

# TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
SIDNEY CARROLL “SID” MILLER,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-31405130

## ORDER and AGREED RESOLUTION

### I. Recitals

The Texas Ethics Commission (Commission) held a preliminary review hearing on December 8, 2016, to consider sworn complaint SC-31405130. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of section 254.031 of the Election Code, a law administered and enforced by the Commission. The Commission met again on May 17, 2017, and the Commission and respondent agreed to the following resolution to resolve and settle this complaint without further proceedings.

### II. Allegations

The complaint alleged that the respondent did not properly report political contributions, political expenditures, and loans in his 8-day pre-election report for the March 4, 2014, primary election and the runoff report for the May 27, 2014, primary runoff election.

### III. Facts Supported by Credible Evidence

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

1. At all times relevant to the complaint, the respondent was a candidate for Agriculture Commissioner. The respondent is currently the Agriculture Commissioner.
2. The complaint alleged that the respondent did not properly report political contributions, political expenditures, and loans on the 8-day pre-election report filed before the March 4, 2014, primary election and the runoff report filed before the May 27, 2014, primary runoff election.

3. The complaint was based on the fact that the respondent's political contributions maintained totals in the runoff report did not reconcile with the amounts of the political contributions and expenditures disclosed on campaign finance reports during those time periods. The complaint also specifically alleged the respondent did not report the repayment of a campaign loan as a political expenditure in the 8-day pre-election and runoff reports at issue.

#### **Total Political Contributions Maintained**

4. The general allegation that the respondent did not properly report political contributions as required by section 254.031 of the Election Code includes the more specific allegation that the respondent did not properly report the total political contributions maintained as of the last day of the reporting period for the runoff report filed for the May 27, 2014, primary runoff election.
5. The respondent timely filed the runoff report on May 19, 2014. The report covered the period of February 23, 2014, through May 17, 2014. The respondent filed a corrected runoff report on May 21, 2014, which was one day before the sworn complaint was filed. Although the corrected runoff report added a \$100,000 political expenditure from political contributions, the total political contributions maintained figure did not change from the original runoff report.
6. The respondent disclosed \$19,340.47 in total political contributions maintained as of May 17, 2014, the last day of the reporting period for the runoff report at issue. However, the respondent's bank statement shows the respondent maintained \$53,303.52 in total political contributions as of the last day of the reporting period. That is a difference of \$33,963.15 between what was reported by the respondent and what the bank statement indicates the respondent maintained in political contributions as of the last day of the reporting period.
7. The respondent stated that the \$53,303.52 bank balance did not account for a \$34,800 check that was issued before the end of the reporting period on May 16, 2014, but did not clear the account until May 20, 2014, which was after the end of the reporting period.

#### **Individual Political Contributions**

8. The general allegation that the respondent did not properly report political contributions as required by section 254.031 of the Election Code includes the more specific allegation that the respondent did not properly report political contributions.

9. A review of bank records for the respondent's campaign account showed that the following checks were deposited into the respondent's campaign account but did not have a corresponding entry as a political contribution or loan on the respondent's runoff report.

<b>Date</b>	<b>Source of Funds</b>	<b>Amount</b>
3/31/2014	Sullivan Public Affairs	\$1,000
4/18/2014	Miller Nursery & Tree Company	\$5,000
5/5/2014	Miller Nursery & Tree Company	\$5,000

### **Individual Political Expenditures and Loans**

10. The complaint alleged the respondent did not accurately report political expenditures based in part on not reporting the repayment of a \$100,000 loan.
11. The respondent reported on his January 2014 semiannual report accepting a \$100,000 loan from an individual on December 23, 2013.
12. Bank records show that the respondent repaid the loan in full by a check dated January 2, 2014. The check for the loan repayment was drawn on the respondent's campaign account.
13. On February 3, 2014, the respondent filed a 30-day pre-election report that covered January 1, 2014, through January 23, 2014, and showed the \$100,000 loan as still outstanding.
14. On February 24, 2014, the respondent filed an 8-day pre-election report that covered the reporting period of January 24, 2014, through February 22, 2014, and showed the \$100,000 loan as still outstanding.
15. On May 19, 2014, the respondent filed a runoff report that covered the reporting period of February 23, 2014, through May 17, 2014, that showed the \$100,000 loan no longer outstanding. However, the runoff report did not include a corresponding political expenditure for the \$100,000 loan repayment.
16. On May 21, 2014, the respondent filed a corrected runoff report that included a \$100,000 political expenditure for the loan repayment. The expenditure was reported as having taken place on May 1, 2014.

