

TEXAS ETHICS COMMISSION

IN THE MATTER OF

TED MOORE,

RESPONDENT

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-3170599

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on November 20, 2019, to consider sworn complaint SC-3170599. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of section 255.003(a) of the Election Code, a law administered and enforced by the Commission. To resolve and settle the complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) knowingly spent or authorized the spending of public funds for political advertising; and 2) knowingly spent or authorized the spending of public funds for communications describing a measure that the officers or employees knew is false; and is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure.

III. Facts Supported by Credible Evidence

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

1. The respondent was the superintendent of the Lovejoy Independent School District (“LISD”). He retired effective February 13, 2019.
2. The complaint alleges that the respondent knowingly spent or authorized the spending of public funds for an animated video, several emails, and a second video posted on the LISD website that contained political advertising in support of the May 21, 2016 LISD tax ratification election (TRE). The complaint also alleges that several of the facts contained in the videos and emails were untrue and sufficiently and important as to be reasonably likely to influence a voter to vote for or against the measure.

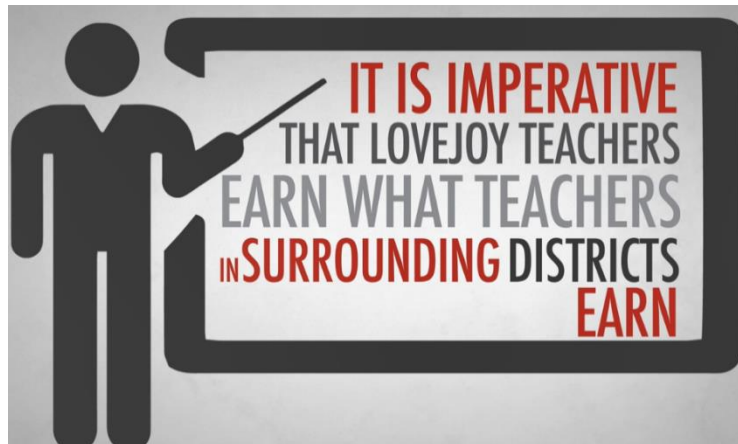
The Animated Video

3. Credible evidence indicates that the respondent authorized the spending of \$4,325 in public funds for a video containing information pertaining to the May 2016 TRE after seeking advice from the District's legal counsel and being informed by District counsel that a video that limited itself to facts and avoided advocacy would not violate the requirements of the Election Code. Following production of the video, but prior to its dissemination, respondent again sought the advice of the District's counsel and proceeded with dissemination only upon approval from the District's legal counsel.
4. The video was included in multiple emails sent by the respondent, through his public email account, in April and May 2016. The emails were posted on the LISD website and YouTube.
5. The video contained graphics, animations, and written text. A transcript of the video is attached to this order.
6. The video begins with the following statement:

The State of Texas continues to reduce the promised level of funding for Lovejoy ISD. At a loss of over \$2 million per year, budget cutting measures are no longer sufficient to maintain the current level of programming offered to the students of Lovejoy. This message is intended to inform the community about the local option for increased revenue.

The District has left no stone unturned to postpone the effects on Lovejoy Students. Over the last five years, the District has cut the budget, reduced staff, frozen salaries, cut the budget again, offered tuition-based enrollment, and used reserved funds that had been set aside for growth. These strategies have allowed the district to protect our quality programs without asking for a tax increase since 2009.

7. The voiceover then states: "In order to recruit and retain the best and brightest teachers for our students, it is imperative that Lovejoy teachers earn what teachers in surrounding districts earn." That narrative is accompanied with the following graphic.



8. The voiceover goes on to state that Lovejoy ISD Trustees proposed an \$.11 increase to the current tax rate that will be up for voter approval at the May 21, 2016, election and that “[t]his tax ratification election, or TRE, would allow Lovejoy voters to adjust the tax rate to maintain a level of funding to support our current programs and provide a teacher pay raise that keeps us competitive with surrounding districts.”
9. The voiceover stated that the school needs additional revenue to deal with increased enrollment, new school facilities, inflation, and additional teacher positions. This all occurred, according to the video, during the “same five years that the Legislature reduced revenue for our district by over \$2 million per year. The reality of funding cuts from the state places the district below the 2007 level of funding.”
10. While an image of animated knight labeled “Tax Payers” fights off a dragon labeled “lost funding” that was menacing an image of a school and items such as a trumpet, computer, and football the voiceover states that:

[e]ssentially the state places the burden of protecting the quality programs valued by our district directly on our taxpayers. In fact, at the current tax rate, as local property tax values rise, our state funding falls. Therefore, the additional funding available through a TRE must be approved by the voters that would yield the district almost \$2 million, balancing the 2016-2017 budget. This would protect the current level of student programming experiences and expectations.



