

An Open Letter to Galveston Housing Authority Employees

25 May 2012

Re: Illegal Campaign Activities

We were very happy to find out that at least some of the people who work at the GHA read the articles and research published by the GOP, and support the work that we do! Over the past several weeks, a few GHA employees have contacted us with accounts of questionable political activities at the GHA, so we decided to find out what would and would not constitute illegal campaign activities at a government agency in order to advise them. Such activities are often referred to as “Electioneering”.

Although the term “Electioneering” is most often used to describe illegal activities by candidates and their campaigns at polling places, it also includes other illegal activities that are undertaken to influence elections. Based on the accounts that we received, it was clear that the concern was about activities observed in the work place; not at the polls.

We didn’t know anything about electioneering laws when we began our research, but we want to share what we have learned, so far, with everyone who works at the GHA. The nature of the messages that we received made it clear that some employees are very concerned about things that they have witnessed, and want to know what is acceptable and what might be illegal!

First, GHA Commissioners and employees have every right to participate in election campaigns as individual citizens, on their own time, using their own resources, and funds.

However, if GHA Commissioners participate in an election campaign in their official capacity, or GHA employees participate in election activities while they are being paid by the taxpayers,

and/or if Commissioners or employees use publically-owned resources and/or public funds when acting in their official capacity or on their own time; this is what would commonly be referred to as “the misuse of public funds”; which is one form of illegal electioneering.

The laws regarding the misuse of public funds in this case seemed very complex, because the GHA is a City agency governed by State law, but it is operated using federal funds. Therefore, the initial question we looked at was whether State law or federal law would apply; or both.

After informally consulting with the Texas Secretary of State, the Texas Ethics Commission, an attorney, people familiar with the election process, and doing our own research; this is what we have discovered, so far:

1. The misuse of State funds falls under Texas Penal Code - Section 39.02. “Abuse of Official Capacity”.

Specifically, 39.02 (a) (2) would seem to apply to situations that GHA employees might encounter:

§ 39.02. ABUSE OF OFFICIAL CAPACITY.

(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) violates a law relating to the public servant's office or employment;
or

(2) 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.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than \$20;

(2) a Class B misdemeanor if the value of the use of the thing misused is \$20 or more but less than \$500 ;

(3) a **Class A misdemeanor** if the value of the use of the thing misused is \$500 or more but less than \$1,500;

(4) a **state jail felony** if the value of the use of the thing misused is \$1,500 or more but less than \$20,000;

(5) a **felony of the third degree** if the value of the use of the thing misused is \$20,000 or more but less than \$100,000;

(6) a **felony of the second degree** if the value of the use of the thing misused is \$100,000 or more but less than \$200,000;

Or (7) a **felony of the first degree** if the value of the use of the thing misused is \$200,000 or more.

<http://law.onecle.com/texas/penal/39.02.00.html>

The penalties for these violations are found in the Texas Penal Code Chapter 12 which demonstrate the serious nature of these offenses:

Class C Misdemeanor: a fine not to exceed \$500.

Class B Misdemeanor: a fine not to exceed \$2,000, a jail term not to exceed 180 days, or both.

Class A Misdemeanor: a fine not to exceed \$4,000, a jail term not to exceed 1 year, or both.

State Jail Felony: a jail term of 180 days to 2 years, and in addition, a fine not to exceed \$10,000.

A Third Degree Felony: a jail term of 2-10 years, and in addition, a fine not to exceed \$10,000.

A Second Degree Felony: a jail term of 2-20 years, and in addition, a fine not to exceed \$10,000.

A First Degree Felony: a jail term of 5-99 years, and in addition, a fine not to exceed \$10,000.

<http://law.onecle.com/texas/penal/chapter12.html>

2. The misuse of federal funds seems to be governed by many sections of the US Code, but 18 USC 648 certainly could apply:

18 USC § 648 - Custodians, generally, misusing public funds

Whoever, being an officer or other person charged by any Act of Congress with the safe-keeping of the public moneys, loans, uses, or converts to his own use, or deposits in any bank, including any branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or exchanges for other funds, except as specially allowed by law, any portion of the public moneys intrusted to him for safe-keeping, is guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be fined under this title or in a sum equal to the amount of money so embezzled, whichever is greater, or imprisoned not more than ten years, or both; but if the amount embezzled does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.
<http://www.law.cornell.edu/uscode/text/18/648>

3. GHA Commissioners and employees are protected if they choose to report anything that they believe is the misuse of public property and/or public funds to the proper State authorities under the Whistleblower Law; Texas Government Code - Chapter 554 “Protection For Reporting Violations Of Law”.

Chapter 554 protects anyone reporting suspected violations of federal and State statutes as well as local ordinances.

554.002 covers protection from retaliation.

§ 554.002. RETALIATION PROHIBITED FOR REPORTING VIOLATION OF LAW.

(a) A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who in good faith reports a violation of law by the employing

governmental entity or another public employee to an appropriate law enforcement authority.

