

TEXAS ETHICS COMMISSION

IN THE MATTER OF

SIDNEY CARROLL "SID" MILLER,

RESPONDENTS

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BEFORE THE

TEXAS ETHICS COMMISSION

SC-31604104

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 26, 2018, to consider sworn complaint SC-31604104. A quorum of the Commission was present. The Commission determined that there is credible evidence of a violation of section 253.035 and 254.031 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission proposed this resolution to the respondent, Sid Miller (Miller).

II. Allegations

The complaint alleges Miller converted political contributions to personal use and did not disclose a political expenditure.

III. Facts Supported by Credible Evidence

Credible evidence available to the Commission supports the following findings of fact:

Conversion to Personal Use

1. The allegations stem from Miller's use of state, then campaign, and then personal funds to pay for airfare for a three-day trip Miller took in February 2015 to Jackson, Mississippi (Jackson) where Miller competed in a rodeo.
2. On January 2, 2015, Miller used personal funds to pay the entry fee for a rodeo that took place in Jackson in February 2015.

3. On January 13, 2015, Miller was sworn into office as Texas Agriculture Commissioner.
4. On February 10, 2015, staffers for Miller booked a flight from Austin to Jackson using a state-issued credit card. The total cost of airfare was \$1,020.99.
5. Miller arrived in Jackson on Monday, February 16, 2015.
6. Miller paid for the hotel and rental car in Jackson using a personal credit card, although on his July 2015 semiannual campaign finance report, he reported using his political contributions to make the expenditures for the hotel and rental car.
7. The rodeo began on February 17, 2015, and Miller won or placed in several events, earning Miller \$812.30 in prize money. Miller deposited a total of seven checks of prize money into his personal account.
8. Miller left Jackson for Austin on February 19, 2015, at noon.
9. On or about March 11, 2015, Miller reimbursed the state \$1,004.20 by check drawn on his campaign account for the airfare for the Jackson flight.
10. On or about March 18, 2015, Miller reimbursed his campaign account by check drawn on one of his personal accounts for \$1,004.20.
11. On March 31, 2015, Miller reimbursed the state an additional \$16.79 by check drawn on a personal account. The reimbursement was for booking fees associated with the Jackson airfare.
12. Miller responded to the sworn complaint by stating that the trip took place within the course and scope of his duties as Agriculture Commissioner. In support of his position, Miller stated that the rodeo was hosted by the Mississippi Department of Agriculture and Commerce and that he met with Mississippi Agriculture Commissioner Cyndi Hyde-Smith, who had previously donated to his campaign. Miller also stated that he spoke with Texas vendors about becoming part of a Texas Agriculture affiliated marketing program "Go Texan." Miller also stated that he planned on attending a meeting with the Jackson-based Catfish Institute, but there is no evidence the meeting was ever actually scheduled.
13. Miller's now-former spokesperson told the *Dallas Morning News* that "It was a personal trip so he could compete in a rodeo."
14. The expenditure from political contributions to reimburse the state for the Jackson trip airfare is the only expenditure associated with the Jackson trip that Miller used political contributions to make.

15. It is unclear why Miller reimbursed the state with political contributions only to reimburse his political account with personal funds seven days later. Miller swore on his correction affidavit for the July 2015 semiannual report that he reimbursed his campaign from his personal account because "some of the trip ended up being spent on personal business." Miller however, still appears to assert that the trip was both a permissible campaign expenditure and officeholder expenditure. He supported the campaign expenditure theory with a statement in the *Dallas Morning News* that permissible campaign expenditures include expenditures to attend events to meet with contributors. In his formal response to the complaint, Miller asserts that the trip was a legitimate officeholder activity for which political contributions could be used. In his response to the complaint Miller notes that the Mississippi Agriculture Commissioner was a contributor to a past campaign. Commission records confirm that Hyde-Smith contributed \$500 to Miller once in 2014.