11. When discussing the cost to taxpayers in the video, the video shows that the average tax increase would be \$481 a year, based on the average home value in the district of \$462,284. It then divides that amount by 52 to arrive at the weekly cost of \$9.25, which the video equates to the cost of a takeout pizza. The voiceover also states that homeowners age 65 and older would not see a change in their school taxes.



12. Near the conclusion of the video, the voiceover states that the "TRE is the last option for funding relief before additional budget cuts," while an animated stack of cash gets cut in half by scissors. The voiceover then states, "this will allow us to continue offering the same level of programming. Without this relief, our students will see a difference in the delivery of our programs, such as increased class sizes and fewer class offerings

13. The penultimate screen (below) concludes with the following voiceover:

With the May 21st election, Lovejoy ISD will receive a clear message from the school community, which reflects their desire and expectation to continue the excellent programs and experiences our students enjoy today.



14. The last screen has a disclaimer of sorts, stating “This video has been provided as an informational message about Lovejoy ISD’s financial structure. Thank you for watching.”

Emails

15. The complaint also included several emails sent by the respondent from his official LISD account and sent to parents of LISD students during the lead up to the TRE. The emails were also posted to the LISD website. Respondent sought the advice of the District’s counsel and proceeded with dissemination of the emails following such discussion.
16. The emails at issue contained information pertaining to the May 21, 2016, LISD TRE. The emails also contained information regarding how other districts had gone to their voters for tax increases, the efforts taken by LISD to reduce their budget and avoid tax increases, state public education funding, and the predicted negative effects should the tax increase not be approved by the voters.
17. The emails contained the following relevant passages:
- The Board of Trustees called this election to give our community the choice to either cut existing programs, or to increase the tax rate.” Both are hard choices, and we are hopeful that we will receive a clear direction from the community on this issue

- Over the last 5 years, as we have navigated the financial challenges brought about by the \$2 million dollar loss in state funds, we have developed several scenarios in the event that significant budget reductions were required. During the board meeting last night, I reminded the board about the things on that list they will have to utilize in order to make the necessary reductions in the budget if the TRE does not pass. Please find below the priority areas that will be utilized to lower district expenditures for the 2016-2017 school year: [bullet points included the elimination of athletic programs and extracurricular activities, charging students for extracurricular and athletic programs, eliminating or reducing bus service, raising class sizes, layoffs, reducing STEM offerings, and increasing school lunch prices].
- The district is hopeful that the TRE election has a large voter turnout. Since we are at the point of hard choices – either cut the budget or increase taxes – the Board of Trustees and the Administration want the voters to send a clear message as to whether the choice is to invest more dollars in our classrooms with a tax rate increase or choose for the district to make significant cuts to the budget.
- If the TRE is approved by our voters, the M&O tax rate will increase from \$1.06 to \$1.17. This tax rate will bring almost \$2 million of additional money to our school district. Fortunately, this \$2 million will cover the \$2 million the district continues to lose in state aid every year since 2011. These additional dollars will be used to: [bullet points included staff raises, adding staff positions, and a budget increase].

Second Video

18. The respondent also posted a second video created by LISD staff with public resources on the LISD website and included it in one of the emails. Following production of the video, but prior to its dissemination, respondent sought the advice of the District's counsel and proceeded with dissemination only upon approval from the District's legal counsel. In this video, the LISD chief financial officer argued why there was "a need for additional funding" through the TRE including the following advocative statements:
- Offer the same diverse, quality menu of programming.
 - Offer the same small class sizes.
 - Recruit/retain the best and brightest teachers for our students.
 - LISD has lost over \$2 million in funding each year since 2011 [in state funding].
 - We are operating with less funding per student than we did in 2007.

Allegedly False Information

19. The complaint alleged that many of the communications at issue contained false information that was sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the TRE.

