

to continue serving you in MUD 67. Please vote for all 3. Thank you.” The email then listed the three names of the incumbent slate with a check box next to each. The email concluded with: “*We know most people don’t like political advertising, and neither do we. But we think you deserve to know what we’ve accomplished, so you and your neighbors can cast an informed vote. Thanks!*” The email also included the disclosure statement “Paid for by the candidates.”

3. The complaint alleged MUD 67 pays Woodlands Water Agency for administrative services to keep and maintain its email server, and pays its own personnel to keep and update its water customer list database, and make available information technology support staff.
4. The general public does not have access to MUD 67 email servers and does not have access to MUD 67’s customer email list.
5. In response to the complaint, the respondent swore:

On or about April 1, 2022, I sent a mass email to the residents of Montgomery County MUD 67 with an attached election flyer in support of the incumbent directors. It was done without realizing that it violated Section 255.003 of the state election code.

6. The respondent swore that before sending the email he asked the district attorney’s office whether such an email would be legal, but the district attorney declined to offer election related advice. The respondent also swore that he believed the email list was considered “public domain,” but when he was advised that the email constituted a violation of law, he canceled plans to resend the email prior to and during the early voting period.
7. 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).
8. 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).

9. 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 67, is an officer of a political subdivision.
10. 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); Tex. Ethics Comm'n Op. No. 45 (1992) (distribution of political advertising using school district equipment or school district employees on school district time would be the spending of public funds where an already existing internal mail system was used); Attorney General Opinion No. KP-177 (2018) (use of school district staff, facilities, or other resources to distribute links to Internet websites would be the spending of public funds).

11. "Political advertising" means, in relevant part, a communication supporting or opposing a candidate for nomination or election to a public office, that:
 - (A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or
 - (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. Elec. Code § 251.001(16).

12. "Political advertising" does not include an individual communication made by e-mail or text message but does include mass e-mails 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).
13. The respondent was an officer of MUD 67 when he sent a mass email to all MUD 67 customers expressly advocating for his re-election and the re-election of two other incumbent candidates. The mass email involved the use of the MUD 67 customer list, a MUD 67 email account, and a MUD 67 server, all paid for and maintained with MUD 67 funds. The email fits the definition of political advertising because it was a mass email sent to all MUD 67 customers using an email service that is paid for by MUD 67 funds.
14. The respondent commandeered an official government channel, using resources paid for and belonging to MUD 67 to carry his personal message advocating for the reelection of the incumbent slate. Therefore, there is credible evidence of a violation of Section 255.003(a) of the Election Code regarding the political advertising mass email of April 1, 2022.

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 \$500 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-32204148.

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

Roland Wayne Johnson, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
J.R. Johnson, Executive Director