

TEXAS ETHICS COMMISSION

IN THE MATTER OF
LANE NICHOLS,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-240223

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission held a preliminary review hearing on January 13, 2005, to consider sworn complaint SC-240223. A quorum of the commission was present. 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 resolution to the respondent.

II. Allegation

The complaint alleges that the respondent, the city attorney of Beaumont, spent or authorized the spending of public funds for political advertising in violation of section 255.003 of the Election Code.

III. Facts Supported by Credible Evidence

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

1. The City of Beaumont held a city charter amendment election on September 13, 2003.
2. Before the election, the respondent, along with the mayor, city clerk, and city manager, participated in the taping of a television program in which they discussed the proposed charter amendments.
3. The complainant alleges that the television program was political advertising.
4. During the program the city officials discussed the proposed charter amendments and the effects of passing those amendments. The general discussion painted passage of the amendments in a favorable light.

5. As part of a contract with Lamar University the university produced the informational program at issue and it was broadcast for free over Time Warner Cable's public access channel.
6. The television channel on which the program was broadcast is made available at no charge to the city as part of the franchise agreement between the city and the cable company.
7. The respondent participated in the program and reviewed it before it aired.
8. After conducting legal research, the respondent concluded that the program did not constitute political advertising. His reasoning was that the statutory definition of political advertising requires the broadcast to be made in return for consideration. The respondent avers that because Time Warner Cable broadcast the program free of charge, it was not broadcast in return for consideration. The respondent concluded that the program did not constitute political advertising, and so advised other city officials.
9. The respondent avers that he was not in charge of broadcasting the program and had no authority to decide when or whether it would be broadcast.

IV. Findings and Conclusions of Law

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

1. "Political advertising" is defined, in relevant part, as a communication supporting or opposing a measure that in return for consideration is broadcast by television. ELEC. CODE § 251.001(16).
2. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising. *Id.* § 255.003(a).
3. The prohibition applies to the use of a political subdivision's resources for political advertising. Ethics Advisory Opinion No. 45 (1992). The respondent's opinion that the program did not meet the statutory definition of political advertising because no consideration was directly given for its broadcast arguably is not without some merit. However, but for the contract between the City of Beaumont and Time Warner Cable the program would not have been broadcast. Accordingly, we find it constituted political advertising.
4. The respondent participated in the production of the program.
5. The respondent participated in the decision to authorize the broadcast of the television program.

6. There is credible evidence that the respondent violated section 255.003 of the Election Code by using or authorizing the use of the city's resources 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 or 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 this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
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 comply with this requirement of the law.

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 respondent's efforts to research the relevant law show that he intended to comply with the law. After considering the fact that the respondent made a reasonable effort to comply with the law, and considering the sanction necessary to deter future similar violations by others, the commission imposes a \$1,250 civil penalty for the violation described under Section IV.

The civil penalty is reduced to \$500 if the respondent makes a good faith effort to make the Texas Municipal League aware of the contents of this order.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-240223.

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

Lane Nichols, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director