

# TEXAS ETHICS COMMISSION

<b>IN THE MATTER OF</b>	§	<b>BEFORE THE</b>
<b>ROBERT “BOB” LUX,</b>	§	<b>TEXAS ETHICS COMMISSION</b>
<b>RESPONDENT</b>	§	<b>SC-32205232</b>

## **ORDER and AGREED RESOLUTION**

### **I. Recitals**

The Texas Ethics Commission (Commission) met on December 13, 2022, to consider sworn complaint SC-32205232. 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 adopted this resolution.

### **II. Allegation**

The complaint alleged that, as a director of Municipal Utility District 60 (MUD 60) and as president of the board of trustees for Woodlands Water, a publicly-funded independent agency that discharges MUD 60’s functions, the respondent spent or authorized the spending of public funds for political advertising by using a customer email list maintained by Woodlands Water to send political advertising to water system customers, in violation of Section 255.003(a) of the Election Code.

### **III. Findings of Fact and Conclusions of Law**

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

1. The respondent was a successful incumbent candidate for director of Montgomery County Municipal Utility District No. 60 (MUD 60) in the May 7, 2022 election, and is the president of the board of Woodlands Water. MUD 60 is a municipal utility district in Montgomery County created under Section 59, Article XVI, of the Texas Constitution.
2. Woodlands Water, formerly known as the Woodlands Joint Powers Agency, is a quasi-governmental organization that administers the operations of several municipal utility districts (MUDs) pursuant to interlocal agreements. Woodlands Water administers MUD 60’s operations.

3. The complaint alleges that the respondent used a customer mailing list obtained from MUD 60 to send out an email supporting himself, fellow MUD 60 incumbent William Stromatt, and non-incumbent candidate for the MUD 60 board Brent Dorsey in the May 7, 2022 election.<sup>1</sup> According to the sworn complaint, in a telephone conversation, Dorsey told the complainant that the respondent had obtained a “full list” of all MUD 60 customer email addresses from the Woodlands Water customer database. Included with the complaint was a copy of an email from Woodlands Water’s general manager confirming that in early 2022, Woodlands Water provided “customer email information” to the respondent, among other incumbent MUD candidates in Montgomery County.
4. The sworn complaint includes MUD 60’s most recent financial audit report. This audit report indicates that MUD 60 contracts for all services and “has no employees or related payroll costs.” The report confirms that Woodlands Water is a joint venture of its constituent MUDs, from whose public funds it draws its funding. According to the report, during the year ending on September 30, 2021, MUD 60 contributed \$280,068 to Woodlands Water for administrative costs. MUD 60’s contributions to Woodlands Water for the year totaled \$1,552,480.
5. The sworn complaint also includes a copy of the email sent to the MUD 60 mailing list obtained from Woodlands Water. The email displays the names and portraits of the candidates supported (Lux, Stromatt, and Dorsey) in large type against a waving American flag. Next to the names and portraits, the email indicates where each candidate could be found on the ballot. For example, for William Stromatt, the email indicates that he would be “# 7 on the Ballot.” Beneath the names and portraits is a vertical text column for each candidate. Each text column contains a list of accomplishments and experience for the relevant director, in bullet point form. For example, beneath the respondent’s name are the phrases “[r]educed MUD 60 tax rate by 19%,” “[a]pproved the return of service deposit to residential customers,” and “[e]nded each year below budget,” among others. The email purports to be a communication from “Citizens for Good Government in the Woodlands.”
6. A logo at the bottom of the email indicates that the email was sent through Constant Contact, a commercial mass emailing service.
7. In his initial response to the complaint, the respondent does not deny that he sent the mass email, but instead claims that he lawfully obtained the customer email information via a request under the Texas Public Information Act. The response includes an affidavit from the former manager of a law firm with no apparent relation to the sworn complaint. In this affidavit, the former manager of the law firm avers that she used a Public Information Act request to obtain customer information from “the agency providing services in the MUDs in The Woodlands.”
8. Section 255.003 of the Election Code provides that an officer or employee of a political subdivision may not knowingly spend or authorize the spending of public funds for political advertising. Tex. Elec. Code § 255.003(a).

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<sup>1</sup> Stromatt and Dorsey lost their elections.

9. In order to find a violation of Section 255.003(a) of the Election Code, the Commission must determine:
- 1) the respondent was an officer or employee of a political subdivision;
  - 2) the respondent knowingly spent or authorized the spending of public funds (or the use of public resources) by sending the email; and
  - 3) the email constituted or contained political advertising.

