



- meeting room used for city court and city council proceedings, the location of which is not generally accessible to the public.
3. In response to the complaint, the respondent stated that the facility used for the photograph is open to the public and used for a variety of events, such as retirement parties, Christmas parties, fundraisers, city council meetings, and church gatherings. The respondent swore that, since the room is open to the public, he was unaware that the photograph could constitute an ethics violation.
  4. In response to written questions submitted by Commission staff, the respondent swore that the meeting room is usually locked and that access may be granted by submitting a request to the city secretary. The respondent further swore that reservations for the room may be required to ensure there is no conflict. The respondent swore that the candidate called him and asked for his support and a photograph, and that they met in the meeting room because it was empty. The respondent swore that he had to unlock the door in order to gain access to the meeting room, and that the picture was taken by the city secretary. Lastly, the respondent swore that he does not possess a key to the meeting room.
  5. An officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a).
  6. In order to find a violation of Section 255.003(a) of the Election Code, the Commission must determine:
    - 1) the respondent was an officer or employee of a political subdivision;
    - 2) the respondent knowingly spent or authorized the spending of public funds (or the use of public resources) for the photograph; and
    - 3) the photograph constitutes political advertising.
  7. The “spending” of public funds includes the use of a political subdivision employee’s work time or a political subdivision’s equipment or facilities. *See, e.g.*, Tex. Ethics Comm’n Op. No. 443 (2002) (placement of campaign flyers in a school district teachers’ lounge would involve the spending of public funds where school district employees were required to transport the flyers to an area of the school that was not accessible to the public); Tex. Ethics Comm’n Op. No. 45 (1992) (concerning use of school district internal mail system, distribution of political advertising using school district equipment or school district employees on school district time would be the spending of public funds); Attorney General Opinion No. KP-177 (2018) (statute prohibits the use of school district staff, facilities, or other resources where school districts electronically distributed links to Internet websites that were partisan in nature).
  8. Ethics Advisory Opinion No. 550 concludes that Section 39.02 of the Penal Code prohibits a public officer from using government resources, of which the officer has custody or possession by virtue of the office, to create a photograph, video, or other communication for political advertising. The opinion further concludes that Section 255.003(a) of the Election Code prohibits officers and employees of political subdivisions from using

government resources, such as restricted areas of government facilities, for political advertising. Tex. Ethics Comm'n Op. No. 550 (2019). Conversely, a "public area of a government facility" that is "equally accessible" to everyone is not in the "custody or possession" of a public officer for purposes of the Penal Code, and thus may generally be used for political advertisements. *Id.* For purposes of Section 255.003(a) of the Election Code, the use for political advertising of an area restricted to employees in a facility maintained by a political subdivision, constitutes a spending of public funds, and therefore violates Section 255.003(a) of the Election Code. *Id.*

9. "Political advertising" is defined, in pertinent part, as a communication supporting or opposing a candidate for nomination or election to a public office or a public officer that is published or broadcast in return for consideration or appears in various forms of writing or on an Internet website. Tex. Elec. Code § 251.001(16).
10. It is undisputed that the respondent is an officer or employee of a political subdivision and that the respondent used the city meeting room for political advertising. The respondent had to unlock the meeting room door in order to gain access, which indicates that the respondent had control over the meeting room and it was not equally accessible to the general public at the time the photograph was taken. In addition, there is no evidence to show the respondent submitted a formal request or made a reservation to use the room, or that other candidates were provided a similar opportunity to use the room for political advertising. Further, credible evidence indicates the picture was taken by an employee of the city during normal business hours. Therefore, there is credible evidence of a violation of Section 255.003(a) of the Election Code regarding the respondent's use of a political subdivision's equipment or facilities and a political subdivision employee's work time for political advertising.

#### **IV. 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 findings of fact and conclusions of law described under Section III, 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 knowingly spend or authorize the spending of public funds or use public resources for political advertising. The respondent agrees to comply with this requirement of the law.

**V. 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.

**VI. Sanction**

After considering the nature, circumstances, and consequences of the violation described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 civil penalty.

**VII. 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-32204206.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Randy Hodges, Respondent

EXECUTED by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
J.R. Johnson, Executive Director