

TEXAS ETHICS COMMISSION

IN THE MATTER OF

SCOTT JOHNSON, CHARLES KEESE,
MIKE MCQUISTON,
LAURA MONTGOMERY,
DAVID PIERCE, STAN SMITH
LESA WARREN, and ALLEN WHITE,

RESPONDENTS

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-231180

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission held a preliminary review hearing on September 10, 2004, to consider sworn complaint SC-231180. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 255.003 of the Election Code, a law administered and enforced by the commission. To resolve this complaint without further proceedings, the commission proposes this resolution to the respondents.

II. Allegations

The complaint alleges that the respondents violated section 255.003 of the Election Code by authorizing the use of school district funds for political advertising.

III. Facts Supported by Credible Evidence

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

1. During the relevant time in question respondent Johnson was the superintendent of the Decatur Independent School District and the seven other respondents were members of the board of the school district.
2. The school district held an election on October 9, 2003, at which voters approved the issuance of \$32.8 million in bonds.
3. The respondents hired a consultant to prepare materials regarding the bond election.
4. The complainant submitted a copy of a circular that states that the bond proposal provides the "best solution" to the needs generated by the school district's population growth.

5. The complainant submitted a copy of an information booklet that contains a copy of a press release and other information about the bond election. The press release quotes the school board president as saying, “This bond is the right thing to do for the children of this community.”
6. The complainant submitted a copy of a letter to senior citizens that is signed by the president of the school district board and the superintendent of schools. The letter explains that senior citizens’ taxes will not increase if the bonds are approved unless they add significant structural changes to their homesteads.
7. An attorney provided a response on behalf of respondents in which he states “this material was prepared by a consultant. The board hired her and relied on her to comply with the law.”

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).
2. Political advertising includes a communication that supports or opposes a measure and appears in a pamphlet, circular, or flier or similar form of written communication. *Id.* § 251.001(16).
3. The prohibition in section 255.003 of the Election Code 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. *Id.* § 255.003(b).
4. The attorney for the respondents acknowledges that the school district superintendent and the school board members authorized the spending of public funds for the materials at issue in this complaint.
5. The materials in question in this complaint appear in a form of written communication that are similar to a pamphlet, circular, or flier.
6. The circular advocates passage of the bond measure by stating that the “best solution” to the school district needs would be to do exactly what the school district has proposed to do with the proceeds of the bonds. Therefore, it is political advertising. Thus, there is credible evidence that the school district superintendent and school board members violated section 255.003 of the Election Code by authorizing the use of public funds for the circular.
7. The information booklet contains a great deal of factual information about the purposes of the bond measure, but it also advocates passage of the bond measure, particularly by the inclusion of the press release that quotes the school board president as saying, “This bond is the right thing to do for the children of this community.” Therefore, it is political

advertising. Thus, there is credible evidence that the school district superintendent and school board members violated section 255.003 of the Election Code by authorizing the use of public funds for the information booklet.

8. Although the letter to senior citizens is clearly intended to allay concerns that approval of the bonds will lead to increases in property taxes, it does so by setting out factual information about possible tax increases. Therefore, it is not political advertising. Thus, there is credible evidence that the school district superintendent and school board members did not violate section 255.003 of the Election Code by authorizing the use of public funds for the letter.

V. Representations and Agreement by Respondents

By signing this order and agreed resolution and returning it to the commission:

1. The respondents neither admit nor deny the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consent to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondents consent to the entry of this Order before any adversarial evidentiary hearings before the commission, and before any formal adjudication by the commission. The respondents waive any right to a hearing before the commission or an administrative law judge, and further waive any right to a post-hearing procedure provided by law.
3. The respondents acknowledge that an officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. The respondents agree to fully comply with this requirement of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are 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 violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty against each of the respondents for the violations described under Section IV.

The \$100 civil penalty is waived if on or before March 15, 2006, the respondents demonstrate to the commission that the respondents have made a presentation at a statewide conference for school board members or administrators regarding the requirements of section 255.003 of the Election Code.

VIII. Order

The commission hereby orders that if the respondents consent to the proposed agreed resolution, this order and agreed resolution is a final and complete resolution of SC-231180.

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

Scott Johnson, Respondent

Charles Keese, Respondent

Mike McQuiston, Respondent

Laura Montgomery, Respondent

David Pierce, Respondent

Stan Smith, Respondent

Lesa Warren, Respondent

Allen White, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director