Tex. Elec. Code § 255.003(a).

10. A municipal utility district is a political subdivision. *Eco Res., Inc. v. City of Austin*, No. 03-00-00353-CV, 2001 Tex. App. LEXIS 153, at \*1 (Tex. App.—Austin Jan. 11, 2001) (pet. denied) (citing *Bennett v. Brown County Water Improvement Dist. No. 1*, 153 Tex. 599, 272 S.W.2d 498, 500 (Tex. 1954)). The respondent, as a director of MUD 60, is an officer of a political subdivision.
11. Title 15 of the Election Code defines “political advertising” 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: 1) in return for consideration is published in a newspaper, magazine, or other periodical, or is broadcast by radio or television; or 2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication, or on an Internet website. *Id.* § 251.001(16).
12. “Political advertising” does not include an individual communication made by email or text message but does include mass emails and text messages involving an expenditure of funds beyond the basic cost of hardware messaging software and bandwidth. 1 Tex. Admin Code § 20.1(11)(B). The mass email at issue in the complaint was sent through Constant Contact, a fee-charging commercial service, and therefore involved an expenditure of funds beyond the basic cost of hardware, messaging software, and bandwidth.
13. The “spending” of public funds includes the use of a political subdivision employee’s work time or a political subdivision’s equipment, resources, or facilities. *See, e.g.*, Tex. Ethics Comm’n Op. No. 443 (2002) (placement of campaign flyers in a school district teachers’ lounge would involve the spending of public funds where school district employees were required to transport the flyers to an area of the school that was not accessible to the public); Attorney General Opinion No. KP-177 (2018) (use of school district “staff, facilities, or other resources” to advertise for or against a candidate or measure, such as by facilitating the electronic dissemination of political advertising, constituted spending of public funds for political advertising).
14. As noted above, in his response to the sworn complaint, the respondent contends that his use of the mailing list was a permissible and lawful use of a document obtained through a Public Information Act request (PIA request). Neither Section 255.003 nor any other section of Title 15 of the Election Code excludes documents subject to a PIA request from Section 255.003’s prohibition on the use of public funds for political advertising. Nor has

the Commission attributed any significance to whether or not a member of the public could obtain documents through a PIA request in pronouncing whether these may be used by an employee or officer in political advertising. For example, in Ethics Advisory Opinion No. 532, the Commission indicated that where a city's letterhead, city logo, and slogan were created with the city's resources to be used for official purposes, they constituted a city resource and could not be used by city officers or employees in political advertising. Tex. Ethics Comm'n Op. No. 532 (2015). The Commission attached no significance to the public availability or unavailability of the letterhead, logo, or slogan. Here, because the mailing list was created with the MUDs' resources to facilitate MUD business, its use in political advertising constitutes a spending of public funds.

15. Further, the mailing list is excepted from disclosure under the Public Information Act because it is confidential by statute. Section 552.101 of the Texas Government Code provides that "[i]nformation is excepted [from disclosure] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 182.001(2) of the Texas Utilities Code makes clear that the personal information of utilities customers is confidential. Tex. Util. Code § 182.052 ("[A] government-operated utility may not disclose personal information in a customer's account record . . . unless the customer requests that the government-operated utility disclose the information."); *see also id.* § 182.001(2) (defining "utility" as "an electric, gas, water, or telephone utility operated by a public or private entity" for purposes of Chapter 182 of the Utilities Code). The personal information of MUD 60's customers is therefore exempt from disclosure under the Public Information Act.
16. The respondent, an officer of a political subdivision, used a public resource created and maintained with public funds, namely the mailing list maintained by Woodlands Water on behalf of Montgomery County MUDs, to send a mass email. The email supported the respondent and two other candidates for election to public office, was sent through a paid promotional emailing service, and constitutes political advertising. There is therefore credible evidence of a violation of Section 255.003(a) of the Election Code.

#### **IV. 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 findings of fact and conclusions of law described under Section III, 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 or use public resources for political advertising. The respondent agrees to comply with this requirement of the law.

**V. 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.

**VI. Sanction**

After considering the nature, circumstances, and consequences of the violation described under Section III, and after considering the sanction necessary to deter future violations, the Commission imposes a \$1,000 civil penalty.

**VII. 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-32205232.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Robert "Bob" Lux, Respondent

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

Texas Ethics Commission

By: \_\_\_\_\_  
J.R. Johnson, Executive Director