

TEXAS ETHICS COMMISSION

IN THE MATTER OF
DAVID WILLIAMS,
RESPONDENT

§
§
§
§
§

BEFORE THE
TEXAS ETHICS COMMISSION
SC-991032

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 12, 1999, and voted to accept jurisdiction of Sworn Complaint SC-991032 filed against David Williams, Respondent. The commission met again on April 14, 2000, to consider Sworn Complaint SC-991032. 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 used county funds, equipment, and personnel to copy and distribute political advertising that encourages recipients to support the respondent in his re-election campaign.

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 the local sheriff.
2. The complainant submitted a copy of a memo that was dated May 3, 1999, and sent to all division heads. The memo states that the "Sheriff's Report" is a daily memo designed to provide employees with updates and changes. The memo states that each employee will receive a copy of the report and that the division heads will have the responsibility of ensuring that the reports are distributed to each employee daily. The complainant also submitted a copy of one issue of the Sheriff's Report.
3. The Sheriff's Report is labeled Issue 112 of Volume 1 and dated October 5, 1999. The report contains information related to the sheriff's department, including job listings, training announcements, and personnel actions.

4. The report also contains a section titled "Special Edition, Campaign for Re-election Speech." The Special Edition is labeled as Issue 1 of Volume 1 and is also dated October 5, 1999. The Special Edition section indicates that it is from the sheriff and contains the contents of a campaign speech given by the sheriff on October 2, 1999.
5. A paragraph from the sheriff prefacing the speech text states that a newspaper article covering the speech failed to include "the actual point and direction of a majority of the speech." The paragraph states that the sheriff felt it necessary to publish the speech in the Sheriff's Report because the newspaper coverage was slanted and because all members of the sheriff's department deserve to know "exactly what was said on their behalf."
6. The speech text contains references to statements made by the sheriff during his 1992 campaign regarding how to solve the high crime rate. The speech references the accomplishments of the sheriff's department since 1992 and the low salary paid to the deputies and sheriff's department personnel. In the speech the sheriff says that he will advocate on the behalf of law enforcement officers for higher salaries and other workplace issues. The speech ends with the sentence, "I need your votes, your support, your financial help and your prayers."
7. The same transmitting facsimile transmission number and transmission date are printed on both the Sheriff's Report and the Special Edition.
8. The respondent states that he gave a re-election speech on October 2, 1999, which gave rise to an article in the local paper that failed to include the "actual point and direction of the majority of the speech."
9. The respondent stated that much of his speech pertained to the performance of his department and he felt it necessary to publish the entire speech in the Sheriff's Report so that all department employees would know exactly what was said on their behalf.
10. The respondent stated that the publication, when read in context and in light of the slanted newspaper article, clearly shows that there was no political service intended but was done to protect the integrity of the sheriff's office and to keep its employees apprised of what was said on their behalf.
11. The respondent included a copy of the newspaper article which states that the respondent took credit for the booming local economy, quotes several of the respondent's opponents regarding his statements, discusses the respondent's disputes with county commissioners, and quotes the respondent regarding the low pay received by employees in his department.

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. Section 255.003(a), Election Code. A person who violates that section commits an offense that is a Class A misdemeanor. Section 255.003(c), Election Code.
2. The prohibition extends to direct or indirect expenditures for the distribution of political advertising. Any method of distribution that involves the use of the subdivision's employees during work hours or the use of the subdivision's equipment is considered an indirect expenditure for purposes of the prohibition. (Ethics Advisory Opinion No. 45 (1992).)
3. "Political advertising" is defined in relevant part as a communication that supports a candidate for nomination or election to a public office and that, in return for consideration, is published in a newspaper, magazine or other periodical, or that appears in a pamphlet, circular, flier, or similar form of written communication. Section 251.001(16), Election Code.
4. The text of the campaign speech published in the Special Edition contains a clear request for the reader to support the respondent's candidacy.
5. The Sheriff's Report is periodically published and distributed and thus is a periodical. The Special Edition of the report in which the campaign speech was published, however, contained a different volume and issue number than the regular Sheriff's Report.
6. The Special Edition also differed from the Sheriff's Report in content, in that it contained a reproduction of the sheriff's campaign speech but no other information pertinent to the sheriff's department.
7. The Special Edition appears to have been distributed in the same manner and to the same audience as the Sheriff's Report, but the Special Edition is not part of the periodically distributed Sheriff's Report because the content consists primarily of the sheriff's campaign speech.
8. The Special Edition is therefore not a periodical, but is a circular, flier, or similar form of written communication. It supports a candidate for nomination or election to a public office and thus constitutes political advertising.
9. County equipment and personnel time were used to distribute the Sheriff's Report and the Special Edition.
10. Because political subdivision funds were expended to copy and distribute the Special Edition, there is credible evidence that the respondent violated Section 255.003, Election Code, by authorizing the spending of public funds 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 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 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 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 10, 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. Sanction

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, consequences, extent, and gravity 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 \$500 civil penalty for the violation described under Section IV, Paragraph 10.

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-991032;
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 \$500 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than July 7, 2000; and
4. that the executive director shall promptly refer SC-991032 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-991032 as proposed in this ORDER and AGREED RESOLUTION.

AGREED to by the respondent on this _____ day of _____, 2000.

David Williams, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Tom Harrison, Executive Director