

TEXAS ETHICS COMMISSION

IN THE MATTER OF
BEVERLY J. WILSON,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-31712183

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on March 27, 2018, to consider sworn complaint SC-31712183. 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 adopted this resolution.

II. Allegations

The complaint alleged that the respondent, as an officer or employee of a political subdivision, knowingly spent or authorized the spending of public funds for political advertising by using the Leon County's Internet website to support her re-election, as prohibited by section 255.003 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The respondent was the incumbent candidate for Leon County District Clerk in the March 6, 2018, election.
2. The complaint alleged that the respondent used public funds for political advertising with respect to the Leon County District Clerk's Facebook page by posting comments about the clerk's office on November 7, 2017. The complaint alleged that the respondent "is using the Leon County Texas website and the Leon County District Clerk Facebook page for self promotion for election purposes." The complaint also alleged that the respondent "is removing all negative comments that are made about her on the Leon Co. Facebook page."
3. The respondent's posting detailed "the special projects accomplished in the last three years since I took office in January 2015" that "are in addition to daily activities" of the district

clerk. The posting listed acts the respondent performed as district clerk for the county on a month-by-month basis from January 2015 through October 2017.

4. The respondent referred to herself in more than 80 sentences and phrases in the posting. She directly identified herself as the officer who accomplished the tasks, using statements that included "I," "me," "my office," "District Clerk Beverly Wilson," "the District Clerk," or "the District Clerk's office" and also used sentence-fragments referring to herself.
5. The posting provided contact information and encouraged people to call the respondent at her office or her cell phone, if she could "ever be of assistance," and to visit the Leon County District Clerk's website for more information.
6. The respondent did not dispute that she was an officer of a political subdivision and that she posted the comments at issue on the Facebook page owned and maintained by the county.
7. The respondent swore that "[a]ny postings I have made on the county website about what has been accomplished in our office are for communication purposes" and that she removed the November 7, 2017, posting when she received notice of the complaint.

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. For the purposes of section 255.003(a), the "spending of public funds" includes the use of any of a political subdivision's resources. Ethics Advisory Opinion No. 532 (2015). "Spending of public funds" specifically includes use of equipment and staff work time, Ethics Advisory Opinion No. 45 (1992), and use of facilities maintained by a political subdivision, Ethics Advisory Opinion No. 443 (2002).
3. "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. ELEC. CODE § 251.001(16).
4. Self-promotional communications, especially those containing the name and title of the public officer in an unduly conspicuous way, constitute political advertising. *See* Ethics

Advisory Opinion No. 102 (1992), Ethics Advisory Opinion No. 476 (2007), and Ethics Advisory Opinion No. 506 (2012).

5. There is credible evidence that the posting on the Leon County's Facebook page, dated November 7, 2017, contained numerous and conspicuous references to the respondent and her public office.
6. There is credible evidence that the posting at issue was self-promotional rather than informational, and therefore constituted political advertising.
7. There is credible evidence that the respondent, as an officer or employee of a political subdivision, knowingly spent or authorized the spending of public funds for political advertising by using of the Leon County's Internet website to support her re-election. 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 section 255.003 of the Election Code states that an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. The "spending of public funds" includes the use of a political subdivision's resources, including the use of a county's Facebook page and website. The respondent agrees to fully and strictly comply with this requirement of 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-31712183.

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

Beverly J. Wilson, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director