

TEXAS ETHICS COMMISSION

IN THE MATTER OF
JOAN HARVEY,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3100370

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-3100370. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.003(a) of the Election Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegation

The complaint alleged that the respondent spent or authorized the spending of public funds for political advertising.

III. Facts Supported by Credible Evidence

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

1. The respondent is the Riverside City Secretary.
2. The complaint alleged that on February 22, 2009, after the complainant paid a bill and while still at city hall, the respondent asked him if he was going to vote and handed him a campaign card supporting an opposed candidate for justice of the peace in the March 2, 2010, primary election.
3. In response to the sworn complaint, the respondent submitted an affidavit in which she admitted the sworn complaint allegation. The respondent swore that, to improve voter turnout, she tries her best to get citizens of Riverside to vote.

IV. Findings and Conclusions of Law

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

1. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003(a).
2. A city is a political subdivision. *Id.* § 1.005(13).
3. Political advertising is defined, in relevant part, as a communication supporting or opposing a candidate for nomination or election to a public office that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* § 251.001(16).
4. Any method of distribution of political advertising that involves the use of political subdivision employees on political subdivision time would be within the prohibition in section 255.003 of the Election Code. *See* Ethics Advisory Opinion No. 45 (1992).
5. The respondent is an officer or employee of a political subdivision.
6. The campaign card at issue supported a candidate for justice of peace. Therefore, the card was political advertising.
7. The respondent was acting in her capacity as an officer or employee of the city at the time she handed the complainant the campaign card at issue. Therefore, there is credible evidence that the respondent violated section 255.003(a) of the Election Code when she used city time and city resources to distribute 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 an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. 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. 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 \$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-3100370.

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

Joan Harvey, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director