

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GRADY W. SMITHEY, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2805227

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-2805227. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.006 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. Allegation

The complaint alleges that the respondent represented in a campaign communication that he held an elective public office that he did not hold at the time the representation was made.

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 city council in the May 10, 2008, Duncanville city election. The respondent was not the incumbent in that election but previously held that position.
2. The complaint included copies of two photographs taken on April 2, 2008, of advertising signs that state, "RE-ELECT SMITHEY FOR CITY COUNCIL DISTRICT 4." The complaint alleged that using the word re-elect represents that the respondent currently holds the office.

3. The complaint also includes copies of newspaper advertising that were published in the Dallas Morning News on May 3 and May 10, 2008, and in the Duncanville Today newspaper on May 8, 2008, that state in part, "ELECT SMITHEY City Council District 4."
4. The respondent filed a response in which he swears that he replaced the signs that said re-elect after learning about the requirements of the political advertising law. The respondent swears that he also put a sticker on all of his signs which stated "Vote to" to cover up the "RE-" in "RE-ELECT." The respondent also swears that he just overlooked the "for" not being on the newspaper advertising.

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 represent in a campaign communication that the candidate holds a public office that the candidate does not hold at the time the representation is made. ELEC. CODE § 255.006(b).
2. 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 political advertising or 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 the office. ELEC. CODE § 255.006(c).
3. 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. ELEC. CODE § 251.001(17).
4. The respondent was not the incumbent in the election. The respondent's signs and newspaper advertising are written communications relating to a campaign for election to public office and are, therefore, campaign communications. Although the respondent's signs included the word "for" before the office sought, the use of the word "re-elect" on the respondent's signs represented that the respondent currently held the office he was seeking. Further, the respondent acknowledged that his signs stated "RE-ELECT" and that he covered up the "RE-" when he learned that he could not use the word "re-elect." The evidence shows that the respondent's newspaper advertising did not include the word "for" before the office sought to clarify that the respondent did not hold that office. Further, the respondent acknowledged that he failed to include the word "for" in his newspaper advertising. Therefore, there is credible evidence that the respondent violated section 255.006 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 the candidate holds a public office that the candidate does not hold at the time the representation is made. The respondent also acknowledges 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 political advertising or 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 the office. The respondent agrees to comply with these requirements 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

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 a \$200 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-2805227.

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

Grady W. Smithey, Jr., Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director