

# TEXAS ETHICS COMMISSION

IN THE MATTER OF	§	BEFORE THE
SIDNEY CARROLL “SID” MILLER,	§	TEXAS ETHICS COMMISSION
RESPONDENT	§	SC-31404104

## 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-31404104. 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 and political expenditures in his January 2013 semiannual campaign finance report.

### III. Facts Supported by Credible Evidence

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

1. The complaint alleged the respondent did not properly report political expenditures and political contributions on the January 2013 semiannual report. The report was also marked as a final report. The complaint was based on the reported political expenditures and political contributions not reconciling with the total political contributions maintained for the January 2013 semiannual reporting period. The reporting of political expenditures and political contributions generally includes the reporting of the total amount of contributions maintained as of the last day of a reporting period, individual contributions accepted during the reporting period, and individual expenditures made during the reporting period.
2. The complaint was based on the following calculation from the January 2013 semiannual report and the preceding runoff report for the July 31, 2012, primary runoff election that showed the respondent reported making more in political expenditures from political contributions than the political contributions the respondent reported having available to him at the time:

**Reported Totals**

<b>Beginning Balance 7/21/2012</b>	<b>\$ 30,779.46</b>
Add: Reported Monetary Contributions	\$ 52,300.00
Less: Reported Expenditures from Political Contributions	<u>\$167,700.17</u>
Calculated Balance	<b><u>(-\$84,620.71)</u></b>
<b>Reported Contributions Maintained as of 12/31/2012</b>	<b>\$ 0.00</b>
<b>Variance from the Reported Amount</b>	<b><u>(-\$84,620.71)</u></b>

**Total Political Contributions Maintained**

3. The 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 January 2013 semiannual report, as required by section 254.031(a)(8) of the Election Code.
4. The respondent reported having \$0 in total political contributions maintained as of December 31, 2012, which was the last day of the reporting period for the January 2013 semiannual report.
5. The Commission received from the respondent bank statements for two accounts in which the respondent maintained political contributions for the period in question. One account was a standard checking account; the other account was an ETrade Securities Investment Account (ETrade) in which the respondent maintained various securities and other investments that he purchased with political contributions.
6. In response to a written question from the Commission, the respondent provided the following answer when asked about the method used to calculate his total political contributions maintained as of the last day of a reporting period:

Calculating my cash on hand, I used my check book balance on the ending day of the report. I would then add the value of the ETrade account to get the total value on hand. It is possible that I might have forgotten to include the ETrade account in the balance on one occasion.
7. As of the last day of the January 2013 semiannual reporting period (December 31, 2012), the campaign checking account balance was \$4,891.03. The ETrade account had a total balance of \$63,566.99. However, the respondent took personal possession of the entire ETrade account on December 31, 2012.

8. Since the respondent took personal possession of the entire ETrade account on December 31, 2012, the total political contributions maintained as of the last day of the January 2013 reporting period did not include the value of the ETrade account and was only the amount reflected in the campaign checking account bank balance: \$4,891.03.

### Individual Political Contributions

9. The complaint alleged the respondent did not accurately report political contributions because the amount of political expenditures the respondent disclosed making in the January 2013 semiannual report exceeded the amount of political contributions the respondent reported having available during the reporting period.
10. A review of bank records for the respondent's campaign account showed the following checks that were deposited into the respondent's campaign account that did not have a corresponding entry as a political contribution or loan on the respondent's January 2013 semiannual report:

<b>Date</b>	<b>Source of Funds</b>	<b>Amount</b>
9/19/2012	Sid Miller Livestock Account	\$100
11/7/2012	Loan Oak Landscaping, LLC	\$1,000
1/16/2013	Miller Nursery & Tree Company	\$3,365.69

### Individual Political Expenditures

11. The complaint alleged the respondent did not accurately report political expenditures because the amount of political expenditures the respondent disclosed making in the January 2013 semiannual report exceeded the amount of political contributions the respondent reported having available during the reporting period.
12. A review of bank records for the respondent's campaign account showed the following canceled checks that were drawn on the respondent's campaign account that did not have a corresponding entry as a political expenditure on the respondent's January 2013 semiannual report:

<b>Date</b>	<b>Payee</b>	<b>Amount</b>
11/13/12	Sid Miller Nursery	\$126.51
11/14/12	Loan Oak Landscaping	\$1,000

13. The respondent also reported having made a political expenditure of \$1,698.18 to himself and a political expenditure of \$6,326.21 to Cowboy Church on December 31, 2012. Bank records show the check to Sid Miller was dated January 1, 2013, and the check to Cowboy Church was dated January 16, 2013.
14. Bank records also indicate that the respondent paid a total of \$92.58 in bank fees for his campaign account during the January 2013 semiannual reporting period. The respondent reported \$0 in total non-itemized political expenditures and did not report any itemized expenditures for bank fees on the January 2013 semiannual report at issue.

#### **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 \$0 in total political contributions maintained as of December 31, 2012, the last day of the reporting period for the January 2013 semiannual report. The bank statement for the respondent's campaign checking account shows a balance of \$4,891.03 as of December 31, 2012.
4. The respondent stated he took personal possession of the entire ETrade account on December 31, 2012. The total amount of political contributions the respondent maintained in one or more accounts as of the last day of the January 2013 semiannual reporting period was \$4,891.03. The respondent reported a total political contributions maintained amount of \$0. Therefore, there is credible evidence of a violation of section 254.031(a)(8) of the Election Code because the respondent misstated the total political contributions maintained amount by \$4,891.03 for the January 2013 semiannual report.

**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 \$4,465.69. The business entities are not corporations and are not engaged in the business of lending money. The respondent did not report those checks as either

contributions or loans on his January 2013 semiannual report. Therefore, there is credible evidence of violations of section 254.031 of the Election Code.

### **Individual Political Expenditures**

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 total amount or a specific listing of the political expenditures of \$100 or less made during the reporting period. *Id.* § 254.031(a)(5).
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 did not report or did not report the proper date on his January 2013 semiannual report for four expenditures made from his campaign account that totaled \$9,150.90. Each expenditure exceeded \$100 and was made from his campaign account, which indicates the expenditures were political in nature. Therefore, there is credible evidence of violations of section 254.031(a)(3) of the Election Code.
19. Bank records indicate the respondent paid a total of \$92.58 in bank fees for his campaign account during the January 2013 semiannual reporting period. The respondent did not itemize the bank fees or include them in a total of non-itemized political expenditures of \$100 or less. Therefore, there is credible evidence of a violation of section 254.031(a)(5) 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 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 total amount or a specific listing of the political expenditures of \$100 or less made during 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 \$250 civil penalty and requires the report 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 the corrected report 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-31404104.

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