



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 442

May 10, 2002

*Whether the text of certain political advertising complies with section 255.006 of the Election Code.
(AOR-494)*

The Ethics Commission has been asked about the application of section 255.006 of the Election Code to a particular piece of political advertising. With the names of the specific office and the actual candidate changed,¹ the piece reads as follows:

Elect
Joe
Candidate
County Commission
Place 2

The question raised is whether that piece of political advertising complies with section 255.006 of the Election Code, which 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 that the candidate does not hold at the time the representation is made.
- (c) For purposes of this section, a person represents that a candidate holds a public office that the candidate does not hold if:
 - (1) the candidate does not hold the office that the candidate seeks; and
 - (2) the political advertising or 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.
- (d) A person other than an officeholder commits an offense if the person knowingly uses a representation of the state seal in political advertising.
- (e) An offense under this section is a Class A misdemeanor.

Subsections (a) and (b) contain general prohibitions against certain campaign materials that represent that a candidate holds an office that the candidate does not in fact hold. Those sections, the text of which has been unchanged since the Election Code was revised in 1987, do not require that any particular words appear in the

campaign materials. Acts 1987, 70th Leg., ch. 899, § 1, at 2995, 3027 (substantive revision of Elec. Code). In contrast, subsection (c), which was added in 1997, requires that a person who does not hold the office he or she is seeking must use the word “for” in certain campaign materials to clarify that the candidate does not hold the office sought.² Acts 1997, 75th Leg., R.S., ch. 1134, § 9, at 4289, 4291.) *See generally* [Ethics Advisory Opinion Nos. 385, 376](#) (1997) (regarding use of word “for” in political advertising).

Because the piece of political advertising at issue does not contain the word “for” and because the candidate supported by the political advertising does not hold the office sought, a violation of section 255.006(a) would occur if a person knowingly entered into a contract or other agreement to print or publish the political advertising. Likewise, a violation of section 255.006(c) would occur if the piece were used as a campaign communication. *See generally* Elec. Code § 251.001(17) (defining “campaign communication” to mean “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”).

Although the political advertising at issue here does not comply with the requirements of section 255.006, the requestor takes the position that the affirmative requirement to use the word “for” in this case violates the constitutional guarantee of free speech. Because an advisory opinion is not a form of enforcement and because reasonable reliance on an Ethics Commission advisory opinion is a defense to prosecution or to the imposition of a civil penalty, however, we take care in advisory opinions to give cautious advice and to approve only conduct that is clearly permissible. In this situation, the political advertising, which is at least ambiguous in regard to whether the candidate holds the office sought, does not comply with the statutory requirement in section 255.006 of the Election Code. Furthermore, the requestor has not cited any case law that would oblige us to conclude that the application of section 255.006 in this case would be constitutionally impermissible.³ Therefore, we cannot advise the requestor that he may disregard the plain language of section 255.006 of the Election Code.

SUMMARY

Section 255.006(c) of the Election Code requires the use of the word “for” in certain campaign materials to clarify that the candidate does not hold the office sought. The political advertising at issue in this opinion does not comply with section 255.006(c).

¹ This illustration tracks the text but does not show the various font sizes or the more artistic layout of the piece.

² The statute does not merely require the inclusion of the word “for.” Rather it requires “for” to be included in a way that clarifies that the candidate does not hold the office sought.

³ In cases in which case law clearly required us to do so, we have relied on the United States Constitution as a basis for disregarding the plain language of a statute. *See* [Ethics Advisory Opinion Nos. 198](#) (1994) (constitutional “express advocacy” standard limits application of Elec. Code § 253.094 regarding political activity by corporations and labor organizations); [8](#) (1992) (constitution limits application of confidentiality provision set out in what is now Gov’t Code § 571.140).