



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 376

September 12, 1997

Whether a candidate may use political advertising materials left over from a previous campaign in an upcoming campaign for the same office. (AOR-417)

The Texas Ethics Commission has been asked whether a candidate may use political advertising materials left over from an unsuccessful campaign for election in 1996 in a campaign for election to the same office in 1998. The requestor has forwarded a copy of the material in question. The material states that it is a political advertisement paid for by the candidate's campaign, states the name of the campaign treasurer, and the campaign address. The requestor asks whether the material may be used in the present campaign even though the candidate's treasurer and campaign address have changed.

It is an offense to *enter into a contract or other agreement to print or publish written political advertising that does not indicate that it is "political advertising" and that does not include the name and address of either the individual who personally entered into the contract or agreement to have the material published or the name and address of the person that individual represents.* If the information in the material in question here was correct at the time it was printed, the material complies with Election Code section 255.001, despite the fact that the information is no longer correct.

Although the information in the disclosure appears to satisfy the requirements of Election Code section 255.001, the material in question does not satisfy the requirements of Election Code section 255.006 as amended by the 75th Legislature which took effect on September 1, 1997. Section 255.006 provides as follows:

(a) A person commits an offense if the person knowingly enters into a contract or other agreement to print, publish, or broadcast political advertising with the intent to represent to an ordinary and prudent person that a candidate holds a public office that the candidate does not hold at the time the agreement is made.

(b) A person commits an offense if the person knowingly represents in a campaign communication that a candidate holds a public office the candidate does not hold at the time representation is made.

Act of June 1, 1997, H.B. 3207, § 9, 75th Leg., R.S. Subsection (c) of section 255.006 provides that a person represents that a candidate holds a public office the candidate does not hold if "the political advertising or campaign communication states the public office sought but does not use the word 'for' to clarify that the candidate does not hold that office." *Id.*

The material in question here is a campaign communication supporting an individual who is not an incumbent in the office sought and it does not include the word "for." *See* Elec. Code § 251.001(17) (defining campaign communication). Therefore, the material does not comply with section 255.006(b).¹

Consequently, the candidate may not use the leftover campaign materials in a new campaign unless the word "for" is inserted before the name of the office sought.

SUMMARY

If the information in a political advertising disclosure statement was correct when the political advertising was printed or published, the political advertising complies with Election Code section 255.001.

A campaign communication supporting an individual who is not an incumbent in the office sought does not comply with Election Code section 255.006(b) if it identifies the office sought but does not use the word "for."

¹ Use of the campaign material in question would not violate section 255.006(a), because the contract or agreement was entered into before the effective date of Election Code section 255.006(c). Section 255.006(b), however, makes it an offense to "represent " in a campaign communication that a candidate holds an office the candidate does not hold. See Elec. Code § 251.001(17) (defining campaign communication). A person makes a representation in a written campaign communication at the time the person displays or distributes the campaign communication.