

TEXAS ETHICS COMMISSION

IN THE MATTER OF

RICHARD A. MIDDLETON,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-981182

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 11, 1998, and voted to accept jurisdiction of Sworn Complaint SC-981182 filed against Richard A. Middleton, Respondent. The commission met again on May 14, 1999, to consider Sworn Complaint SC-981182. 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 a violation of Section 255.003, Election Code, a law 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, the superintendent of an independent school district, violated Section 255.003, Election Code, by using public funds for political advertising regarding a school bond election. The complainant alleges that the school district ran a newspaper insert advocating passage of the school bond measure. The complainant further alleges that the insert was presumably paid for with district funds as there is no other attributed sponsor, and that the insert was presumably prepared by school district employees on school district time using school district equipment.

III. Facts Supported by Credible Evidence

1. The respondent is the superintendent of an independent school district. The district held a school bond election on September 26, 1998, with early voting beginning on September 9, 1998. Approximately one month before early voting, the school district ran an insert in the local newspaper providing information on the use of funds from the 1995 school bonds, the anticipated use of the 1998 school bond money, the effect on groups in the community, and the current aptitude of students in the school district. The information is presented in the format of newspaper articles, and the statement, "A Publication of the North East Independent School District" appears at the top of each of the six insert pages. The insert also contains an article titled "Message from the Superintendent" which ends with the phrase,

“Our citizens now have the opportunity to position the NEISD for the 21st century. Please support the vision - our future depends on your commitment.”

2. The respondent submitted an affidavit in which he swore that the insert was one of at least 48 issues in an on-going school district publication designed to keep the citizens informed of issues facing the district. The respondent also swears that the articles in the issue are indicative of the articles typically included in the publication, and that the authors and editors of the publication in no way intended, nor were they instructed, to write or slant the facts so as to advocate passage of the bonds.
3. The respondent further swears that the insert was initially printed by the district and mailed to district residents but is now published in a local newspaper at a cost of \$2,700 per page.
4. The respondent’s response included voluntary statements from several school district employees who stated that they provided some information or service in compiling the insert.

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 spend or authorize the spending of public funds for political advertising. The prohibition 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. Section 255.003, Election Code.
2. “Political advertising” is defined in relevant part as a communication that supports or opposes a measure and that is published for consideration in a newspaper. Section 251.001(16), Election Code.
3. The school bond issue is a measure because it is a question or proposal submitted in an election for an expression of the voters’ will. Section 251.001(19), Election Code.
4. The respondent’s sworn statement shows that the insert was published for consideration in a newspaper.
5. The insert presents facts about the school bond measure but also contains a message from the superintendent requesting the public to support their vision.
6. The message from the superintendent causes the insert to cross the line from a communication that is factual to a communication that advocates passage of the bonds.

7. In Ethics Advisory Opinion No. 45 (1992), the Ethics Commission stated, “Any method of distribution [of political advertising] that involves the use of school district employees on school district time or school district equipment would be within the prohibition.”
8. The respondent’s sworn statement and the voluntary statements from school district employees show that school district employees were used to create and edit the insert, and that the district paid \$2,700 per page to have the insert published in the newspaper.
9. Because the insert constitutes political advertising and advocates passage of the bonds, and because school district employees and funds were used to create and distribute the insert, there is credible evidence that the respondent violated Section 255.003, 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. The respondent acknowledges that Section 255.003, Election Code, prohibits the use of public funds for political advertising. The respondent agrees to fully and strictly comply with this requirement of the law.
4. 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 violation described under Section IV, Paragraph 9, 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 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 violation described under Sections III and IV, including the nature, circumstances, consequences, and extent of the violation, 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 \$300 civil penalty for the violation described under Section IV, Paragraph 9.

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-981182;
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 \$300 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than June 30, 1999; and
4. that the executive director shall promptly refer SC-981182 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-981182 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 199__.

Richard Middleton, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director