#### IV. Findings and Conclusions of Law

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

##### **Total Political Contributions Maintained**

1. Each report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period. ELEC. CODE § 254.031(a)(8).
2. The total amount of political contributions maintained in one or more accounts includes the balance on deposit in banks, savings and loan institutions and other depository institutions, and the present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc. Ethics Commission Rules § 20.50(a).
3. The respondent reported \$19,340.37 in total political contributions maintained as of May 17, 2014, the last day of the reporting period for the runoff report for the May 27, 2014, primary runoff election. The bank statement for the respondent's campaign checking account showed a balance of \$53,303.52 as of May 17, 2014.
4. The total amount of political contributions the respondent maintained in one or more accounts as of the last day of the runoff reporting period was \$53,303.52, but the respondent reported a total political contributions maintained amount of \$19,340.37. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code.

##### **Individual Political Contributions**

5. Each report filed under chapter 254 of the Election Code must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).
6. Each campaign finance report filed under chapter 254 of the Election Code must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans

guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. *Id.* § 254.031(a)(2).

7. “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include: (A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or (B) an expenditure required to be reported under Section 305.006(b), Government Code. *Id.* § 251.001(2).
8. “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3).
9. “Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that: (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money. *Id.* § 251.001(4).
10. “Political contribution” means a campaign contribution or an officeholder contribution. *Id.* § 251.001(5).
11. The respondent deposited into his campaign account three checks from business entities that totaled \$11,000. The business entities are not corporations and not engaged in the business of lending money. The respondent did not report those checks as either contributions or loans on his runoff report filed for the May 27, 2014, primary runoff election. Therefore, there is credible evidence of violations of section 254.031 of the Election Code.

### **Individual Political Expenditures and Loans**

12. Each campaign finance report filed under chapter 254 of the Election Code must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. ELEC. CODE § 254.031(a)(3).

13. Each campaign finance report filed under chapter 254 of the Election Code must also include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. *Id.* § 254.031(a)(2).
14. “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. *Id.* § 251.001(6).
15. “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure. *Id.* § 251.001(7)
16. “Officeholder expenditure” means an expenditure made by any person to defray expenses that: (A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money. *Id.* § 251.001(9).
17. “Political expenditure” means a campaign expenditure or an officeholder expenditure. *Id.* § 251.001(10).
18. Bank records show the respondent repaid a \$100,000 loan in full on January 2, 2014. Despite having paid the loan in full, the respondent reported the loan as still outstanding on his 30-day and 8-day pre-election reports filed for the March 4, 2014, primary election. Therefore, there is credible evidence of a violation of section 254.031(a)(2) of the Election Code with respect to the amount of outstanding loans reported on the 8-day pre-election report (the 30-day pre-election report is outside the scope of the complaint).
19. The respondent also did not report repayment of the loan as a political expenditure until he filed a corrected runoff report on May 21, 2014. The respondent disclosed the loan repayment as having taken place on May 1, 2014, while bank records show the expenditure actually took place on January 2, 2014. Therefore, there is credible evidence of a violation of section 254.031(a)(3) of the Election Code with respect to the reporting of the \$100,000 loan repayment.

### **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 denies 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: 1) each report must include as of the last day of the reporting period, the total amount of political contributions accepted, including interest or other income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period; 2) each report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions; 3) each report must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; and 4) each report must include the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period. 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 \$2,500 civil penalty and requires the reports at issue to be corrected in a manner consistent with the findings of fact and conclusions of law of this order. The full payment of the civil penalty and corrected reports must be received by the Commission no later than June 15, 2017.

**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-31405130.

AGREED to by the respondent on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Sidney Carroll "Sid" Miller, Respondent

EXECUTED ORIGINAL received by the Commission on: \_\_\_\_\_.

Texas Ethics Commission

By: \_\_\_\_\_  
Seana Willing, Executive Director