

TEXAS ETHICS COMMISSION

IN THE MATTER OF
GERALD CLEVELAND,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-230309

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 10, 2003, and voted to accept jurisdiction of Sworn Complaint SC-230309 filed against Gerald Cleveland. The commission met again on July 10, 2003, to consider Sworn Complaint SC-230309. A quorum of the commission was present at both meetings. 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 proposes this agreed resolution to the respondent.

II. Allegation

The complainant alleges that the respondent, the mayor of a city, authorized the use 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. The respondent is the mayor of the City of Paradise.
2. This case involves a petition that was circulated to ask for support to disincorporate the city. If two-thirds of the registered voters signed the petition, the respondent, as mayor of the city, would be required to order an election on the question of abolishing the city.¹
3. In February 2003, the city sent a letter to its citizens. The letter lists 16 things that will happen if the city is dissolved. The letter also encourages residents to “keep the control here – among the residents – not in the hands of outsiders.”

¹ Section 62.002 of the Local Government Code.

4. In response to this complaint, the respondent submitted a sworn statement in which he does not deny that he authorized the use of public funds for the letter. The respondent swears that the letter was sent to inform the voters of the possible and probable consequences if the city were to be disincorporated.
5. The respondent stated that the city has 301 registered voters and that the total cost of the letter in question was approximately \$80, “which includes paper, copying, envelopes and postage, and employee time.” The respondent stated that he had no intention of violating any of the provisions of the applicable statute.

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. Elec. Code § 255.003(a). 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. Elec. Code § 255.003(b).
2. A city is a political subdivision for purposes of section 255.003(a) of the Election Code. Elec. Code § 1.005(13).
3. “Political advertising” is defined in relevant part as a communication that supports or opposes a measure and that appears in a pamphlet, circular, flier, sign, or similar form of written communication. Elec. Code § 251.001(16).
4. The letter from the city is a circular or flier or similar form of written communication.
5. The petition in question constitutes a “measure” because it is a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters’ will. Elec. Code § 251.001(19).
6. Although the letter may provide some factual information, the phrase “keep the control here – among the residents – not in the hands of outsiders” advocates defeat of a measure. Therefore, the letter constitutes political advertising.
7. The respondent acknowledges that the city sent the letter and does not deny that he authorized the use of public funds for the letter. Therefore, there is credible evidence that the respondent authorized the use of public funds for political advertising in violation of section 255.003 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 title 15 of the Election Code prohibits an officer or employee of a political subdivision from spending or authorizing the spending of public funds for political advertising.
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 7, 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

The commission imposes a \$100 civil penalty for the violation described under Section IV, Paragraph 7.

VIII. Order

The commission hereby ORDERS:

1. that if the respondent consents to the proposed AGREED RESOLUTION, this ORDER and AGREED RESOLUTION is a final and complete resolution of SC-230309;

- 2. 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 August 7, 2003; and
- 3. that the executive director shall promptly set SC-230309 for a preliminary review hearing if the respondent does not agree to the resolution of SC-230309 as proposed in this ORDER and AGREED RESOLUTION.

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

Gerald Cleveland, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Karen Lundquist, Executive Director