II. Allegations

The complaint alleges that the respondent failed to include a political advertising disclosure statement and a highway right-of-way notice in political advertising and misrepresented in campaign communications that she held a public office that she did not hold at the time of the communications.

### III. Facts Supported by Credible Evidence

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

1. The respondent was a candidate for county and district clerk of Upton County in a primary election held on March 4, 2008, and a subsequent runoff election held on April 8, 2008, in which she was unsuccessful. The respondent did not hold the office of county or district clerk at the time of the election.
2. At issue in the complaint are signs and business cards purchased and distributed by the respondent. The signs and cards stated:

JANET LINDSEY

COUNTY/DISTRICT CLERK

Vote for Experience

3. Neither the signs nor the cards included a political advertising disclosure statement or highway right-of-way notice.
4. In response to the allegations, the respondent swears that it was brought to her attention on February 11, 2008, that her signs and cards did not include a political advertising disclosure statement. She swears that she ceased using the cards and ordered new cards at that time.
5. The respondent purchased and corrected additional cards to properly include the word “for” and corrected the signs at issue to include the disclosure statement, highway right-of-way notice, and the word “for” to clarify that the respondent did not hold the office.
6. The respondent also swears that she “was in no way trying to be misleading,” that she had worked in the county/district clerk’s office for almost six years as a deputy, and that most of the 2,000 voters in the county knew that she was not the incumbent.
7. The respondent’s campaign finance reports indicate that she made approximately \$1,174 in political expenditures in connection with the primary election and an additional approximate \$386 in political expenditures in connection with the runoff election.

#### **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, in pertinent part, the full name of the person who paid for the political advertising. ELEC. CODE § 255.001(a).
2. “Political advertising” means, in pertinent part, a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* § 251.001(16)(B)(i).
3. “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. *Id.* § 251.001(1).
4. In Ethics Advisory Opinion No. 435, the commission stated that political advertising in the form of business cards must include a political advertising disclosure statement. Ethics Advisory Opinion No. 435 (2001).

5. The evidence indicates that the respondent purchased and distributed signs and business cards that expressly advocated support for her as a candidate for public office and that did not include a political advertising disclosure statement. Therefore, there is credible evidence that the respondent violated section 255.001(a) of the Election Code.
6. A person commits an offense 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. ELEC. CODE § 255.006(b). For purposes of this section, a person represents that a candidate holds a public office that 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 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 business cards did not include the word “for” to clarify that the respondent did not hold the office of county/district clerk. The signs and business cards constituted campaign communications because they were written communications relating to a campaign for nomination or election to public office. Therefore, there is credible evidence that the respondent violated section 255.006(b) of the Election Code because the word “for” was not properly included in the signs and business cards.
8. Campaign communication means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure. *Id.* § 251.001(17).
9. 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.”  
  
*Id.* § 255.007(a).
10. 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 notice or instructs another person to place a political advertising sign that does not contain the notice. *Id.* § 255.007(b). “Political advertising sign” means a written form of political advertising designed to be seen from a road but does not include a bumper sticker. *Id.* § 255.007(e).
11. The evidence indicates that the signs were political advertising designed to be seen from a road and did not include a highway right-of-way notice. Therefore, there is credible evidence that the respondent violated section 255.007(a) 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, in pertinent part, the full name of the person who paid for the political advertising. The respondent also 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 is made and that a person represents that a candidate holds a public office that 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 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. The respondent also acknowledges that a person may not knowingly enter into a contract to print or make a political advertising sign that does not contain a highway right-of-way notice or instructs another person to place a political advertising sign that does not contain the 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 \$100 civil penalty.

**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-2803133.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Janet R. Lindsey, Respondent

EXECUTED ORIGINAL received by the commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
David A. Reisman, Executive Director