20. The main allegations about false information were that the respondent falsely claimed: (1) that LISD salaries were frozen in the years leading up to the TRE and (2) that if the TRE failed certain programs or positions would be cut.
21. The respondent signed a sworn affidavit stating that, to the best of his knowledge, the information in the communications at issue was not false.

Frozen Salaries

22. To support his claim that Moore provided false information about a salary freeze, the complainant provided spreadsheets of teacher and administrator's salaries and the percent change from 2012 through 2016. In most cases, the teacher and administrator's rose over the years, according the data obtained by the complainant.
23. Moore responded that the claim made in the video was that teacher "pay scales" were frozen, but state mandated raises were given over the years. In effect, teacher pay rates based on a step system were frozen, but teachers continued to receive raises within that system. Moore also stated that while his salary increased, restructuring of other benefits meant that his total compensation was not changed.
24. Although the term "pay scales" is used in the animated video, Moore stated in an email that "We have avoided a tax increase during this time by reducing the budget, reducing staff, **freezing all salaries**, reducing the budget again, adding revenue from tuition, and using reserve funds set aside for growth." (**emphasis added**).
25. The spreadsheets submitted with the complaint show that several teachers' salaries were not "frozen" in the sense that they rose year-over-year.

Threat of Cuts

26. The complainant provided a graphic that showed the claims that the respondent made regarding what programs and positions would be cut at LISD in advance of the TRE vote from residents which changed from the claims made before calling an election and was voted on by the LISD trustees. The complainant alleged that the respondent falsely claimed certain programs would be cut in an attempt to influence voters to approve the TRE.
27. The respondent responded that LISD prepared for the consequences of the TRE failing by creating several scenarios to balance the budget. The respondent stated that informing the voters of likely outcomes that were more specific than ones contemplated before the TRE was even called is not false or misleading.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

The Use of Public Funds for Political Advertising

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).
2. “Political advertising” means 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: (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. *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. Section 255.003(a) of the Election Code 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).
5. 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.
6. 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.

7. 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 a 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”).
8. Any knowing use of school district equipment or school district employees on school district time is prohibited under section 255.003(a) of the Election Code. Ethics Advisory Opinion No. 45 (1992). Under section 255.003(b), the prohibition against authorizing or spending public funds does not apply to a communication that factually describes the purposes of the measure if the communication does not advocate passage or defeat of the measure.
9. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that: (1) the officer or employee knows is false; and (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. ELEC. CODE § 255.003(b-1).
10. There is credible evidence that the respondent authorized the spending of public funds and resources for the animated video only after seeking advice from the District’s legal counsel, and being informed by the District’s counsel that a video that limited itself to facts and avoided advocacy would not violate the requirements of the Election Code. Following production of the video, but prior to its dissemination, respondent again sought the advice of the District’s counsel and proceeded with dissemination only upon approval from the District’s legal counsel. There is also credible evidence that the respondent, after seeking approval from the District’s legal counsel, used public resources when posting the emails, one of which included the second video, on the LISD website. There is also credible evidence the respondent authorized the spending of public funds for the second video by producing it during work hours, using LISD equipment, and the LISD webpage to host it only after seeking advice from the District’s legal counsel and being informed by the District’s counsel that a video that limited itself to facts and avoided advocacy would not violate the requirements of the Election Code. Following production of the video, but prior to its dissemination, respondent again sought the advice of the District’s counsel and proceeded with dissemination only upon approval from the District’s legal counsel.

The Animated Video

11. While not every screen in the video constitutes support for the measure, when viewed as a whole, the video is capable of interpretation as an appeal to vote for the measure. The video was structured as a persuasive argument. It began by setting up a problem, i.e., the state public school funding formula resulting in decreased state funding of \$2 million despite increased student enrollment and increased housing evaluations. The video then set up a tax increase as the only possible solution to that problem by expressly stating:

The District has left no stone unturned to postpone the effects on Lovejoy Students. Over the last five years, the District has cut the budget, reduced staff, frozen salaries, cut the budget again, offered tuition-based enrollment, and used reserved funds that had been set aside for growth. These strategies have allowed the district to protect our quality programs without asking for a tax increase since 2009.

To drive the point home, the video compares Love Joy tax increase history and teach pay raise history to surrounding districts. The video further added subjective statements of opinion such as, “it is imperative that Lovejoy teachers earn what teachers in surrounding districts earn.”

