

TEXAS ETHICS COMMISSION

IN THE MATTER OF

BOB GRIGGS,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-2209102

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-2209102 filed against Bob Griggs. The commission met again on April 11, 2003, to consider Sworn Complaint SC-2209102. A quorum of the commission was present at both meetings. The commission determined that there is credible evidence of a violation of section 255.006(b) of the 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, a candidate for state representative, represented in a campaign communication that he held a public office that he did not hold at the time the representation was made. The complainant also alleges that the respondent misrepresented his identity by representing in a campaign communication that he held a public office that he did not hold at the time the representation was made.

III. Facts Supported by Credible Evidence

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

1. The respondent was a successful non-incumbent candidate for state representative in the November 2002 general election.
2. In support of his allegations, the complainant submitted a communication in the form of a letter urging participation in a golf tournament to raise funds for the respondent. Although there is no date on the letter, it states that the golf tournament is scheduled for October 8, 2002. The letter begins as follows:

Thank you for your tremendous support and for allowing me the privilege and honor of serving as your representative from the 91st Texas House District. I

am hard at work to learn to be the best State Representative possible, and have begun tackling tough issues that must be addressed in the upcoming session—specifically public school finance.

In order for me to be effective in this role, I need your continued financial support. Your contributions reach beyond the funding of campaign activities. That is only the start. Your gifts help pay for expenses associated with the running of the office, the meetings and activities being planned so citizens can play an active role in matters related to state government, and for participation in numerous events that I will need to attend as your state representative.

The only explicit references to the respondent's candidacy are the words "Texas State Representative Candidate" after the respondent candidate's signature and the disclosure at the bottom of the page, which reads, "Political Advertisement by the Bob Griggs for State Representative Campaign, C.A. Sanford, Treasurer."

3. In his response, the respondent candidate acknowledges that he was responsible for mailing 1,000 copies of the communication.
4. The complainant also submitted a copy of a church bulletin printed from the church's website. An article in the bulletin about a donation by the respondent refers to the respondent as "our newest state representative to Austin."
5. The respondent candidate submitted a letter from the executive pastor of the church, which states:

The statement made in our pastor's article that Dr. Bob Griggs was "our newest state representative to Austin" was purely a statement of optimism and encouragement. Dr. Griggs never made that statement either to myself, our pastor or any other staff member of this church. He did not represent himself to us as a member of the Texas legislature before the fact.

IV. Findings and Conclusions of Law

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

1. 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. Elec. Code § 255.006(b). A written communication relating to a campaign for election to a public office is a campaign communication. *Id.* § 251.001(17).

2. The letter urging participation in a golf tournament to raise funds for the respondent is a campaign communication because it seeks funds to support the respondent both as a candidate and as an officeholder. Because the letter has to do with an event scheduled for October 8, 2002, it is clear that the representations in the letter were made at a time when the respondent did not hold the office of state representative. The letter contains language indicating that the respondent is currently a state representative. Therefore, there is credible evidence that the respondent knowingly represented in a campaign communication that he held a public office that he did not hold at the time the representation was made and that he violated section 255.006(b) of the Election Code.
3. The church bulletin is not a campaign communication because it does not relate to a campaign. Therefore, there is credible evidence that the respondent did not violate section 255.006(b) of the Election Code, in regard to the church bulletin.
4. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person misrepresents the person's identity or, if acting or purporting to act as an agent, misrepresents the identity of the agent's principal, in political advertising or a campaign communication. Elec. Code § 255.005.
5. Section 255.005 of the Election Code, does not apply in a case involving a misrepresentation that an individual holds an office he or she does not hold because a more specific provision, section 255.006 of the Election Code, applies in that case.
6. Because section 255.005 of the Election Code does not apply in a case involving a misrepresentation that an individual holds an office he does not hold, there is credible evidence that the respondent did not violate section 255.005 of the Election Code, in connection with either the letter or the church bulletin.

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 he is prohibited from representing in a campaign communication that he holds a public office that he does not hold at the time the representation is made. 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 and agrees that the commission will consider the respondent to have committed the violation described under Section IV, Paragraph 2, 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 civil penalty of \$200 for the violation described under Section IV, Paragraph 2.

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-2209102 as to Bob Griggs;
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 \$200 civil penalty to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711, no later than May 9, 2003; and
4. that the executive director shall promptly refer SC-2209102 as to Bob Griggs 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-2209102 as to Bob Griggs as proposed in this ORDER and AGREED RESOLUTION.

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

Representative Bob Griggs, Respondent

EXECUTED ORIGINAL received by the commission on: _____.
Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director