



MESSER ★ FORT

THE MUNICIPAL LAW FIRM

FRISCO | DALLAS | AUSTIN | ABILENE

TO: Complainant Courtney Goza
FROM: Sara Kerr, City of Kyle Ethics Commission Compliance Officer
SUBJECT: Compliance Officer Dismissal of Complaint for Legal Insufficiency
DATE: April 8, 2025

Ms. Goza:

I have reviewed the Complaint you submitted on April 4, 2025 against Mayor Travis Mitchell and Councilman Robert Rizo and all accompanying documents and statutory references listed in your Complaint. I am exercising my authority as Ethics Compliance Officer pursuant to Ethics Code Sec. 2-275(b)(6) to **dismiss** your Complaint as legally insufficient. The reasons for the dismissal are stated below.

First, your claims listed in Sections IV, V, VI, and VII are for alleged violations in the Texas Penal Code, common law torts, 42 U.S.C. § 1983, and First Amendment violations, all of which are outside the jurisdiction of the Ethics Commission pursuant to City of Kyle Ethics Code § 2-273. The Ethics Commission is not a court of law and is not empowered to adjudicate civil or criminal matters.

Second, the relief you requested in subsections 4 and 5 of Section VIII are not requests for relief that the Ethics Commission is empowered to grant pursuant to the City of Kyle Ethics Code §§ 2-273 and 2-278. Subsection 4 requests the equivalent of an advisory opinion under § 2-280, which is only applicable when an individual is requesting advice on whether that individual's own actions would be a violation of the Code of Ethics. Here, you are asking for that result against other individuals, which is not a form of relief that the Ethics Commission is empowered to grant. Section 5 requests the equivalent of a declaratory judgment of existing common law protections and a § 1983 claim, which is both redundant and outside the jurisdiction of the Ethics Commission, as already explained.

Third, your claims for abuse of official capacity and improper use of confidential information are based on the incorrect premise that email communications to and from a City email address are not public and not subject to release. This is directly contrary to the Texas Government Code § 552.002, which states that public information is information that exists under law or ordinance or in connection with official business, and specifically includes electronic communication made on any device in connection with official business. *See* Tex. Gov't Code § 552.002(a); 552.002(a-2). Thus, any claims based on your allegation that confidential or nonpublic information was used are baseless and without merit as alleged, even if all allegations are taken as true.

Fourth, your allegations of abuse of position to influence an election, threatening and intimidating conduct, improper use of public position, and effort to interfere with an election and harm reputation are not applicable to Ethics Code §§ 2-172; 2-178; and 2-179 in the context of an election. Instead, actions relating to illegal conduct during an election are subject to Texas Election Code Title 14, Election Contests, and are under the *exclusive* jurisdiction of the district courts in the State of Texas. Tex. Elec. Code § 221.002(a). Thus, the Ethics Commission does not have jurisdiction to review such allegations.

Finally, the social media posts and comments are private speech, a matter which no court or Commission or other adjudicative body has jurisdiction to control. How the administrators of privately run Facebook groups choose to operate is within the administrators' full discretion and is not subject to review by the Ethics Commission. The Ethics Commission cannot and will not interfere with a private individual's decisions on how to manage a group on a private social media platform. Doing so would risk running afoul of the First Amendment protection of freedom of expression and association. This is especially relevant given that the posts and comments in question are inextricably intertwined with your accusations of interfering with an election, which, as discussed, is already outside of the jurisdiction of the Ethics Commission.

While there may be certain facts and circumstances listed within your Complaint that could form the basis of a validly asserted ethics violation, that threshold has not been met with respect to how it is currently drafted, and therefore it must be dismissed.

Your Complaint as written will not be subject to investigation or review by the Ethics Commission and will not be considered at any future meeting of the Ethics Commission. If you wish to redraft your Complaint to include factual assertions and allegations that are within the jurisdiction of the Ethics Committee, then you may do so at any time within the two-year statute of limitations, and such new Complaint will be reviewed *de novo*, e.g. independently from any conclusion drawn in this Dismissal.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'SK' with a stylized flourish.

Sara Kerr
Compliance Officer, City of Kyle Ethics Commission