Reporting the Airfare Reimbursement

16. Miller wrote a check dated March 11, 2015, drawn on his campaign account to the "Texas Department of Agriculture" to reimburse the state for Jackson trip airfare.
17. The expenditure would be required to be reported on the July 2015 semiannual report, which covers January 1 through June 30.
18. Miller did not include that expenditure when he initially filed his July semiannual report on July 15, 2015. On May 18, 2016, Miller corrected his July 2015 semiannual report to disclose the \$1,004.20 expenditure.
19. A *Dallas Morning News* article published on April 8, 2016, noted the fact that Miller did not report the expenditure from political funds to the Agriculture Department on a campaign finance report.
20. The sworn complaint, filed on April 12, 2016, included an allegation that Miller failed to disclose the Agriculture Department reimbursement.
21. When Miller corrected his July 2015 semiannual report on May 18, 2016, to include the \$1,004.20 expenditure to the Agriculture Department, he explained in the correction affidavit:

I did not enter on the original report a check written to TDA out of the campaign account because a few days later I personally reimbursed the campaign account. I reimbursed TDA, from my campaign account, for my airfare to Mississippi because my TDA meeting fell through. Then I reimbursed the campaign, from my

personal account, because some of the trip ended up being spent on personal business.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Conversion to Personal Use

1. A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. ELEC. CODE § 253.035(a). "Personal use" is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. *Id.* § 253.035(d). The term does not include payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or officeholder. *Id.*
2. Credible evidence indicates the primary purpose of the trip to Jackson was personal. The majority of the time Miller spent in Jackson appears to have been spent at the rodeo, where he won and accepted prize money after competing in at least seven events. Although Miller contends that he planned on visiting the Catfish Institute, he did not and there is no evidence he even set up a meeting. No meetings besides the horse show appear on any official Texas Agriculture Department schedules. Miller's spokesperson told the press that they viewed the trip as personal. Since the trip was primarily personal, using campaign contributions to fund the trip would constitute a conversion to personal use.
3. Miller only used political funds after the trip was completed, and quickly reimbursed his campaign account with personal funds. Miller has not adequately explained why he initially reimbursed the state with political funds before reimbursing his political account with personal funds. But his sworn correction affidavit indicates that he decided enough of the Jackson trip was personal to use personal rather than political funds to pay for the airfare.
4. In limited circumstances the Commission allows for political funds to be used to pay for campaign or officeholder assets, such as a vehicle or phone, that are used for both political and personal purposes. To avoid converting political funds to personal use the Commission has said that a candidate or officeholder may account for the time the asset was used for personal purposes and reimburse the campaign account in proportion to the amount of time the asset was used for personal purposes. *See* Ethics Advisory Opinion No. 430 (2000).

5. Although the Commission does allow, in some circumstances, a period for accounting and reimbursement to avoid a conversion to personal use, this does not appear to be such a circumstance. Here Miller had ample time to determine whether the Jackson trip could fairly be characterized as a political trip after the trip was completed and *before* making the reimbursement to the state from political funds. However, based on the totality of the circumstances, including the fact that Miller quickly reimbursed his political account for the airfare, there is a technical or *de minimis* violation of section 253.035(a) of the Election Code.

Reporting the Airfare Reimbursement

6. A campaign finance report must include all political expenditures made during the reporting period that exceed \$100, the full name and address of the payee, and the dates and the purpose of the political expenditure. ELEC. CODE § 254.031(a)(3). A report must also include the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment. *Id.* § 254.031(a)(4).
7. A political expenditure is an officeholder or campaign expenditure. *Id.* § 251.001(10). A campaign expenditure is an expenditure made in connection with an election. *Id.* § 251.001(7). An officeholder expenditure is an expenditure made to defray expenses incurred in performing a duty or engaging in an activity in connection with the office that are not reimbursable with public funds. *Id.* § 251.001(9).
8. Here, the respondent made a payment from political funds of \$1,004.20 to the Department of Agriculture on March 11, 2015, but did not disclose it when he initially filed the campaign finance report for that reporting period (July 2015 semiannual). Regardless of whether the payment is properly classified as a "political expenditure" required to be reported on Schedule F1 or a "non-political expenditure" required to be reported on Schedule I, there is no question it was required to be reported on the July 2015 semiannual report.
9. The respondent did not correct the report until approximately one month after the sworn complaint was filed—almost a year after the report was originally filed. Therefore, there is credible evidence of a violation of section 254.031 of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the Commission:

1. The respondent neither admits nor deny the facts described under Section III or the Commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use. "Personal use" is a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate or officeholder. The respondent further acknowledges that a campaign finance report must include all political expenditures made during the reporting period that exceed \$100, the full name and address of the payee, and the dates and the purpose of the political expenditure and the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the Commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the Commission.

VII. Sanction

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$500 civil penalty.

VIII. Order

The Commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-31604104.

AGREED to by the respondent on this _____ day of _____, 2018.

Sidney Carroll "Sid" Miller, Respondent

EXECUTED ORIGINAL received by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director