12. The video also used visuals in an effort to persuade people to vote for the TRE. The visuals include a tax payer knight protecting the school from a “lost funding” dragon. In no way can that portion of the animation be considered a description of the purposes of the measure. The knight versus dragon animation is a clear call to action, trying to rally taxpayers to help ward the effects of reduced state funding by approving the TRE.
13. The video again uses animation and visuals and crosses the line from a description of the purposes of the measure to advocacy by comparing the cost of the tax increase to that of a takeout pizza. There’s no reason to divide the yearly cost of the tax increase by 52 weeks and compare it to a minor indulgence except to minimize the cost to taxpayers.
14. There are multiple examples of communications constituting violations of section 255.003 of the Election Code in the orders resulting from Commission decisions in previous sworn complaints, which are available to the public on the Commission’s Internet website. For example, in SC-210964, *In re Isreal*, the Commission found the following statement went beyond a mere factual description of the purposes of a measure and constituted advocacy: “[w]e want to sustain the excellence. And we are now asking voters if they too want to sustain the excellence.” Similarly, the first video at issue in this complaint contains the statement: “With the May 21st election, Lovejoy ISD will receive a clear message from the school community, which reflects their desire and expectation to continue the excellent programs and experiences our students enjoy today.” In addition, in SC-211170, *In re John Williams et al.*, the Commission found a violation on the basis that a brochure described “attractive amenities” that a tax increase would pay for. The decision in *Williams* was

primarily based on the fact that the communication contained a positive adjective—”attractive,” and the reasoning of that case applies to the use of any subjective terminology, whether through the use of positive or negative adjectives.

15. The animated video features both positive and negative adjectives:
- “This tax ratification election, or TRE, would allow Lovejoy voters to adjust the tax rate to maintain a level of funding to support our current programs and provide a teacher pay raise that keeps us *competitive* with surrounding districts.”
 - In order to recruit and retain the *best and brightest* teachers for our students, it is *imperative* that Lovejoy teachers earn what teachers in surrounding districts earn.
 - The district now faces major changes to the delivery of *exemplary* educational experiences for our students unless additional funding becomes available to maintain our *strong* track record of educational *excellence* and fiscal responsibility.
 - “With the May 21st election, Lovejoy ISD will receive a clear message from the school community, which reflects their desire and expectation to continue the *excellent* programs and experiences our students enjoy today.
16. Further, in SC-31512177, *In re De La Torre*, the Commission found that the following statements constituted advocacy:

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;” and “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.

17. In SC-290102, *In re Stoerner*, the Commission found the following statements constituted advocacy:

These programs meet the unique needs of our many students, but they are costly. Our district also is dealing with uncontrollable expenses that are straining our budget. . . . Not many people realize we are struggling to [maintain] operations in 2008 with the same funding we received in 2005. We have operated very efficiently for many years but the legislative

mandate and uncontrollable cost increases are causing extreme financial hardships for this school district. . . . Unfortunately, even after these cost reductions, next year's budget will require us to use more than \$15 million of our fund balance or savings. If we continue at this rate, we will deplete these emergency funds in just three years to an amount that will not even allow us to cover fall expenditures in 2010. The district will be forced to borrow money just to pay our staff. After examining our options and each department's budget, we are left with only one way to generate the monies needed to continue programs and services that are essential to our students' success. We must have a change in our tax rates. That means asking voters to go to the polls and vote in a tax rate election. If approved, the district's rate would still be considerably lower, than it was just three years ago. . . . The Alief School District and Board of Trustees believe this rate increase is vitally important. The additional funding is needed to allow us to continue offering the programs that our parents, patrons, and students have come to expect for all our students. The bottom line is Alief has always aimed for student success and we will continue to strive for success into the future. We live by our motto: Preparing students for tomorrow while caring for them today.

