

TEXAS ETHICS COMMISSION

IN THE MATTER OF
FRED BUSCHE,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-210438

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on August 10, 2001, and voted to accept jurisdiction of Sworn Complaint SC-210438 filed against Fred Busche, Respondent. The commission met again on January 11, 2002, to consider Sworn Complaint SC-210438. A quorum of the commission was present at both meetings. Based on the investigation conducted by commission staff, the commission determined that there is credible evidence of violations of Sections 255.001 and 255.006, Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, a city council candidate, failed to include a political advertising disclosure statement and represented that he held a public office that he did not hold on his political advertising.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to this complaint, the respondent was an opposed candidate for city council in the May 5, 2001, city election in Highland Village. The respondent was not the incumbent and was successful in the election.
2. In support of her allegations, the complainant submitted nine written communications. The first five exhibits are fliers that support the respondent and two other candidates, referred to as Candidate 1 and Candidate 3. Exhibit 6 is a postcard that supports the respondent, Candidate 1, and Candidate 3, and includes a political advertising disclosure statement indicating that it was paid for by the respondent. Exhibits 7 through 9 are yard signs, and Exhibit 8 supports the respondent, Exhibit 7 supports Candidate 1, and Exhibit 9 supports Candidate 3. Exhibits 1 through 5 do not include political advertising disclosure statements.

Because of the size of the exhibits, it is unclear whether Exhibits 7-9 include disclosure statements. None of the exhibits include the word “for” before the name of the office sought.

3. The respondent submitted an affidavit acknowledging responsibility for Exhibits 6 and 8. He swears that Exhibits 2, 3, 4, and 5 were not paid for or approved by his campaign, that Exhibits 1 and 7 were prepared and distributed by Candidate 1, and that Exhibit 9 was prepared and distributed by Candidate 3. He admits that Exhibits 6 and 8 should have used the word “for.” He also admits that Exhibit 8 should have included a political advertising disclosure statement. Exhibit 6 does include a political advertising disclosure statement. He swears that his omissions were unintentional and inadvertent.

IV. Findings and Conclusions of Law

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

1. A person may not enter into a contract or other agreement to print political advertising that does not indicate that it is political advertising and that does not contain the full name and address of the individual who entered into the contract or agreement with the printer or the full name and address of the person that individual represents. Section 255.001(a), Election Code.
2. 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. Section 255.006(b), Election Code. A person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office that the candidate seeks and the political advertising 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. Section 255.006(c), Election Code.
3. Political advertising is defined in relevant part as a communication supporting a candidate for election to a public office that appears in a circular, flier, sign, or similar form of written communication. Section 251.001(16), Election Code. Campaign communication is defined in relevant part to mean a written or oral communication relating to a campaign for election to public office. Section 251.001(17), Election Code.
4. The exhibits constitute political advertising because they are communications supporting candidates for election to a public office that appear in a circular, flier, or sign. They also constitute campaign communications because they are written or oral communications relating to campaigns for election to public office.
5. The respondent admitted that he failed to comply with all requirements of Sections 255.001 and 255.006, Election Code, and the submitted evidence supports that fact. Therefore, there

is credible evidence that the respondent violated Sections 255.001 and 255.006, 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 and 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 and settling this sworn complaint.
2. The respondent consents to the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands and agrees that the commission will consider the respondent to have committed the violations described under Section IV, Paragraph 5, if it is necessary to consider a sanction to be assessed in any future sworn complaint proceedings against the respondent.

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, 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, consequences, extent, and gravity of the violations, after considering the fact that no previous violations by this respondent are known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty for the violations described under Section IV, Paragraph 5.

VIII. Order

The commission hereby ORDERS:

1. that this proposed AGREED RESOLUTION be presented to the respondent;

2. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-210438;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original and the \$100 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than February 8, 2002; and
4. that the executive director shall promptly refer SC-210438 to either the commission or to an administrative law judge to conduct hearings on the commission's behalf and to propose findings of fact and conclusions of law to the commission in accordance with law if the respondent does not agree to the resolution of SC-210438 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2002.

Fred Busche, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director