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May 11, 2016
Via Certified Mail

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Texas Ethics Commission
c/o Ms. Anitra Abdullah-Levy
Assistant General Counsel
P.O. Box 12070, Capitol Station
Austin, Texas 78711-2070

Re: Response to Notice of Ethics Complaints SC-3160388 and SC-3160389

Dear Texas Ethics Commission,

This letter is submitted for your consideration in response to two Notices of Complaint received by Todd Meier, the Mayor of the Town of Addison. The first is Notice of Complaint, SC-3160388, which was filed by Mr. James F. Duffy. The second is Notice of Complaint, SC-3160389, which was filed by Mr. John F. Oliver. Mayor Meier received the first notice and corresponding sworn complaint via certified mail on March 24, 2016, and he received the second notice and corresponding sworn complaint on April 8, 2016.

Considering the similarities between these two Notices of Complaint, and with approval from TEC Assistant General Counsel Anitra Abdullah-Levy to do so by May 16, 2016, Mayor Meier provides this response to both complaints pursuant to Section 571.1242 of the Texas Ethics Commission Government Code and Section 12.52(a) of the Texas Ethics Commission Rules.

ALLEGATIONS

Within their sworn complaints, Complainant Duffy and Complainant Oliver allege that Mayor Meier used public funds for political advertising, in violation of the Texas Election Code, Section 255.003.¹

¹ The Notice of Complaint for SC-3160389 also notes that Mr. Oliver appears to allege that Mayor Meier violated the Open Records Act, Chapter 552 of the Government Code, but that the Texas Ethics Commission has no jurisdiction to administer or enforce this act. As such, this response does not address these allegations, though Mayor Meier denies any wrongdoing with regard to this act as well.

Texas Ethics Commission

May 11, 2016

Page 2

Specifically, both Complaints allege that, within the weekly newsletters that his office published on February 26, 2016 and March 4, 2016, the Mayor's characterization of candidates running for City Council in the May 7 election constituted "Political Advertising" under Section 255.003. *See* SC-3160388 at Section IV, Page 1; SC-3160389 at Section IV, Page 1. The Mayor's characterization is identical in both newsletters and includes the following language:

We will be having a Council election this spring in Addison. Filing for the May 7 election closed last Friday at 5:00pm and **current Council members Mayor Pro Tempore Janelle Moore, Deputy Mayor Pro Tempore David Heape and Council member Mary Carpenter will be standing for reelection. Running against them are Al Angel, Jim Duffy and Paul Walden.** Early voting ends today, February 26, at 7pm. As mentioned above, Election Day is Saturday, May 7 with results posted soon after the polls close at 7pm.

Id. (Citing Newsletters, February 26, 2016 and March 4, 2016 (emphasis in original)).

In addition, Complainant Oliver alleges that "[t]aken individually and as a body of work judged over time, the Newsletter written by Meier is clearly self-promotional, and also regularly supports and praises sitting councilmembers perceived to be allies." SC-3160389 at Section IV, Page 1. He further states that "[w]hether viewed in detail or from a macro level, ... Meier's one-sided commentary has the impact of supporting, directly and indirectly, councilmembers and candidates for office." *Id.* at Section IV, Pages 1-2.

To support these allegations, Complainant Oliver makes reference to various passages in five of Mayor Meier's newsletters, claiming that they mischaracterize events, are self-promotional, and/or show support of certain councilmembers over others. He also references multiple emails between council members and citizens of Addison to support his claims, though the emails appear nowhere in the newsletters. *See id.* at Section V.

Complainant Oliver divides his claims into four categories:

1. Self-promotion/support of councilmembers in Addison's January 29, 2016 Newsletter (including three who were then expected to, and have now filed for reelection in May 2016).
2. Improper support of Janelle Moore's candidacy in 2014.
3. Attacks on prior management and employees as a way of supporting current councilmembers.

4. Number of mentions/photos/photo coverage.

See id. at Section IV.

Mayor Meier denies any wrongdoing with regard to the publication of his weekly newsletters. For the reasons stated below, Mayor Meier urges this Commission to find that there was not a violation of the law and dismiss both Complaints.

