

TEXAS ETHICS COMMISSION

IN THE MATTER OF

PATRICIA TORRES-MCLEAN,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31509156

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on September 27, 2017, to consider sworn complaint SC-31509156. 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, as an officer or employee of a political subdivision, 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 was the President of the Board of Trustees for Ysleta Independent School District (YISD) at the time relevant to the complaint. She is no longer on the school board of trustees.
2. The complaint alleged that the respondent authorized the spending of public funds for a newsletter that advocated for the approval of a YISD bond measure. A newsletter, titled "Special Newsletter, 2015 YISD Bond, The Communicator, Vol. 12, Issue 2," was published in the Spring of 2015.
3. The second page of the newsletter at issue includes a section titled "Greetings from the Board President," in which the respondent writes about the need for the construction projects that will be funded with the bond measure. For example, the respondent wrote, "[O]ur facilities needs are so great that we just don't have the money to do it on our own.

This is why the Board of Trustees approved a \$451.5 million bond proposal for the May 9 election."

4. The third page of the newsletter includes a description of the new construction and renovations that the school bond would pay for. The final page of the newsletter includes a frequently asked questions section and a comparison of the tax rates at YISD and surrounding school districts. One of the frequently asked questions is: "Is this school bond really needed?" The answer reads: "Ysleta ISD is 100 years old – and many of our schools have deteriorated to the point where they must be repaired, rebuilt, or modernized. School bonds are used as a primary source for school districts to help pay for costly school facilities projects."
5. The school bond election was held on May 9, 2015, and was not approved by the voters.
6. The respondent denied the allegation by asserting that the newsletter did not constitute political advertising. The respondent argued that the newsletter contained statements of fact and did not advocate passage or defeat of the measure. The respondent attached to her response multiple engineering reports detailing the deterioration of the YISD school district.
7. The respondent stated in her response that she only reviewed and authorized the "Greetings from the Board President" portion of the newsletter.

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). Subsection (a) does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure. *Id.* § 255.003(b).
2. "Political advertising" is defined, in relevant part, as a communication supporting or opposing 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).
3. "Measure" means a question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. *Id.* § 251.001(19).

4. The critical question in determining whether a communication constitutes "political advertising" is whether it is a communication supporting or opposing a measure. Whether a particular communication supports or opposes a measure is a fact question. A factor in determining whether a particular communication supports or opposes a measure is whether the communication provides information and discussion of the measure without promoting the outcome of the measure. Ethics Advisory Opinion No. 476 (2007). Whether a violation of section 255.003(a) of the Election Code has occurred depends on an examination of the overall content of the advertising.
5. The Commission's brochure on the prohibition against using political subdivision resources for political advertising expressly warns against "wrap[ing] up a factual explanation with a motivational slogan" or including "calls to action such as: Put Children First or Show That You Care About Education." *A Short Guide to the Prohibition Against Using Political Subdivision Resources for Political Advertising in Connection with an Election*, Texas Ethics Commission (last revised September 1, 2009) (internal quotation marks omitted), available at https://www.ethics.state.tx.us/pamphlet/B09pad_pol.pdf.
6. In past enforcement actions, the Commission found violations of section 255.003 of the Election Code for general "promotional statements" that exceeded a factual description of the purposes of the measure. *See, e.g., In re Williams et al.*, SC-211170 (brochure supported passage of sales tax proposition by describing "attractive amenities" the tax would pay for); *In re Isreal*, SC-210964 (newsletter supported measure because it included "we want to sustain the excellence. And we are now asking voters if they too want to sustain the excellence"); *In re Joiner*, SC-31605137 (Letter from city attorney that raised questions about a measure to switch forms of local government and was included with a newsletter about the measure "exceeds a factual description of the purposes of the measure, and the letter, when viewed as a whole, opposes the measure").
7. The respondent admits that the newsletter was paid for with YISD funds and that she was directly responsible for the "Greeting from the Board President" section. The newsletter is a circular or flyer, such that its contents could be considered political advertising if it supports or opposes a measure. The only relevant question is whether the "Greetings from the Board President" section of the newsletter goes beyond factually describing the measure, and when viewed as a whole, advocates for its passage.
8. The respondent begins by laying out her priority to "make sure all YISD students get the best education possible." She then states that school facilities that promote a positive learning experience are a requirement to achieve that goal. "But," she writes, "it has become clear that many of our school facilities are woefully lacking." She then states that she personally believes the plan to be financed by the bond "is a wonderful first step" to fix the "catastrophic" state of the YISD schools. She closes with a call to action, writing, "Again, I thank you for your support of our schools. Together, we can build a brighter future for our 42,500 students, and continue the legacy of success. . . ."

9. The "Greetings from the Board President" section is structured as a persuasive essay (stating a goal of quality education, identifying poor facilities as the problem preventing the goal, and presenting the passage of the school bond measure as the solution to the problem). It also includes her personal preference for the measure to pass (the plan to be funded by the bonds is a "wonderful first step") and a call to action ("together, we can build a brighter future"). When viewed as a whole, the respondent's section of the newsletter goes beyond factually describing the measure and advocates for its passage. Therefore, there is credible evidence of a violation of section 255.003 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 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 nature, circumstances, and consequences of the violation described under Sections III and IV, 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-31509156.

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

Patricia Torres-McLean, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director