



October 2, 2008

Mr. David Escamilla
Travis County Attorney
314 West 11th Street, Suite 300
Austin, Texas 78701

Dear Mr. Escamilla:

This letter serves as my request for your office to investigate the enclosed February 25th, 2008 letter sent by State Representative Hubert Vo on his official state letterhead to the Houston Chief of Police, Houston Assistant Chief of Police, and Assistant Director Field Operations. According to published news accounts, Rep. Vo used his elected office to ask the police department to reconsider citations that had been issued in connection with deplorable conditions at one of Vo's apartment complexes and back off from further visits and citations.

I also request that you investigate any related phone calls and correspondence between Mr. Vo, the Houston Police Department, and City of Houston officials concerning these citations and the enforcement of city ordinances at Mr. Vo's properties. For the reasons stated herein, this letter in which Vo uses the prestige of his office to advance his personal business interests, and any other similar communications, may violate Texas laws relating to coercion of a public servant and misuse of government resources.

First, as you know, under Section 36.03 of the Penal Code, the Class A misdemeanor of coercion of a public servant is committed if a person "influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty." There is an exception in section (c) of this provision for elected officials of the same governing body whose actions are involved.

However, Mr. Vo sought to influence the actions of the Houston Police Department (HPD) but he is not an elected official with the City of Houston. Moreover, this exception only applies "if the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body." Here, the letter sent by Vo was not an "official action" such as voting on legislation and, in fact, solely related to Vo's personal business, not his public duties.

Both the appearance and substance of the letter are suggestive of coercion of a public servant. First, the letter is on Vo's official state letterhead, which includes a reference on the bottom to his position as a member of the Law Enforcement Committee of the Texas House of Representatives.

Second, Vo uses language that specifically asks for special consideration by the recipient HPD officials, impliedly based on his role as a state lawmaker. With regard to the language in the letter, Vo expressly asks for the recipients to exercise their official powers and perform their duties in a way that will benefit him and his business.

In the first paragraph on page 3, Vo writes:

“My property manager has been treated unfairly and I ask that the two citations issued be reviewed, especially on the last one because the reason for the ticket was that she did not use blacktop. I ask that department officers clearly and in writing, identify problems and resolutions. I ask that officers perform their duties without unreasonable returns to the property.”

The normal process of citations is that they are routinely filed in Municipal Court, not given special review by the Assistant Police Chief or Police Chief. Thus, Vo is asking that he and his business be singled out for more lenient treatment, presumably based on his role as a state legislator. Additionally, he is demanding that the leadership of HPD ask officers not to come back to his property, which is directly contrary to their duty to act wherever laws are being violated, including protecting apartment residents from unsanitary and unsafe conditions, as well as avoiding the effect that such conditions have on fostering crime in the entire neighborhood.

In the letter, Vo also accuses HPD and the officer who issued the citations at issue of “harassment” and observes “I’m sure you that you agree that mutual cooperation and assistance will render more positive results for everyone involved than intimidation and force will.” Yet, as the *Houston Chronicle* has repeatedly reported, Vo did nothing for years to rectify the decrepit and unsanitary conditions at his complex that violate Houston city ordinances until he faced these enforcement actions and the resulting unfavorable publicity.

Also, Vo implies that there is a link between the recipients’ providing him special treatment and his role as a legislator, not just by the use of his official letterhead, but also by the language he uses in the opening of the letter. Here, Vo says, “I understand that you have recently taken the reigns of the Neighborhood Protection Corps and I extend a welcome and an invitation to call my office if there is anything that my office can do to assist NPC.” Clearly, here Vo is referring to his legislative office and his role as a legislator and a member of the Law Enforcement Committee in areas such as grants to local law enforcement and state laws that specify the powers, responsibility, training, and civil service rules that apply to law enforcement officers.

Secondly, I ask that you investigate whether Vo’s letter constitutes a misuse of state resources in violation of Penal Code Section 39.02 entitled “Abuse of Official Capacity,” which provides in relevant part:

(a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

In this case, it is apparent that Vo sought to obtain a benefit to his own business interests because he is the owner of the apartment complex in question. While it is not known whether he or his business will pay the citation fines on behalf of the complex manager, the citations have forced Vo to commit to making expenditures for long overdue repairs and contributed to a negative public image of his complex that may deter prospective residents.

Texas Ethics Commission Advisory Opinion No. 372¹ is instructive on such misuse of state resources. It notes that incidental "personal use of telephones or computer services as long as the state is reimbursed for any direct costs incurred" is not prohibited. However, there is no indication that Rep. Vo reimbursed the state for the cost of preparing and sending this letter on state time, including not just postage and paper, but also the value of any time spent by his legislative office staff on the letter. Moreover, the opinion states that it must be ensured "that state resources are not used for private commercial purposes." Therefore, even incidental personal use that has no cost to the state may violate Section 39.02 if it, as is the case here, advances the state employee's business interests.

I would also note that it is possible that an investigation may reveal additional details, such as other similar correspondence and telephone conversations between Vo and HPD officials. Indeed, Vo's letter concludes, "I look forward to a more thorough discussion with you regarding these concerns."

These kinds of discussions need to be stopped, not continued, if we are to ensure the public integrity of not only the State of Texas, but also local law enforcement. It fundamentally violates the public trust when a state official advances his own business interests by pressuring police to provide special treatment and ignore violations of the law. Thus, I believe a full investigation by your office is needed. Thank you for your consideration of this complaint.

Sincerely,



Greg Meyers

Enclosures: Letter from Rep. Vo to Houston Police Department
Houston Chronicle news clip

¹ <http://www.ethics.state.tx.us/opinions/372.html>.