

TEXAS ETHICS COMMISSION

IN THE MATTER OF
CHARLES BOUDREAUX,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-220889

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 11, 2002, and voted to accept jurisdiction of Sworn Complaint SC-220889 filed against Charles Boudreaux. A preliminary review hearing was held on this matter on September 12, 2003. At the hearing, the respondent asserted that he did not violate section 255.003 of the Election Code because the communication in question did not constitute political advertising as defined by section 251.001(16) of the Election Code. The commission, however, determined that there was credible evidence of a violation of section 255.003 of the Election Code, a law enforced by the commission. A quorum of the commission was present at both meetings. To settle this complaint without further proceedings, the commission proposes this agreed resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, by composing and distributing an e-mail, spent public funds for political advertising. The complainant also alleges that the respondent failed to include a political advertising disclosure statement in the e-mail, and that the respondent violated section 39.02 of the Penal Code.

III. Facts Supported by Credible Evidence

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

1. The respondent is a school district employee.
2. The complainant provided copies of an e-mail sent by the respondent. The evidence shows that the respondent sent the e-mail to another school district employee, who then forwarded it to approximately 185 other e-mail addresses.
3. The text of the e-mail states:

To all members who live within DPISD:

You can vote in the school board election early from now until the 30th at the AD BLDg [sic]. Although, as policy, we will not formally endorse, there is a choice there that some of our leaders highly favor. You can contact me for who and why, but I am confident all of you will research and make the right choice! Thanks! [Respondent's name].

4. The e-mail does not contain a political advertising disclosure statement.
5. The respondent submitted a response, in which the respondent swears:

I sent this communication to the members of the Deer Park Education Association. I did not make a statement of support or opposition for any candidate running for a position on the Deer Park Board of Trustees. I did not receive any consideration for sending this message.

The abovementioned email communication was only related to the school board election. It had no relation to a judicial candidate or a political committee related to any judicial election.

It was not my intent to make a political advertisement. I believe that the message was within the bounds of the law and Deer Park I.S.D.'s email policy.

IV. Findings and Conclusions of Law

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

1. The Ethics Commission does not have the authority to enforce the Penal Code. Therefore, the commission may not consider the Penal Code allegation.
2. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003(a).
3. "Political advertising" means, in pertinent part, a communication supporting or opposing a candidate for public office that appears in a pamphlet, circular, or flier. *Id.* § 251.001(16).
4. 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. *Id.* § 255.001(a).
5. Although the e-mail in question does not name a particular candidate by name, it is the Commission's position that it constitutes political advertising because it states that the writer

- of the e-mail prefers one candidate over another and encourages the recipients of the e-mail to contact the respondent to find out who that is.
6. There is no evidence that the respondent entered into a contract or other agreement to print or publish the e-mail. Therefore, there is insufficient evidence that the respondent violated section 255.001 of the Election Code.
 7. The evidence shows that, in regard to the e-mail communication, the respondent believed that he was complying with the applicable legal requirements.
 8. The Election Code provides that an officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003.
 9. The Ethics Commission has interpreted that Election Code provision to mean that an officer or employee of a school district may not use or authorize the use of school personnel or equipment for the distribution of political advertising. Ethics Advisory Opinion No. 45 (1992).
 10. The respondent is a school district employee. The respondent swears that he sent the e-mail in question on his school district e-mail account. The Commission's position is that e-mail constitutes political advertising. Therefore, there is credible evidence that the respondent violated section 255.003 of the Election Code by using school equipment for political advertising.

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 disagrees with the commission's conclusions of law described under Section IV, but consents to the entry of this ORDER and AGREED RESOLUTION solely for the purpose of settling this sworn complaint.
2. The respondent waives any right to a hearing before the commission or an administrative law judge, and further waives any right to any post-hearing appeal.
3. The respondent acknowledges that an officer or an employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. The respondent agrees to comply with this requirement of the law.
4. Notwithstanding any other provisions of this ORDER and AGREED RESOLUTION, the respondent understands that the commission will consider the respondent to have committed the alleged violation described under Section IV, 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 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. No Sanction

After considering the seriousness of the violation described under Sections III and IV, including the circumstances, extent, and gravity of the violation, after considering that no previous violations by the respondent is known to the commission, and after considering the sanction necessary to deter future violations, the commission imposes no civil penalty against the respondent for the violation described under Section IV.

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 resolution of SC-220889;
3. that the respondent may consent to the proposed AGREED RESOLUTION only by signing an original of this document and mailing the signed original to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than October 25, 2003; and
4. that the executive director shall refer SC-220889 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 this resolution of SC-220889.

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

Charles Boudreaux, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director