RELEVANT REGULATIONS AND DEFINITIONS

Section 255.003 of the Texas Election Code provides as follows:

- (a) An officer or employee of a political subdivision may not spend or authorize the spending of public funds for political advertising.
- (b) This section does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure.
- (c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

This Commission defines “political advertising,” in relevant part, 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: ... (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.” Tex. Election Code, §251.001(16).

This Commission has previously held that “[t]he critical issue in determining whether an advertisement is ‘political advertising’ is whether it is a communication supporting or opposing a candidate or a public officer. ... Whether a particular communication supports or opposes a candidate or a public officer is a fact question.” Ethics Advisory Opinion 476 (2007) (internal citations omitted).

The Commission specifically excludes newsletters from this definition under the Ethics Commission Rule 26.2(1)-(3), so long as the newsletter in question fulfills the following requirements:

- (1) It includes no more than two pictures of a public officer per page and if the total amount of area covered by the pictures is no more than 20 percent of the page on which the pictures appear;
- (2) It includes no more than eight personally phrased references (such as the public officer's name, "I", "me", "the city council member") on a page that is 8 ½" x 11" or larger, with a reasonable reduction in the number of such personally phrased references in pages smaller than 8 ½" x 11"; and
- (3) When viewed as a whole and in the proper context:
 - (A) is informational rather than self-promotional;
 - (B) does not advocate passage or defeat of a measure; and
 - (C) does not support or oppose a candidate for nomination or election to a public office or office of political party, a political party, or a public officer.

When viewed as a whole and in the proper context, Mayor Meier's newsletters satisfy the requirements under the Ethics Commission Rule 26.2(1)-(3) and do not constitute "political advertising" within the meaning of Texas Election Code Section 255.003.

ARGUMENTS AND LEGAL SUPPORT

A. Each newsletter must be viewed individually and not "as a body of work judged over time."

Complainant Oliver's contention that Mayor Meier's newsletters constitute political advertising "as a body of work judged over time" and when viewed "from a macro level" is misguided and an improper application of the relevant rules. The Texas Election Code and Ethics Commission Rules each define political advertisements using references to individual communications:

1. Tex. Election Code, §251.001(16) uses the singular article "a communication" in its definition of political advertising.
2. Ethics Commission Rule 26.2(1)-(3) uses the singular article "a newsletter" and describes the analysis of each newsletter individually, "[w]hen viewed as a whole and in the proper context."

In addition, all advisory opinions discussing newsletters and other publications as potential political advertisements analyze individual documents based on the documents themselves and not extraneous evidence. *See, e.g.*, Ethics Advisory Opinion 211 (1994) (discussing a brochure); Ethics Advisory Opinion 476 (2007) (discussing a four-page newsletter); Ethics Advisory Opinion 506 (2012) (discussing a refrigerator magnet).

Each of Mayor Meier’s newsletters is produced and distributed individually each week. Once a newsletter is emailed to those recipients who have requested to be included on the mailing list, it is then published on its own page and linked to the Addison city website for archive purposes.² The Mayor has published hundreds of these weekly newsletters since July 1, 2011, and each newsletter contains numerous pages of information. Analyzing these newsletters as a homogeneous mass is unrealistic and improper under the rules.

In fact, Complainant Oliver himself does not analyze the hundreds of newsletters “as a body of work judged over time.” Instead, he selectively references factual passages from five newsletters over a two-year period—combined with emails and other extraneous information completely unrelated to the newsletters themselves—to fabricate what can only be described as a subliminal political advertising campaign by Mayor Meier. It is clear that Complainant Oliver dislikes the way Mayor Meier recounts certain community events, but this does not create grounds for classifying any of the newsletters as political advertising. Complainant Oliver’s unfounded arguments and “conspiracy theory” analysis methods find no support in the relevant rules and should be rejected by this Commission.

B. The language in question does not constitute political advertising by the plain meaning of the applicable regulations.

When reviewing each of Mayor Meier’s newsletters individually and in their entirety, it is nearly impossible to see how they would constitute political advertising under the definitions of the Texas Election Code and Ethics Commission Rules. Ethics Commission Rule 26.2(3) specifically states that the newsletter must be viewed “as a whole and in the proper context.” Yet both Complainants isolate three factual sentences that list the date of an upcoming election and the names of the six candidates involved to support the allegation that the entire purpose of the newsletters (indeed, the six-year existence of weekly newsletters) is to support three incumbent candidates.