(b) In this section, a report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

(1) regulate under or enforce the law alleged to be violated in the report; or

(2) investigate or prosecute a violation of criminal law.

554.003 covers the remedies available to employees subject to retaliation.

§ 554.003. RELIEF AVAILABLE TO PUBLIC EMPLOYEE.

(a) A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Section 554.002 is entitled to sue for:

(1) injunctive relief;

(2) actual damages;

(3) court costs; and

(4) reasonable attorney fees.

(b) In addition to relief under Subsection (a), a public employee whose employment is suspended or terminated in violation of this chapter is entitled to:

(1) reinstatement to the employee's former position or an equivalent position;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of fringe benefits and seniority rights lost because of the suspension or termination.

554.009 requires the GHA to post a public notice of these rights in the workplace.

§ 554.009. NOTICE TO EMPLOYEES.

(a) A state or local governmental entity shall inform its employees of their rights under this chapter by posting a sign in a prominent location in the workplace.

(b) The attorney general shall prescribe the design and content of the sign required by this section.

<http://law.onecle.com/texas/government/chapter554.html>

In short, the simplest way to deal with any problems that may arise at the GHA seems to be at the State level.

What are some possible examples of the misuse of public funds?

1. The work time of GHA employees is something of value belonging to the GHA/City. Therefore, the use of staff members to do any kind of work for a campaign would be the misuse of public funds.

Texas Ethics Commission Opinion Number 431

<http://www.ethics.state.tx.us/opinions/431.html>

2. The use of GHA property and/or GHA employees to handle campaign activities would be a misuse of government property, services, and personnel.

Texas Ethics Commission Opinion Number 386

<http://www.ethics.state.tx.us/opinions/386.html>

Simply using publically-owned computers or fax machines to send out campaign emails, letters, flyers and/or brochures, even though they have been lawfully prepared by a campaign staff, using campaign resources, has been ruled a misuse of government property and/or public funds!

3. The use of GHA vehicles to further the interests of a political campaign would be the misuse of public property and public funds. As always, the question revolves around whether the vehicles are being used lawfully for a public purpose, or illegally for a private interest; in this case to help elect a specific candidate.

4. The use of GHA funds to purchase gifts, such as flowers, to further the interests of a political campaign would be the misuse of public funds. Once again, the question would be were the gifts purchased for a public purpose (what might that be?), or to influence an election?

5. The use of GHA staff to make public presentations to further the interests of a political campaign would be the misuse of public property and public funds. Here the question would revolve around the true purpose of the presentation? What did employees hear discussed in preparation for the presentation?

6. The use of GHA resident lists, Section 8 lists, DHAP lists and waiting lists to further the interests of a political campaign would be the misuse of public property and public funds. How they are used would determine whether misuse is involved.

7. Telling employees that there are likely to be layoffs if a certain candidate is elected could certainly be construed to be an act of coercion to motivate employees to support a specific candidate by those granted the positions of power within a government agency to hire and fire employees. The motive for the comments would be the critical element here.

8. The most blatant example of the misuse of public property and public funds that we can possibly think of would be if campaign activities were actually coordinated between GHA Commissioners and/or staff and the members of a campaign's paid staff, consultants and/or volunteers. No argument could be made that such activities were for a public purpose.

What should you do if you witnessed the type of activities described above or other misuses of public property and/or public funds?

If you witnessed any occurrences of illegal electioneering, such as the misuse of public property and/or public funds and wish to report them, you should contact the Attorney General's office,

the Texas Ethics Commission and the Galveston County District Attorney's office immediately to give them a sworn statement and seek protection under the Chapter 554 Whistleblower Law.

Attorney General Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548
512-463-2100
greg.abbott@texasattorneygeneral.gov

David A. Reisman, Executive Director
Texas Ethics Commission
P. O. Box 12070
Austin, TX 78711-2070
512-463-5800
512-463-5777 fax

Jack Roady
Galveston County Criminal District Attorney
Galveston County Criminal Justice Center
600 59th Street, Suite 1001
Galveston, Texas 77551
409-766-2355
jack.roady@co.galveston.tx.us

On the federal level, you can also make a report to the GAO at the following web site:

<http://www.gao.gov/fraudnet/fraudnet.htm>

It is a fundamental part of the mission of the GOGP to welcome and assist whistleblowers who wish to report wrongdoing within the government, so we will continue to aid any whistleblowers who contact us. As always, we protect our sources, and we will

assist anyone in filing complaints with the proper authorities, if they choose to do so.

We will also publish information given to the GOGP, if we are provided with witness statements and/or other forms of documentation.

Our short-term goal here is simply to safeguard the integrity of the runoff election, knowing that early voting and the 12 May election may have already been compromised. If illegal electioneering is occurring at the GHA, it is our hope that some GHA employees will come forward to report it, so that it does not create the basis to challenge the runoff election results in court which could put City government in limbo for many months or even years.

David Stanowski
President
Galveston Open Government Project, Inc.
GOGP@att.net
409-621-2099