

# TEXAS ETHICS COMMISSION

IN THE MATTER OF  
XAVIER DE LA TORRE,  
RESPONDENT

§  
§  
§  
§  
§

BEFORE THE  
TEXAS ETHICS COMMISSION  
SC-31512177

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) met on November 13, 2017, to reconsider sworn complaint SC-31512177. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of section 255.003(a) of the Election Code, a law administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission proposed this resolution to the respondent.

### II. Allegation

The complaint alleged that the respondent, as an officer or employee of a political subdivision, spent or authorized the spending of public funds for political advertising.

### III. Facts Supported by Credible Evidence

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

1. The respondent is the Superintendent of Schools for the Ysleta Independent School District (YISD) and was superintendent at all times relevant to the complaint.
2. The complaint alleged that the respondent authorized the spending of public funds for a newsletter that advocated for the approval of a YISD bond measure. The newsletter, titled "Special Newsletter, 2015 YISD Bond, The Communicator, Vol. 13, Issue 1, Fall 2015" (the newsletter) was published in the Fall of 2015 in advance of a November 9, 2015 YISD school bond election.
3. The newsletter is a four-page newsletter published with YISD funds that contains descriptions of the bond measure and a letter signed by the respondent and the YISD school board president.
4. The first page includes the early voting dates and the statement "YISD seeks community support for proposed bond" superimposed on a picture of students in a classroom.

5. The second page includes the letter from the respondent and a chart comparing the tax rate at YISD with surrounding school districts. The chart included the assumption that an unrelated proposition that would increase the homestead exemption will also pass, reducing YISD taxpayers' overall tax burden.
6. Included next to the chart is "If Prop. 1 and the YISD bond pass, the owner of a \$100,000 home would actually see YISD taxes go down \$70! At the same time, taxpayers would be investing in the modernization of our schools, athletics and fine arts facilities, technology and safety and security systems."
7. The letter, titled "Greetings from YISD," begins with stating general goals to improve the school district. The general goals lead into a discussion of the YISD Facilities Master Plan and the bond measure to fund it. The letter also includes a reference to the state Proposition 1 and states that "If voters approve both Proposition 1 and our bond, many homeowners would not only see a decrease in their annual YISD tax bills, but they will have given our district the money it needs to significantly improve, modernize and rebuild schools. On behalf of the YISD Board of Trustees and the Ysleta Independent School District we thank you again for your dedication, loyalty and support of our schools."
8. The school bond election was held on November 9, 2015, and was approved by the voters.
9. The respondent denied the allegation by asserting that the newsletter did not constitute political advertising. The respondent argued that the newsletter contained statements of fact and did not advocate passage or defeat of the measure. The respondent attached to his response multiple engineering reports detailing the deterioration of the YISD school district.
10. The respondent stated in his response he only reviewed and authorized the "Greetings from YISD" section of the newsletter. However, that section asks the reader to read the entire newsletter before voting on the measure.

#### **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 political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. ELEC. CODE § 255.003(a). Subsection (a) 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. *Id.* § 255.003(b).

2. Political advertising" is defined, in relevant part, as a communication supporting or opposing a measure that appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication. *Id.* § 251.001(16).
3. "Measure" means a question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. *Id.* § 251.001(19).
4. The critical question in determining whether a communication constitutes "political advertising" is whether it is a communication supporting or opposing a measure. Whether a particular communication supports or opposes a measure is a fact question. A factor in determining whether a particular communication supports or opposes a measure is whether the communication provides information and discussion of the measure without promoting the outcome of the measure. Ethics Advisory Opinion No. 476 (2007). Whether a violation of section 255.003(a) of the Election Code has occurred depends on an examination of the overall content of the advertising.
5. The Commission's brochure on the prohibition against using political subdivision resources for political advertising expressly warns against "wrap[ing] up a factual explanation with a motivational slogan" or including "calls to action such as: Put Children First or Show That You Care About Education." *A Short Guide to the Prohibition Against Using Political Subdivision Resources for Political Advertising in Connection with an Election*, Texas Ethics Commission (last revised September 1, 2009) (internal quotation marks omitted), available at [https://www.ethics.state.tx.us/pamphlet/B09pad\\_pol.pdf](https://www.ethics.state.tx.us/pamphlet/B09pad_pol.pdf).
6. In past enforcement actions, the Commission found violations of section 255.003 of the Election Code for general "promotional statements" that exceeded a factual description of the purposes of the measure. *See, e.g., In re Williams et al.*, SC-211170 (brochure supported passage of sales tax proposition by describing "attractive amenities" the tax would pay for); *In re Isreal*, SC-210964 (newsletter supported measure because it included "we want to sustain the excellence. And we are now asking voters if they too want to sustain the excellence"); *In re Joiner*, SC-31605137 (letter from city attorney that raised questions about a measure to switch forms of local government and was included with a newsletter about the measure "exceeds a factual description of the purposes of the measure and the letter, when viewed as a whole, opposes the measure").
7. The respondent admits that the newsletter was paid for with YISD funds and that he was responsible for the "Greetings from YISD" section, although it had been prepared by YISD staff. The newsletter is a circular or flyer, such that its contents could be considered political advertising if it supports or opposes a measure. The only relevant question is whether the respondent goes beyond factually describing the measure, and when viewed as a whole, advocates for its passage in the "Greetings from YISD" section at issue.

8. The respondent's section of the newsletter factually describes the purpose of the measure, but goes beyond a factual description to advocate for its passage in two ways:
  - Presenting voting to approve both the expanded homestead exemption measure and the school bond measure as a way to achieve a net property tax reduction, while funding the school construction projects; and
  - Ending his letter, which explains the need for the school bond, by thanking the YISD community for their "dedication, loyalty, and support of our schools."
9. The respondent advocates not only for the passage of the school bond measure, but the unrelated state homestead exemption proposition by stating "If voters approve both Proposition 1 and our bond, many homeowners would not only see a decrease in their annual YISD tax bills, but they will have given our district the money it needs to significantly improve, modernize, and rebuild our schools." The obvious implication of tying the school bond measure to the unrelated homestead exemption measure is that voters should approve both measures and get the best of both worlds: better schools, lower taxes.
10. After writing about the need for school construction and how it can be achieved without an increased tax burden, the respondent concludes by thanking readers for their dedication, loyalty, and support of the YISD schools. Thanking readers for their loyalty and support after detailing a school bond proposal is similar to the "show that you care about education" call to action language warned against in the Commission's pamphlet on political advertising by political subdivisions. When viewed as a whole, the "Greetings from YISD" section of the newsletter goes beyond factually describing the measure and advocates for its passage. Therefore, there is credible evidence of a violation of section 255.003 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 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 for political advertising. The respondent agrees to comply with this requirement of the law.

### **VI. 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.

### **VII. Sanction**

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

### **VIII. 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-31512177.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Xavier De La Torre, Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
Seana Willing, Executive Director