

September 8, 2018

Complaint Filed by Douglas Walter Kirk, DOB 12-07-1952

This complaint is being filed by Douglas Walter Kirk, naming Robert W. Slupik as the suspect.

### STATEMENTS

On July 19, 2018 at a hearing of the Appraisal Review Board which is chaired by Slupik, the following statements were made. There were eight witnesses, to wit,

1. Comal Appraisal District public servant No. 1, a male.
2. Comal Appraisal District public servant No. 2, a male.
3. Comal Appraisal District public servant No. 3, a female.
4. Appraisal Review Board Member public servant Guy Anderson.
5. Appraisal Review Board Member public servant No. 1, a male.
6. Appraisal Review Board Member public servant No. 2, a male.
7. Appraisal Review Board Member public servant No. 3, a female.
8. Douglas Kirk.

The comments were tape recorded by the Comal Appraisal District.

*Transcript of comments relative to complaint:*

SLUPIK: Now, I don't know what the district will do on some of this stuff. Typically I don't think they go back on, on, on you know. They're not that vindictive normally to go back.

But on the other hand, if you're uncooperative, I think the chief appraiser may decide, 'I'm going to exercise my full authority', and go back five years. That would not be, again, beneficial to you.

KIRK: So, um, Mr. Slupik, that sounds a little bit like a threat.

SLUPIK: No, it...

KIRK: If I don't cooperate they can exercise their full authority.

But obviously they can exercise their full authority whether I cooperate or not.

SLUPIK: Right. What I'm telling you is that I don't know what they're gonna do, 'cause I don't, again, I don't work for 'em or speak for 'em, but I'm just tellin' ya that they have the authority to do that. And they have some discretion on how they use that authority from what I've said. Now I don't know exactly what drives that discretionary factor. Just as a normal human being if I'm having a hard time with somebody and I have some discretionary stuff that I can do, maybe I consider doing that. I don't know.

KIRK: I hear you, I understand...

SLUPIK: On the other hand...

KIRK: ...and once again that sounds like a threat.

SLUPIK: I'm just trying to be up front with you...

KIRK: Yes, sir.

SLUPIK: If you get 'em out, if you will allow them on your property, I mean, unless you, you know, hopefully they can look at all this stuff and then decide then what how it needs to be appropriately [inaudible]. And I think, and I believe what you're telling me, I think it's going to be beneficial to you in the end run. I mean you get a true value for what your property is worth and we take this guess work out of it. You know, I don't like it either. I mean, I...

### **PENAL CODE DEFINITION OF COERCION**

The Texas Penal Code (TITLE 1. INTRODUCTORY PROVISIONS, CHAPTER 1. GENERAL PROVISIONS defines coercion as:

- (9) "Coercion" means a threat, however communicated:
- (A) to commit an offense;
  - (B) to inflict bodily injury in the future on the person threatened or an other;
  - (C) to accuse a person of any offense;
  - (D) to expose a person to hatred, contempt, or ridicule;
  - (E) to harm the credit or business repute of any person; or
  - (F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

Applicable in this complaint is”

Title 1, Chapter 1, (9)(D) to expose a person to hatred, contempt, or ridicule; and (9)(F) or to cause a public servant to take or withhold action.

The suspect exposed Douglas Kirk (a person) to hatred, contempt, or ridicule, and, the suspect caused one or more public servants to take action, namely, to send to Douglas Kirk Notices of Appraised Value for the years 2018, 2017 and 2016, dated September 5, 2018, after the threat and coercion was made, and, after the usual annual appraisal deadline of May 31/15.

### **PENAL CODE OFFENSE**

PENAL CODE, TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION, CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER. (a) A person commits an offense if by means of coercion he:

(1) 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; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 67, Sec. 1, 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Applicable to the suspect is:

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER.

(a) A person commits an offense if by means of coercion he:

(1) 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;

Sec. 36.03 (c) does not apply because

(1) The suspect is not a member of the governing body of a governmental entity, nor was it

(2) An official action taken by the member of the governing body.

Regardless, if both conditions of 36.03 (c) are not met, then the section does not apply.

The complaint is that the suspect unlawfully coerced a public servant or public servants to take an action, an action which is detrimental to the complainant.

This is a Class A misdemeanor, punishable as follows:

PENAL CODE, TITLE 3. PUNISHMENTS, CHAPTER 12. PUNISHMENTS, SUB-CHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

## PUNISHMENT

Sec. 12.21. CLASS A MISDEMEANOR. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$4,000;
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and confinement.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

## INVESTIGATION PLAN

1. Obtain copy of audio recording made at Appraisal Review Board hearing Case No. 2018-2663.
2. Listen to audio recording to verify statements in complaint were actually made.
3. Obtain copy of 2016, 2017, 2018 Notices of Appraised Values mailed to Douglas Kirk, 1850 Old Sattler Road, New Braunfels, Texas 78132, dated September 5, 2018 and signed by Chief Appraiser Rufino H. Lozano.
4. Determine the names for the following individuals who were present at the aforementioned July 19, 2018 meeting:
  1. Comal Appraisal District public servant No. 1, a male.
  2. Comal Appraisal District public servant No. 2, a male.
  3. Comal Appraisal District public servant No. 3, a female.
  4. Appraisal Review Board Member public servant No. 1, a male.
  5. Appraisal Review Board Member public servant No. 2, a male.
  6. Appraisal Review Board Member public servant No. 3, a female.
5. Interview Comal Appraisal District public servants No. 1, 2, and 3 to determine if they heard the statements made by the suspect.
6. Interview Appraisal Review Board Member public servants No. 1, 2, 3 and Guy Anderson to determine if they heard the statements made by the suspect.
7. Interview Chief Appraiser Rufino H. Lozano to determine who prepared the Notices of Appraised Value that were mailed to the complainant and who caused these Notices to be prepared and mailed.
8. Interview the suspect, Robert W. Slupik, to determine if he made the statements appearing on the recorded tape.

## ELEMENTS OF CRIMINAL OFFENSE

### Actor: (One must be true)

1. Robert W. Slupik uttered the statements.

### Action: (Both must be true)

2. Robert W. Slupik was not a member of a governing body of a governmental entity, and, or, he was not taking official action when he uttered the statements.
3. Robert W. Slupik's statements exposed a person to hatred, contempt, or ridicule; or, caused a public servant to take an action. (The statute says attempting to influence the public servant is sufficient to be a crime.)

### Reaction to the Action: (One may be true but it is not necessary for it to be true)

4. A public servant mailed three years worth of back Appraisal Value Notices to a person (the person threatened by the statements).

### Results of the Action: (One must be true)

5. The individual coerced was a public servant.
6. Douglas Kirk was exposed to hatred, contempt, or ridicule.

END OF COMPLAINT