

TEXAS ETHICS COMMISSION

IN THE MATTER OF

LUIS ALVAREZ,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-240456

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on July 16, 2004, to consider sworn complaint SC-240456. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001, 255.006 and 255.007 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegations

The complainant alleges that the respondent, an unsuccessful candidate for school board trustee in Port Arthur in a May 2004 election, failed to include a disclosure statement in a political advertisement; that the respondent failed to use the word “for” as required in a campaign communication; and that the respondent failed to include the required right-of-way notice on political advertising signs.

III. Facts Supported by Credible Evidence

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

1. The respondent was an unsuccessful candidate for school board trustee in a May 15, 2004, school board election.
2. In support of his allegations, the complainant submitted a number of photographs of signs. Some of the signs are in English, some are in Spanish, and some are in Vietnamese. The photograph shows that one side of one of the signs states, “VOTE FOR LUIS ALVAREZ SCHOOL BOARD TRUSTEE.” The side of the sign shown in the photograph does not include a political advertising disclosure statement or a right-of-way notice. The respondent submitted an affidavit in which he states that he was notified of his failure to comply with sections 255.001, 255.006, and 255.007 of the Election Code. His affidavit states that he was not aware of, nor did he intentionally violate, these provisions of the Texas Election

Code. He states that after notification of the violations he immediately took action to comply with these provisions of the law.

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 cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person, candidate, or political committee who paid for it. ELEC. CODE § 255.001.
2. The respondent's sign supports a candidate for elected public office and is therefore political advertising. *Id.* § 251.001(16). The sign does not include the required disclosure. Therefore, there is credible evidence of a violation of section 255.001 of the Election Code.
3. A person may not represent in a campaign communication that a candidate holds a public office that the candidate does not hold at the time that the representation is made. ELEC. CODE § 255.006(b). The law provides that a person represents that a candidate holds a public office that the candidate does not hold if the candidate does not hold the office the candidate seeks and the campaign communication states the public office sought but does not include the word "for" in a type size that is at least one-half the type size used for the name of the office to clarify that the candidate does not hold that office. *Id.* § 255.006(c).
4. The respondent's sign is a campaign communication because it is a written communication relating to a campaign for public office. ELEC. CODE § 251.001(17). Although the sign includes the word "for," it does not use the word "for" in connection with the name of the office sought. Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.006 of the Election Code.
5. The Election Code provides that the following notice must be written on each political advertising sign:

"NOTICE: IT IS A VIOLATION OF STATE LAW (CHAPTERS 392 AND 393, TRANSPORTATION CODE), TO PLACE THIS SIGN IN THE RIGHT-OF-WAY OF A HIGHWAY."

- ELEC. CODE § 255.007(a). A person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the right-of-way notice or if the person instructs another person to place a political advertising sign that does not contain the right-of-way notice. *Id.* § 255.007(b).
6. The respondent's sign is a political advertising sign because it is a written form of political advertising designed to be seen from a road. *Id.* §§ 255.007(e), 255.001. Thus, a right-of-way notice was required on the sign. The respondent acknowledges that he failed to comply

with section 255.007 of the Election Code. Therefore, there is credible evidence of a technical or *de minimis* violation of section 255.006 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 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 a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person, candidate, or political committee who paid for it; may not represent in a political advertising or a campaign communication that a candidate holds a public office that the candidate does not hold; and that a person commits an offense if the person knowingly enters into a contract to print or make a political advertising sign that does not contain the right-of-way notice or if the person instructs another person to place a political advertising sign that does not contain the right-of-way notice. The respondent agrees to fully comply with the requirements 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 for the violations of the Election Code described under Section IV.

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-240456.

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

Luis Alvarez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director