The three sentences in question express no opinion about any of the candidates, either positive or negative. They simply reference the fact that three candidates are incumbents, listing

² The archive links may be found here: <http://blog-addisontx.info/category/mayor> (last accessed on May 5, 2016).

the titles under which they operate as councilmembers to give context to their incumbency. It is unreasonable to consider such factual statements as promoting a campaign, and doing so would stifle the ability for public officials to properly inform their community of any local elections in the future.

After repeating almost all of Complainant Duffy's Complaint verbatim, Complainant Oliver attempts to find support of Mayor Meier's perceived bias using selective passages from various newsletters dating back to March 2014. Once again, none of the newsletters containing the referenced passages, when viewed in context of the corresponding newsletter as a whole, come close to the definition of political advertising under Ethics Commission Rule 26.2(1)-(3).

In fact, Complainant Oliver—likely realizing that the three sentences discussed above were completely innocuous on their face and insufficient to support an ethics violation claim—returns to that passage later in his Complaint to bolster the argument. He states that “[b]rief background is needed to fully appreciate the nature of the problems with the February 26, 2016 Newsletter,” and then describes the events of an unrelated council meeting, among other things. SC-3160389 at Section IV, Page 9. He argues that these facts show “Meier’s keen awareness of the upcoming election” and thus his political purpose in referencing the upcoming election and candidates as he did. *Id.* Once again, this extraneous information is irrelevant to this Commission’s analysis and merely emphasizes the fact that the newsletters are not political advertising under the rules.

In another example, Complainant Oliver cites the following two sentences within the March 7, 2014 newsletter to claim that the entire fourteen-page document—as well as future newsletters—should be considered political advertising:

Council Member **Janelle Moore** whose outstanding academic career from Ursuline to University of North Texas undergraduate degree and her MBA from UT at Dallas, 12 years of professional success in the medical sales and business development field and remarkable community service work from Africa to Addison, was honored with the Chamber’s **Rising Star Award**. Congratulations Janelle, you make Addison very proud.

SC-3160389 at Section IV, Page 8 (emphasis in original).

The language in question simply commends a council member for receiving an award, listing her accomplishments to give context as to why she received it. It makes no reference to any election, is situated unremarkably at the end of a paragraph in the middle of the fourth page of text, and is surrounded by acknowledgements of other individuals and descriptions of other

events and accomplishments within the city over the previous week. Further, it is not accompanied by any picture of the council member, nor is it emphasized in any way.

In this context, it is clear that the purpose of the newsletter is not to promote an electoral candidate, but to educate readers on weekly events in Addison and highlight the successes within the city by community members, including those in leadership positions.

Considering the volume of information provided in each of the newsletters, and the relevant nature of the information that they provide for subscribers regarding Council activities, community economic development, and upcoming events, the Complainants' argument that they each constitute political advertising holds no weight.

C. The newsletters do not support or oppose a candidate for nomination or election to a public office.

Under the Ethics Commission Rules and Ethics Advisory Opinions, it is clear that Mayor Meier's newsletters do not support or oppose any candidate for public office, as they do not reference any candidates in an "unduly conspicuous way." As previously stated, the newsletter must be viewed as a whole and in the proper context, and the determination regarding whether each newsletter constitutes "political advertising" as defined by the Election Code is made on an individual basis. *See* Ethics Commission Rule 26.2.

The three sentences in which Mayor Meier describes the May 2016 election is the only language referenced in either Complaint that pertains to an upcoming election and the associated candidates. They constitute one paragraph near the end of the text in the two associated newsletters, each of which is over a dozen pages long.

This Commission previously found that a brochure featuring an incumbent candidate's identifying information, including his title and duties, was not political advertising under 251.001(16):

The text of the brochure merely describes the duties of the justice of the peace court. The name of the incumbent justice of the peace appears only on the letterhead, and this is not done in an unduly conspicuous way or in a way that would lead one to believe that the purpose of the brochure was to support the incumbent.

Ethics Advisory Opinion 211 (1994).

