

TEXAS ETHICS COMMISSION

IN THE MATTER OF
TERRY BROCKETT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-3210344

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (“Commission”) met on June 16, 2021, to consider sworn complaint SC-3210344. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of Sections 255.001, 255.006, and 259.001 of the Election Code, laws 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: 1) failed to include a political advertising disclosure statement on political advertising signs, in violation of Section 255.001 of the Election Code; 2) represented on political advertising signs that he held a public office that he did not hold at the time the representations were made by not including the word “for” before the office sought, in violation of Section 255.006 of the Election Code; and 3) failed to include a highway right-of-way notice on political advertising signs, in violation of Section 259.001 of the Election Code.

III. Findings of Fact and Conclusions of Law

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

1. The respondent is a non-incumbent candidate for Aubrey Independent School District Trustee, Place 3, in the May 1, 2021 election.
2. The complaint alleged that all of the respondent’s political advertising signs were missing the disclosures required by Sections 255.001, 255.006, and 259.001 of the Election Code. The complaint included a picture of one of the respondent’s political advertising yard signs. The sign stated “Terry Brockett | Aubrey School Board.” The sign was missing the political advertising disclosure statement, the word “for,” and a highway right-of-way notice.

3. In response to the complaint, the respondent admitted the violations and swore that the omission of the disclosure statements was an “unintentional oversight.” The Commission requested that the respondent either add language to his political advertising signs or remove them in advance of the May election in order to resolve and settle the complaint without a civil penalty. The respondent stated that he would rather pay a civil penalty than correct the signs.
4. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising: 1) that it is political advertising; and 2) the full name of either the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate if the political advertising is authorized by the candidate. Tex. Elec. Code § 255.001(a).
5. A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office that the candidate does not hold at the time the representation is made. *Id.* § 255.006(b). A person represents that a candidate holds a public office that the candidate does not hold if: (1) the candidate does not hold the office that the candidate seeks; and (2) the political advertising or campaign communication states the public office sought but does not include the word “for” in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
6. The following notice must be written on each political advertising sign designed to be seen from a road: “NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY.” *Id.* § 259.001(a). A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the notice or instructs another person to place a sign that does not contain the notice. *Id.* § 259.001(b). “Political advertising sign” is a written form of political advertising designed to be seen from a road but does not include a bumper sticker. *Id.* § 259.001(e).
7. Credible evidence indicates the respondent did not include a political advertising disclosure statement on political advertising signs. Therefore, there is credible evidence of a violation of Section 255.001 of the Election Code.
8. Credible evidence indicates the respondent was a non-incumbent candidate, but did not include the word “for” before the office sought on the political advertising signs. Therefore, there is credible evidence of a violation of Section 255.006 of the Election Code.
9. Credible evidence also indicates the respondent did not include a highway right-of-way notice on political advertising signs. Therefore, there is credible evidence of a violation of Section 259.001 of the Election Code.

IV. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the Commission:

1. The respondent admits to the findings of fact and conclusions of law described under Section III, 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:
 - a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising: (1) that it is political advertising, and (2) the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the full name of the candidate, if the political advertising is authorized by the candidate;
 - a candidate who does not hold the office sought shall include the word “for” before the name of the office in political advertising and campaign communications; and
 - political advertising signs designed to be seen from a road must include the highway right-of-way notice.

The respondent agrees to fully and strictly comply with these requirements of law.

V. 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.

VI. Sanction

The respondent was first made aware that his signs did not comply with Sections 255.001, 255.006, and 259.001 of the Election Code on March 31, 2021, when he was emailed a copy of the complaint. The respondent filed a sworn response on April 14, 2021, in which he admitted the violations. Commission staff called the respondent on the day he filed his response and offered to resolve the complaint with an Assurance of Voluntary Compliance and no civil penalty, if the respondent made reasonable efforts to either correct the non-complying signs or remove them from public view before the May 1, 2021 election. The respondent declined that offer and stated he would rather pay a civil penalty than correct his signs. The respondent has therefore been engaging

in a knowing and continuing violation of at least Section 255.001 of the Election Code. *See* Elec. Code § 255.001(c) (“a person who learns that political advertising signs, as defined by Section 259.001, that have been distributed do not include the disclosure . . . does not commit a continuing violation of this subsection if the person makes a good faith attempt to remove or correct those signs.”). The respondent’s refusal to make a good-faith attempt to correct or remove the non-complying signs, to end a continuing violation of law voluntarily, indicates that a civil penalty is necessary to deter future violations. After considering the nature, circumstances, and consequences of the violations described under Section III, and after considering the sanction necessary to deter future violations, including the fact that the respondent refused to correct non-complying signs before the May 2021 election, the Commission imposes a \$750 civil penalty.

VII. 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-3210344.

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

Terry Brockett, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Anne Temple Peters, Executive Director