

TEXAS ETHICS COMMISSION

IN THE MATTER OF
RUBEN GOMEZ,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2406107

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on November 12, 2004, to consider sworn complaint SC-2406107. 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 involves an allegation that the Mayor of the City of Hearne violated 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. At issue in this complaint are two credit card charges made by the respondent on two different credit cards.
2. Below are the relevant dates and facts regarding one of the credit cards, a JP Morgan Credit Card.
 - March 18, 2003 The respondent charged \$652.85 to purchase 144 t-shirts for his re-election campaign.
 - April 4, 2003 The respondent reimbursed the city \$652.85.
 - April 26, 2003 The city issued a check to the credit card company to pay the invoice that included the \$652.85 charge.
3. The invoice for this charge was issued to the respondent and describes the charge as "144 CT. T-SHIRTS...50/50 HANES..2/COLORS...2/SIDED...RE-ELECT RUBEN GOMEZ."

4. According to the respondent and the complainant, the JP Morgan credit card contains both the name of the respondent and the name of the city.
5. Below are the relevant dates and facts regarding the second credit card, a Bank One Credit Card.
 - January 12, 2004 The respondent charged \$1,161.87 to purchase political advertising for his campaign.
 - January 26, 2004 The city received the credit card invoice that included the \$1,161.87 charge.
 - January 27, 2004 The respondent reimbursed the city \$1,161.87.
 - January 30, 2004 The city issued a check to the credit card company to pay the invoice that included the \$1,161.87 charge.
6. The invoice for this charge was issued to the respondent and describes the charge as “10 CT. SIGNS 4’ X 8’... 2/COLORS...1/SIDE RUBEN GOMEZ.”
7. The Bank One credit card used to charge these campaign signs was issued to the city’s purchasing agent.
8. In response to this complaint, the respondent submitted a sworn statement through his attorney, who is also currently the city attorney of the City of Hearne. The respondent does not deny that he is responsible for the charges at issue. The respondent swears to the following:

I have a credit card which is contracted under my name. I am responsible for the payment of the account. The contract is in my name personally. The credit card does say on the card, the City of Hearne, but the City is not responsible for the payment of the card. If the card is not paid, I am the responsible party.

In the past, I have charged both personal items and City items on the card. If the item charged is a personal expense, then I pay for the item. If the item charged is a City expense, then the City pays for the item. There have been times in the past when the City paid the bill which included a personal item, but I would repay the City for that personal expense.

The previous City attorney approved this method of payment. It was not until recently, when I did purchase some campaign signs with the card, and the bill came to the City, that I learned from the current City attorney that the practice was possibly illegal. The City attorney advised me to never again charge personal items on a card where the City is paying the bill. He also told me to immediately reimburse the City. I did so at once. We have discontinued this practice.

I had no intent for the City to pay for my personal charges and I have always made sure that my personal charges, that may have been paid by the City, were reimbursed.

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. The commission has interpreted the prohibition to apply to the use of a political subdivision's resources for political advertising. Ethics Advisory Opinion No. 45 (1992).
3. Political advertising is defined as a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or (B) appears (i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or (ii) on an Internet website.
4. The t-shirts and signs charged by the respondent on the credit cards at issue constitute political advertising because they support the respondent's candidacy for an elected public office.
5. The respondent does not dispute that he made the credit card charges at issue. The evidence shows that the credit card charges for the respondent's campaign materials were mailed to the city and that the city paid the credit card bill. The respondent submitted evidence to show that he reimbursed the city for those charges before the city paid the bill. Nonetheless, city resources were used to handle the respondent's purchase of political advertising. Therefore, there is credible evidence that city resources were used 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 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 and employee of a political subdivision may not spend or authorize the spending of public funds for political advertising and that the prohibition applies to the use of public resources to handle credit card charges 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

After considering the seriousness of the violation described under Sections III and IV, including the nature, circumstances, and consequences of the violation, and after considering the sanction necessary to deter future violations, the commission imposes a \$500 civil penalty for the violation 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-2406107.

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

Ruben Gomez, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director