

TEXAS ETHICS COMMISSION

IN THE MATTER OF
ROYCE D. MARTIN,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2211135

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on January 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-2211135 filed against Royce D. Martin. The commission met again on April 11, 2003, to consider Sworn Complaint SC-2211135. 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. Allegation

The complainant alleges that the respondent used signs in the 2002 election that urged voters to “re-elect” the respondent and thereby represented in a campaign communication that he held a public office that he did not hold at the time of the representation.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful non-incumbent candidate for justice of the peace, precinct #4, in the 2002 election in Cooke County. The respondent had formerly held the office of justice of the peace, precinct #4.
2. In support of his allegation, the complainant submitted photographs of two different signs that state, “RE-ELECT ROYCE D. MARTIN FOR J.P. PRECINCT 4.”
3. In response to the complaint, the respondent submitted an affidavit in which he swears that he did not violate the law. He swears that he checked to see if his signs were legal and was told that they were.

IV. Findings and Conclusions of Law

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

1. A person may not knowingly represent in a campaign communication that a candidate holds a public office the candidate does not hold at the time the representation is made. Elec. Code § 255.006(b).
2. A campaign communication includes a written communication relating to a campaign for election to public office. *Id.* § 251.001(17). The respondent's signs are campaign communications because they relate to the respondent's campaign for election to justice of the peace.
3. The evidence shows that the signs at issue are the respondent's signs and that the signs used the word "re-elect" in such a way as to represent that the respondent held the office of justice of the peace, precinct #4, at a time when he did not hold that office. The respondent's placement of the signs at the time of the 2002 election constituted a representation in a campaign communication that he held a public office that he did not hold. Therefore, there is credible evidence that the respondent violated section 255.006(b) of the 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 a person may not knowingly represent in a campaign communication that a candidate holds a public office the candidate does not hold at the time the representation is made.
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 3, 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 \$100 civil penalty for the violation described under Section IV, Paragraph 3.

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-2211135;
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 \$100 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-2211135 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-2211135 as proposed in this ORDER and AGREED RESOLUTION.

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

Royce D. Martin, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director