

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LOUIS STOERNER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-290102

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 21, 2010, to consider sworn complaint SC-290102. 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 proposed this resolution to the respondent.

II. Allegation

The complaint alleged that the respondent 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. At the time relevant to the complaint, the respondent was the superintendent of Alief Independent School District (AISD).
2. The complaint alleged that the respondent spent or authorized the spending of public funds for political advertising in connection with a successful measure to increase the district's ad valorem tax rate by approximately 7.3 cents per \$100 valuation. The election was held on November 20, 2008.
3. At issue were two videos concerning the measure that the complaint alleged were posted to AISD's website and played during open house events. The complaint also alleged that school employees were paid their normal salary to participate in the videos.
4. One video was a recording that primarily showed the respondent reading from a script or teleprompter and several graphs and charts and segments of footage depicting teachers, students, and staff. The complaint included a document titled "Tax Roll-back Message

SCRIPT,” dated August 25, 2008, in which the respondent participated in drafting. Another video primarily showed another individual reading a similar script translated into Spanish.

5. The video featuring the respondent stated, in pertinent part:

These programs meet the unique needs of our many students, but they are costly. Our district also is dealing with uncontrollable expenses that are straining our budget. . . .

Not many people realize we are struggling to [maintain] operations in 2008 with the same funding we received in 2005. We have operated very efficiently for many years but the legislative mandate and uncontrollable cost increases are causing extreme financial hardships for this school district. . . .

Unfortunately, even after these cost reductions, next year’s budget will require us to use more than \$15 million of our fund balance or savings. If we continue at this rate, we will deplete these emergency funds in just three years to an amount that will not even allow us to cover fall expenditures in 2010. The district will be forced to borrow money just to pay our staff. After examining our options and each department’s budget, we are left with only one way to generate the monies needed to continue programs and services that are essential to our students’ success. We must have a change in our tax rates. That means asking voters to go to the polls and vote in a tax rate election. If approved, the district’s rate would still be considerably lower, than it was just three years ago.

. . .

The Alief School District and Board of Trustees believe this rate increase is vitally important. The additional funding is needed to allow us to continue offering the programs that our parents, patrons, and students have come to expect for all our students. The bottom line is Alief has always aimed for student success and we will continue to strive for success into the future. We live by our motto: Preparing students for tomorrow while caring for them today.

6. Also at issue was a video that contained footage of students, teachers, staff, and other individuals, including the respondent, in various settings on what appear to be school grounds. The video began with a caption, “The Bottom Line . . .,” and included an audio recording or “voice-over” with subtitles and captions during the video.
7. The “Bottom Line” video began with the statement, “What do you think it takes to educate our children in Alief ISD?” and continued with various statements concerning the needs for the operation of a school district. At the conclusion of these statements, the video included a caption that stated, “And it takes your tax contributions.” The voiceover then stated, “So let your voice be heard by casting an early vote November 3rd through the 17th in the tax

- rollback election or on November 20th, election day,” while a caption referred to the tax rollback election. At the conclusion, the voiceover in the video stated, “The bottom line is, whatever it takes,” and displayed a caption that stated, “WHATEVER It Takes!”
8. The “Bottom Line” video was also produced in a version that included similar captions and subtitles in Spanish.
 9. The respondent swore that he reviewed the DVDs that contained the videos, and asserted that the videos were produced by AISD to factually describe the election, and that they did not advocate passage or defeat of the measure.
 10. The respondent argued that, by modifying section 255.003 of the Election Code, the 81st Legislature intended to “narrow the scope of the [commission’s] ability to sanction public officers and employees for releasing factual information regarding an election unless they knowingly expended funds for political advertising.” The respondent also stated that his statements were “designed to provide factual information about the tax election to the public without advocating any side of the measure” and that he “did not knowingly authorize the expenditure of public funds for political advertising.”
 11. The respondent asserts that attempts were made by AISD employees to “pre-clear” the videos so that they would not be construed to be political advertising as defined by section 255.003(a) of the Election Code.

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. This section 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).
3. Political advertising means, in pertinent part, 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 or on an Internet website. *Id.* § 251.001(16).
4. The videos at issue in the complaint, when considered in their entirety, supported the measure and were therefore political advertising.
5. In *Osterberg v. Peca*, the Texas Supreme Court considered the meaning of the word “knowingly” in section 253.131(a) of the Election Code, which stated:

A person who knowingly makes or accepts a campaign contribution or makes a campaign expenditure in violation of this chapter is liable for damages as provided by this section.

Osterberg v. Peca, 12 S.W.3d 31 (Tex. 2000). The court stated that the legislature's intent regarding section 253.151(a) was that "knowingly" refers only to the act of making or accepting a contribution or expenditure and not to whether the contribution or expenditure violated the Election Code. *Id.* at 38. Part of the court's reasoning was that the legislature had specifically created additional knowledge requirements in other statutes in title 15 of the Election Code but had not done so in section 253.131(a). *Id.* The court also cited section 253.003(b) of the Election Code, which stated, "A person may not *knowingly* accept a political contribution *the person knows to have been made in violation of this chapter.*" *Id.* The court held that "knowingly" applies only to whether a person is making a "campaign contribution" or "campaign expenditure" and that it is not necessary to determine whether the person knew they were violating the Election Code. *Id.* at 39.

6. *Osterberg's* treatment of the word "knowingly" in title 15 of the Election Code supports the conclusion that, under a plain reading of section 255.003(a) of the Election Code, the respondent would have committed a violation if he knowingly spent or authorized the spending of public funds for political advertising, regardless of whether he knew what constitutes political advertising. Thus, if either of the videos at issue in the complaint was political advertising and the respondent knowingly spent or authorized the spending of public funds for that video, then the respondent committed a violation, regardless of whether he knew that the video was political advertising.
7. There is credible evidence that public funds were used for the production and distribution of the videos at issue in the complaint, and that the respondent as superintendent, on behalf of the Board of Trustees of AISD, authorized the spending of public funds for the production and distribution of the videos. Therefore, there is credible evidence that the respondent violated section 255.003(a) of the Election Code in connection with the videos.

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 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 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.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, 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-290102.

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

Louis Stoerner, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director