

TEXAS ETHICS COMMISSION

IN THE MATTER OF
MICHAEL VOIT,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2406114

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission met on September 10, 2004, to consider sworn complaint SC-2406114. A quorum of the commission was present. The commission determined that there is credible evidence of a violation of section 255.0031 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 agreed resolution to the respondent.

II. Allegations

The complaint alleges that the respondent violated section 255.0031 of the Election Code by using the school's internal mailing system for political advertising and that the respondent violated section 255.004 of the Election Code by representing in a campaign communication that the communication emanated from a source other than its true source.

III. Facts Supported by Credible Evidence

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

1. At all times relevant to the complaint, the respondent was a teacher at Llano Elementary School.
2. The complaint alleges that the respondent violated section 255.0031 of the Election Code by using the school's internal mailing system for political advertising.
3. The complaint further alleges that the respondent violated section 255.004 of the Election Code by representing in a campaign communication that the communication emanated from a source other than its true source.
4. The complainant submitted a copy of an e-mail that urges readers to vote for certain candidates for school trustee.

5. The e-mail was sent to “elstaff.” Apparently this address is used to send e-mails to all school staff members.
6. The respondent submitted an affidavit in which he states that he and a fellow teacher were discussing an upcoming school board election in the fellow teacher’s classroom.
7. He then states, “While discussing our opinions and realizing that many fellow teachers were unaware or alarmed by the results, we made a decision to share our opinion with these peers in the form of an e-mail.”

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 state agency or political subdivision may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising. ELEC. CODE § 253.0031. “Political advertising” means a communication supporting or opposing a candidate for election to a public office that appears in a pamphlet, circular, flier, or similar form of written communication or on an Internet website. *Id.* § 251.001(16).
2. The e-mail in question is a written communication that supports candidates in an election and that is similar to a flier because it was distributed to everyone on the “elstaff” e-mail list. At the time the e-mail was sent, the respondent was an employee of Llano Elementary School. The respondent sent the e-mail using the school’s internal mailing system. His fellow teacher allowed him to use her e-mail account to send the e-mail. Therefore there is credible evidence that the respondent violated section 255.0031 of the Election Code by using the school’s internal mailing system for political advertising.
3. Section 255.004 of the Election Code prohibits a person from representing in a campaign communication, with intent to injure a candidate or influence the result of an election, that the communication emanates from a source other than its true source. A campaign communication is “a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.” ELEC. CODE § 255.001(17).
4. The e-mail from the fellow teacher’s computer is a campaign communication because it is a written communication that relates to an election and supports candidates for public office. The fellow teacher was a source of the campaign communication because she allowed the respondent to use her e-mail account to send the e-mail. Therefore, there is credible evidence that the respondent did not violate section 255.004 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 the entry of 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 state agency or political subdivision may not knowingly use or authorize the use of an internal mail system for the distribution of political advertising. The respondent agrees 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

The commission imposes a \$200 civil penalty for the violation described under Section IV.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed agreed resolution, this order and agreed resolution is a final and complete resolution of SC-2406114.

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

Michael Voit, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
Sarah Woelk, Acting Executive Director