

TEXAS ETHICS COMMISSION

IN THE MATTER OF

TERRY LOWRY,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31007215

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 14, 2011, to consider sworn complaint SC-31007215. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.002 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, as publisher of a newsletter, sold political advertising at rates exceeding the lowest charge made for comparable use of the space.

III. Facts Supported by Credible Evidence

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

1. The respondent is the owner and publisher of "The Link Letter," a newsletter. The complaint alleged that the respondent sold political advertising at rates exceeding the lowest charge made for comparable use of the space. At issue in the complaint is the respondent's February 2010 newsletter.
2. The complaint included copies of the advertisements at issue, as well as an advertisement price list. The price list identified the names of each candidate or officeholder who purchased advertisement space in the respondent's newsletter, the amount each person paid, and the size of each advertisement. A candidate for probate court judge was charged \$10,000 for two full page advertisements. The entries for two candidates for county judge and state representative indicated that each candidate received the same amount of advertisement space (one page). However, one candidate was charged \$5,000 while the other candidate was charged \$10,000.

IV. Findings and Conclusions of Law

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

1. “Political advertising” is defined, in relevant part, as a communication supporting or opposing a candidate for nomination or election to a public office that in return for consideration, is published in a newspaper, magazine, or other periodical. ELEC. CODE § 251.001(16).
2. The rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes. ELEC. CODE 252.002(b).
3. In determining amounts charged for comparable use, the amount and kind of space or time used, number of times used, frequency of use, type of advertising copy submitted, and any other relevant factors shall be considered. ELEC. CODE 252.002(c).
4. The documents at issue supported the election of candidates to public office. Therefore, they are political advertising. The evidence indicated that two candidates for public office purchased the same amount of advertisement space from the respondent. However, the candidates were charged rates differing by \$5,000 for the same amount of space. Therefore, there is credible evidence of a violation of section 255.002(b) 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 the rate charged for political advertising that is printed or published may not exceed the lowest charge made for comparable use of the space for any other purposes. The respondent agrees to comply with this requirement 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 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 \$500 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-31007215.

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

Terry Lowry, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director