The brochure under consideration in Opinion 211 listed the duties of a justice of the peace and included detailed information about a particular incumbent justice of the peace. Even though the brochure included the name, current title, specific duties, courthouse address, and courthouse phone number of the incumbent, this Commission did not consider it political advertising.

Much like in the brochure analyzed in Ethics Advisory Opinion 211 (1994), Mayor Meier's newsletters did not highlight the names of the committee members in an "unduly conspicuous way." Indeed, Mayor Meier's use of names and titles were less conspicuous than that in Opinion 211 in numerous ways:

1. Although the incumbents' names are in boldface in the Mayor's newsletters, so too are the other three candidates' names and all other names he references, along with significant portions of other text throughout the newsletters.
2. The brochure in Opinion 211 did not mention any other candidates, whereas Mayor Meier's newsletters recite all the candidates.
3. Finally, the brochure in Opinion 211 restricted its topic to information about the justice of the peace and his personal information and duties, whereas the section at issue in Mayor Meier's newsletters make up only one informational paragraph in over a dozen pages of material covering a wide range of topics.

See Newsletters, February 26, 2016 and March 4, 2016.

The newsletters' references to these candidates are far from "unduly conspicuous," and thus do not show sufficient support or opposition to raise the newsletters to the level of political advertising under the rules.

D. The distribution of the newsletters is not campaign related.

Mayor Meier's newsletters should not be considered political advertising because their weekly distribution is not related to any campaign. The timing of any publication and the targeted nature of its distribution are important considerations for whether the publication constitutes political advertising. *See* Ethics Advisory Opinion 211 (1994). In Opinion 211, the Commission noted that an incumbent justice of the peace was featured on a brochure that the justice of the peace handed out "when speaking at meetings." *Id.* Still, the Commission found that "[n]o facts [were] indicated that would lead the commission to believe that distribution of the brochure [was] campaign related. Therefore, we do not believe that the brochure provided for

our inspection constitutes political advertising as that term is defined in section 251.001(16) of the Election Code.” *Id.*

Mayor Meier’s newsletters have been published almost every week since July 2011 and are distributed to all individuals who subscribe to the newsletter mailing list, which currently contains approximately 2,500 email addresses. These subscriptions are voluntary and available to anyone on the Town of Addison website.³

When viewed in their entirety, Mayor Meier’s newsletters—much like the brochure in Opinion 211—are clearly not campaign related, as they are published regularly regardless of the proximity to any election, and distributed to voluntary recipients. Indeed, they are less like political advertisements than the brochure in Opinion 211, as they discuss numerous topics unrelated to the candidates in the pending election or their leadership roles, and they are sent to anyone who signs up to the distribution list online.

E. The newsletters are informational rather than self-promotional.

The Complainants’ argument that Mayor Meier’s newsletters are self-promotional under Ethics Commission Rule 26.2(3)(A) is unfounded and illogical.⁴ The Mayor is not up for reelection. He is at the end of his third two-year term, and could not run for any other council position, as the deadline to file for such positions passed in February. Once he completes this term, he does not intend to seek public office, and would not benefit from publishing a self-promotional political advertisement, much less one that would subject him to scrutiny by this Commission.

Also, the fact that Mayor Meier’s photos are present in the newsletters does not make them self-promotional, and Complainant Oliver’s reliance on Ethics Advisory Opinion 476 to imply otherwise is misplaced. Even that opinion notes that “[t]he mere fact that the name of a public officer or the picture of a public officer appears in a newsletter would not determine whether the communication constitutes political advertising.” Ethics Advisory Opinion 476 (2007). The newsletter under scrutiny in that opinion contained 23 pictures of the public official in just four pages of content, making up over 50 percent of the entire newsletter. *See id.* This Commission determined that the use of pictures was excessive in that case and considered the newsletter to be political advertising, taking the opportunity to outline the newsletter guidelines

³ http://www.addisontexas.net/index.php?section=mayors_newsletter.

⁴ Although the Complainants do not argue that Mayor Meier’s newsletters advocate the passage or defeat of any measure under Ethics Commission Rule 26.2(3)(B), it is important to note that the newsletters satisfy this requirement as well, as none of the measures that were discussed in the referenced newsletters were pending for a vote.

later codified in Ethics Commission Rule 26.2(2). *See id.* While photographs of Mayor Meier periodically appear in his newsletters, their frequency and size abide by this Rule and are far from excessive in the context of the newsletters as a whole. Thus, they should not be considered self-promotional.