18. These statements are highly similar to the following statements at issue in this complaint:

- In fact, at the current tax rate, as local property tax values rise, our state funding falls. Therefore, the additional funding available through a TRE must be approved by the voters that would yield the district almost \$2 million, balancing the 2016-2017 budget. This would protect the current level of student programming experiences and expectations. So, how will this impact you financially? The increase would be \$.11 for every \$100 in property value. For a homeowner whose house is valued at \$462,284, the average home value in Lovejoy ISD, this equates to an additional \$481 per year. That cost translates to \$9.25 per week, about the cost of a take-out pizza. Homeowners age 65 and older, whose taxes are frozen, would not see a change in their school taxes. Regardless of the outcome of the TRE election, the interest and sinking portion of the tax rate will not change. The TRE is the last option for funding relief to avoid additional budget cuts. This will allow us to continue offering the same level of programming. Without this relief, our students will see a difference in the delivery of our programs, such as increased class sizes and fewer class offerings. With the May 21st election, Lovejoy ISD will receive a clear message from the school community, which reflects their desire and expectation to continue the excellent programs and experiences our students enjoy today. This video has been provided as an informational message about Lovejoy ISD's financial structure. Thank you for watching.

- If the TRE is approved by our voters, the M&O tax rate will increase from \$1.06 to \$1.17. This tax rate will bring almost \$2 million of additional money to our school district. Fortunately, this \$2 million will cover the \$2 million the district continues to lose in state aid every year since 2011. These additional dollars will be used to [give staff raises, add staff positions, and increase the budget].

19. Finally, the video closes with a call to action:

With the May 21st election, Lovejoy ISD will receive a clear message from the school community, which reflects their desire and expectation to continue the excellent programs and experiences our students enjoy today.



20. The screen sets up a choice for the voter: if you vote for the measure you desire and expect excellent programs and experiences; if you vote against it you are for less than excellent programs and experiences for Lovejoy ISD. The clear implication is that the LISD administrators that produced this video want the viewer to vote for the TRE.
21. The animated video supports the TRE and is therefore political advertising prohibited by section 255.003 of the Election Code. Credible evidence indicates that the respondent spent or authorized the spending of public funds for its production only after relying on the advice of the District's counsel that doing so would not violate the Election Code.

Emails

22. Similar themes are used in the emails sent by Moore. For example, the emails contained the following phrases that support the passage of the measure:
- Every district in Collin County that relies on M&O taxes to fund their schools **except Lovejoy ISD** has gone to their voters for this same tax increase.”
 - “We have avoided a tax increase during this time by reducing the budget, reducing staff, freezing all salaries, reducing the budget again, adding revenue from tuition, and using reserve funds set aside for growth.”
 - “Our property values are increasing, but for every additional dollar that we raise from local property taxes, the State of Texas takes away one dollar. Therefore, property growth only benefits the State of Texas.”
 - “We have frozen teacher pay along with all other positions for 4 of the last 6 years. Our surrounding districts have already told us that they are planning to pass along a 3% raise to their teachers for the next school year.”
 - “This increase [tax rate increase at issue] is a response to the current state school funding formula that does not allow Lovejoy ISD to get any additional dollars from the growing tax base that you see in our community. For each dollar of increased local taxes, the state reduces the state share by one dollar. Our local growth in property values allows the state to have more money to send to other school districts that have a lower level of property wealth than Lovejoy ISD. The only avenue that the state has given us to add additional revenue per student is to raise the M&O tax rate and place it before our voters for voter approval.”
 - “The Board of Trustees called this election to give our community the choice to either cut existing programs, or to increase the tax rate. Both are hard choices, and we are hopeful that we will receive a clear direction from the community on this issue.”
 - “Over the last 5 years, as we have navigated the financial challenges brought about by the \$2 million dollar loss in state funds, we have developed several scenarios in the event that significant budget reductions were required. During the board meeting last night, I reminded the board about the things on that list they will have to utilize in order to make the necessary reductions in the budget if the TRE does not pass. Please find below the priority areas that will be utilized to lower district expenditures for the 2016-2017 school year: [bullet points included the elimination of athletic programs and extracurricular activities, charging students for

extracurricular and athletic programs, eliminating or reducing bus service, raising class sizes, layoffs, reducing STEM offerings, and increasing school lunch prices].”

- “The district is hopeful that the TRE election has a large voter turnout. Since we are at the point of hard choices – either cut the budget or increase taxes – the Board of Trustees and the Administration want the voters to send a clear message as to whether the choice is to invest more dollars in our classrooms with a tax rate increase or choose for the district to make significant cuts to the budget. In order to allow maximum flexibility, the district has suspended the following open positions to make them no longer available for immediate hire until after the May 21 election: [bullet points included seven positions].”
 - “If the community chooses to say no to the TRE, the Board of Trustees will meet on June 3, 2016 for a budget workshop to begin the final process of approving specific cuts for next year.”
23. Several of the emails contain a link to the animated video. Other emails include running tally of the percent of LISD parents have voted during early voting, in what appears to be an attempt to spur parents to the polls. The emails at issue were sent by Moore, arguably support the measure, and were posted on the LISD website only after he obtained approval from the District’s counsel.

