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FILE COPY

In Re

C 19-18-04

Marcos Villanueva  
\_\_\_\_\_ /

### PUBLIC REPORT AND FINAL ORDER

Orlando Lopez (Lopez), the Mayor of the City of Sweetwater, filed this complaint against Sweetwater Commissioner Marcos Villanueva (Villanueva).

Lopez alleged that Villanueva violated Section 2-11.1(g) of the Conflict of Interest and Code of Ethics ordinance, *Exploitation of official position*, when he assisted or attempted to assist Jose M. Diaz (Diaz), a former Sweetwater Commissioner and former Interim Mayor, in his political campaign against Mayor Lopez. Diaz had made a public record request (PRR) for certain documents from the City as part of his election campaign. Lopez alleged that due to the extensive nature of the request and in anticipation of a high production cost, Villanueva who was supporting Diaz in his campaign, made a "substantively identical request for documents."

Investigation determined that, during the election, Villanueva supported Diaz for Mayor, which only made the contentious relationship between Lopez and Villanueva more strained.

Diaz made a public record requests to the City on several occasions, regarding financial information he was seeking about the Mayor's discretionary expenditures. The City and Diaz went back and forth several times trying to clarify his (Diaz's) request. Diaz eventually explained that his request was for the Mayor's spending authority records (not discretionary funds). Coincidentally, virtually all the City Commissioners were having difficulty obtaining financial information about the City. Even though the Commission had passed a Resolution to gain access to the "LOGOS" financial information, the City administration dragged its feet in providing that access.

Diaz communicated his frustrations with obtaining the public records to his attorney (Palomares) and Villanueva's attorney (Herrera), during the pendency of these PRRs. Villanueva denied that there was coordination or any "quid pro quo" between him and Diaz whereby Villanueva would use his position as Commissioner to obtain, at no cost, the public records Diaz was seeking. In fact, Villanueva made his public record request for financial information, including the Mayor's discretionary expense account, four days *before* Diaz was advised of the substantial monetary estimate for production of the records.

It would constitute an exploitation of official position if Villanueva intentionally and deliberately used his official position, which grants him public records at no cost, to advance his friend's (Diaz's) political campaign. However, the facts suggest otherwise. The PRR made on behalf of Diaz by his attorney, involved very specific *financial data*. The PRR made on behalf of Villanueva by his attorney, pursuant to the Resolution, also consisted of *financial data*. It appeared that Villanueva's intent all along was to gain access to all the financial information while Diaz's PRR related to a specific piece of financial information.

It was reasonable to conclude that the attorneys in this case, in an effort to assist their clients in obtaining public records, communicated with each other and sought the quickest means of obtaining the information, albeit the incorrect one. The evidence, however, is insufficient to prove that there was any agreement between Diaz and Villanueva wherein Villanueva agreed to use his official position in order to benefit Diaz's political campaign. Accordingly, a finding of No Probable Cause was entered in this case.

On September 11, 2019, the Ethics Commission agreed with the recommendation of the Staff Attorney that there was insufficient evidence to sustain a finding of probable cause in this matter and dismissed the complaint. The Ethics Commission explained that this dismissal does not suggest that City commissioners may obtain records at no cost, unrelated to city commission business, for the benefit of their family and friends. Any future use of Section 2-27 of the Sweetwater City Code will be closely examined to conform to its intent to facilitate records to commissioners for the efficient conduct of city business.

WHEREFORE it is:

**ORDERED AND ADJUDGED** that COMPLAINT C19-18-04 against Marcos Villanueva is dismissed.

**DONE AND ORDERED** by the Miami-Dade County Commission on Ethics & Public Trust in public session on this 11<sup>th</sup> day of September 2019.

MIAMI-DADE COUNTY COMMISSION ON  
ETHICS & PUBLIC TRUST

By: *H. Jeff Cutler*

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H. Jeffrey Cutler

Chairman

Signed on: 09/18/2019