

TEXAS ETHICS COMMISSION

IN THE MATTER OF
KENNETH W. HAWKINS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31011409

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on February 8, 2012, to consider sworn complaint SC-31011409. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.003 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. Allegations

The complaint alleged that the respondent knowingly 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. At the time of the complaint, the respondent was the mayor of the City of Willow Park.
2. The complaint alleged that the respondent spent or authorized the spending of public funds for political advertising by: 1) including a letter that constituted political advertising in the city's water billing statements, and 2) using the city's telephone broadcast system to promote himself as mayor and to solicit email addresses for his personal newsletter distribution list.

Letter

3. The complaint alleged that on or about October 23, 2010, the respondent directed that a letter be included in utility bills sent to residents of the City of Willow Park.
4. The complaint included a copy of the letter, which encouraged citizens to cancel subscriptions to a local newspaper, The Community News. In the letter, the respondent claimed that the newspaper was biased against him and the members of the city council. The

letter then gave examples of the service he and the city council members had performed while in office.

5. In pertinent part, the letter stated:

As the Mayor, I have a certain responsibility to promote the well being of our city in the public forum. I serve as an *unpaid volunteer* as do the five City Council members who together represent Willow Park to the best of our abilities. Together we are accomplishing strategic improvements in our city. As you might imagine, we try to effectively communicate with our fellow citizens to inform you of the whole truth about the actions of your Council. We have Open Meetings, I hold Open Mayor Forums, communicate through emails, and utilize our phone broadcasting when matters affect your neighborhoods. I continue to search for every way to relay to you directly to keep you informed about why things are occurring. To that end, I want to invite each of you to e-mail me your address so that I can add you to my periodic reports. Please send a note to kennethwhawkins@aol.com. I will keep you updated on the events that transpire at our open City Council meetings and try to give you insight into the decisions we make.

...

Remember, your Council is made up of wonderful public servants who devote many hours in *unpaid service* for each of you. Councilman Tatum has often driven up from Houston where he works during the week to make sure he attends important Council Meetings. Councilman Alderman while recovering from open heart surgery pushed himself to make the meetings from a sense of duty *in service to you*. Councilman Hickerson recently promoted to a management position at Lockheed continues to *volunteer his time* even though he would prefer time with his children. Councilman Brown serves in several capacities balancing his time between work, service in his church, the Aledo Band Club, and being a father and husband to a great family. Councilman Martin does all the normal duties of a Councilman and is reorganizing our entire Code of Ordinances to streamline the law and minimize infringements upon your personal liberty. (Emphasis in original.)

6. The complaint also included an email sent by the respondent, directing that the letter be included in the city water billing statement. In the email, the respondent stated that the letter “has been formatted to appear on the front and back of a single piece of paper [in order] to minimize the cost to the city.”
7. In a sworn response, the respondent admitted to composing the letter. The respondent also asserted that the “expense incurred in delivery of the correspondence was de minimis.”

Telephone Broadcast System

8. The complaint alleged that the respondent used the city's telephone broadcast system to promote himself as mayor and to solicit email addresses for his personal newsletter distribution list.

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. Political advertising means 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, in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication or on an Internet website. *Id.* § 251.001(16).
3. The critical issues in determining whether a communication is political advertising are whether it supports or opposes a public officer and whether it appears in a format that constitutes political advertising.
4. In Ethics Advisory Opinion No. 211 (1994), the commission determined that a brochure that listed the duties of a justice of the peace, and also listed the name, courthouse address, and courthouse phone number of a specific justice of the peace, was not political advertising. The commission stated that the name of the officer appeared only on letterhead and did not appear in such a way that would lead one to believe that the communication's purpose was to support the public officer.
5. In Ethics Advisory Opinion No. 476 (2007), the commission determined that a newsletter that prominently featured photographs of a public officer and contained several personally phrased references was political advertising. The commission stated that based on the area of the newsletter covered by photographs, the number of instances in which the name of the public officer appeared, and the manner in which the name of the officer was set apart from other text, the newsletter appeared more promotional than informational and thus supported the public officer.

Letter

6. Although the letter did not feature any photographs, it did contain a number of personally phrased references about the respondent and the city council members. Also, the letter went beyond merely listing the duties of and contact information for the public officers, as the

letter also described the personal challenges the officers overcame out of a sense of service to the community. As a result, much of the communication was promotional rather than informational. Therefore, the letter supported the mayor and city council members of Willow Park.

7. The communication at issue appeared in a pamphlet, circular, or flier or similar form of written communication and was in support of public officers. Thus, the communication was political advertising.
8. The respondent authorized the use of city funds or resources to distribute the communication. Therefore, the respondent authorized the spending of public funds for political advertising. There is credible evidence of a violation of section 255.003 of the Election Code.

Telephone Broadcast System

9. The use of a telephone system does not fall within the definition of political advertising. Therefore, there is credible evidence of no violation of section 255.003 of the Election Code with regard to that communication.

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 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.

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-31011409.

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

Kenneth W. Hawkins, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director