Second Video

24. In the second video, the Lovejoy CFO argued why there was “a need for additional funding:”
- LISD has lost over \$2 million in funding each year since 2011 [in state funding].
 - We are operating with less funding per student than we did in 2007.
 - With need for almost \$2 million in additional expenditures comes the need for additional revenue
25. The second video uses a video of the CFO talking to the camera and slides, but does not feature animation like the first video. However, the video contains a slide with the title “Protecting the Lovejoy Way” which is a call to action in support of the TRE.
26. Taken as a whole, the animated video supports the TRE and is therefore political advertising prohibited by section 255.003 of the Election Code. Credible evidence indicates that Moore spent or authorized the spending of public funds for its production by producing the video during work hours and using LISD resources to film and post the video on the Internet only after relying on the advice of the District’s counsel that doing so would not violate the Election Code.

27. It is an affirmative defense to prosecution for an offense under this section or the imposition of a civil penalty for conduct under this section that an officer or employee of a political subdivision reasonably relied on a court order or an interpretation of this section in a written opinion issued by: (1) a court of record; (2) the attorney general; or (3) the commission. ELEC. CODE § 255.003(d).
28. The respondent is not an attorney. There is credible evidence that the respondent sought and relied on the District's legal counsel's interpretation of the applicable law and supporting authorities before authorizing the expenditure of public funds **and** again before the various videos and emails at issue were actually posted and/or disseminated. The evidence reflects that while the respondent authorized and/or spent public funds for the production of the videos and disseminated such videos and emails, he did so only after he obtained advice from the District's legal counsel that such communications did not constitute "political advertising" and fell within the safeharbor of ELEC. CODE § 255.003(b).
29. However, the opinion of a District's legal counsel is not a legal opinion that creates an affirmative defense to the imposition of a civil penalty, under section 255.003(d) of the Election Code.
30. The respondent contends that reliance on advice of counsel made it so that the respondent did not "knowingly" authorize the spending or spend public money for political advertising. It is the opinion of the Commission that even reasonable and good-faith reliance on advice of counsel does not negate the knowledge element of a violation of section 255.003. Although reliance on counsel's advice mitigates culpability, it does mean his actions to authorize the spending of public funds for the video were without knowledge. Accordingly, there is credible evidence of violations of section 255.003(a) of the Election Code.

The Use of Public Funds for False Communications Describing a Measure

31. An officer or employee of a political subdivision may not spend or authorize the spending of public funds for a communication describing a measure if the communication contains information that: (1) the officer or employee knows is false; and (2) is sufficiently substantial and important as to be reasonably likely to influence a voter to vote for or against the measure. ELEC. CODE § 255.003(b-1).
32. False is defined as "1. Untrue" or "2. Deceitful; lying." Black's Law Dictionary 8th ed.
33. While the claims may be misleading (e.g. pay *scales* frozen rather than actual pay, programs that may be cut based on different ways to balance the budget if the TRE fails) it is difficult to say they are false. It is literally true that pay *scales* were frozen even if

teachers continued to receive yearly raises. However, is doubtful that the qualifier *pay scales* can modify “we have avoided a tax increase by...freezing all salaries,” when the term “scales” is not used in that communication. Whether it is simply “false” or misleading to say all salaries are frozen, when in fact people continue to receive pay raises, but the scale on which the employees receive raises is frozen, is a difficult question. There is insufficient credible evidence of a violation of section 255.003(b-1) of the Election Code with respect to the reference to frozen salaries.

34. It is also difficult to say which choice of many the LISD trustees would have made had the TRE failed. There is insufficient credible evidence that the claims of potential programming cuts were knowing falsehoods. Therefore, there is insufficient evidence of violations of section 255.003(b-1) of the Election Code with respect to the proposed cuts.

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 the entry of this Order before any adversarial evidentiary hearings or argument before the commission, and before any formal adjudication of law or fact by the commission. 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 violations that the Commission has determined are 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 violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes an \$1,500 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-3170599.

AGREED to by the respondent on this _____ day of _____, 2019.

Ted Moore, Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Executive Director