On the contrary, as they have been since their inception over five years ago, Mayor Meier's newsletters are informational tools that describe weekly council activities, special occasions, local economic development, and upcoming meetings and events, which periodically include pending elections. When elections are approaching, the mayor simply provides voting location information and the names of the candidates. The fact that he mentions candidates' incumbency is not dispositive, particularly because doing so provides additional information for the reader as required under Ethics Commission Rule 26.2(3)(A).

Indeed, the anti-establishment sentiment permeating much of the political landscape of the past few years calls into question the assumption that providing such additional information would even benefit an incumbent's candidacy, especially considering the rise of the Tea Party and the state of the current presidential race.

F. The newsletters are vetted using an extensive internal review process to ensure compliance with legal and ethical requirements.

Mayor Meier takes the ethical requirements of his office very seriously and makes every effort to ensure that his newsletters are compliant. He has published the newsletters for over five years without a complaint such as these being raised and investigated by this commission. Not only that, he and his office helped develop and implement an extensive internal review process for the weekly newsletters almost three years ago.

On September 24, 2013, the Addison City Council held a public hearing to discuss the future of the newsletter. After hearing from multiple speakers and debating at length, the council established a new process whereby the City Attorney would review and make any necessary edits to each newsletter before publication to ensure that it was compliant with any relevant ethical requirements. The attending council members, including Neil Resnik, Bruce Arfsten, Blake Clemens, Janelle Moore, Chris Defrancisco, and Mayor Meier, voted unanimously in favor of the motion.

Every Thursday evening since that motion was approved, the Mayor has circulated a draft newsletter about the events of the previous week to the City Attorney and numerous other city officials on Town staff for review. One of the primary goals of the review is to ensure that the

newsletters do not fall within the definition of “Political Advertising” under section 251.001(16) of the Election Code and section 26.2(3)(A) of the Ethics Commission Rules.

Once the City Attorney and other reviewing officials finish editing Mayor Meier’s newsletter, they approve the newsletter’s content for publication the following morning. At that point, the City Director of Marketing and Communications reformats the final newsletter, emails it to all the mailing list subscribers, and publishes it on its own web page that is linked to the Addison City website. The Mayor is restricted from seeing, editing, or giving further input for the newsletter from the time he submits the draft on Thursday night until the newsletter is published.

In fact, Mayor Meier and his office sought to remedy any ethical concerns in this instance long before the concerns were brought before this Commission. For example, in an abundance of caution, the Mayor completely removed any reference to the May election and its candidates from his draft for the March 7, 2016 newsletter⁵ after Complainant Duffy sent him an email on March 4, 2016 objecting to the language used therein.⁶ Then, although the City Attorney and other reviewing city officials found nothing objectionable about the language in question, the City Attorney requested an advisory opinion regarding the newsletters from this Commission on March 1, 2016,⁷ but did not receive a response before Complainant Duffy filed his Complaint with this Commission.

G. Conclusion

Based on the facts described above, it is clear that Mayor Meier is committed to the ethical requirements set forth by this Commission and applicable regulations, and he has published the newsletters for the Town of Addison with diligence and respect for these requirements for over five years. His newsletters, when viewed as a whole and in proper context, are informational rather than self-promotional, and they do not promote any candidate for public office. The Complainants’ arguments to the contrary are based on irrelevant facts and a misinterpretation of the law. Mayor Meier urges this Commission to find that there was not a violation of the law and dismiss both Complaints so that he and other Texas leadership may continue to promulgate informative newsletters for the benefit of their local communities.

⁵ Published version is marked as Exhibit F in Complaint SC-3160389.

⁶ Marked as Exhibit C in Complaint SC-3160388.

⁷ Included as Exhibit A.



Texas Ethics Commission
May 11, 2016
Page 12

Sincerely,

A handwritten signature in blue ink that reads "WIL B. Mateja".

William B. Mateja
Attorney Representative of

A handwritten signature in blue ink that reads "Todd Meier".

Mayor Todd Meier
Respondent

Enclosure
086054 / 544586