

TEXAS ETHICS COMMISSION

IN THE MATTER OF
SIDNEY MILLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2809326

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on April 16, 2009, to consider sworn complaint SC-2809326. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 572.023 of the Government Code, a law administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposes this resolution to the respondent.

II. Allegation

The complaint alleges that the respondent failed to properly disclose information in a personal financial statement.

III. Facts Supported by Credible Evidence

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

1. The respondent is the state representative of District 59 and was a successful incumbent candidate in the November 4, 2008, general election.
2. The complaint alleges that the respondent failed to include information in personal financial statements (PFSs). The respondent's PFS covering 2005 was due on February 13, 2006.
3. The complaint alleges that both the respondent and a registered lobbyist served on the board of directors of E-Communications Advantage, Inc., (ECA) in 2007 and that the respondent failed to disclose in his PFS covering 2007 that both he and the lobbyist held an interest in ECA. The complaint also alleges that the respondent failed to disclose his position as a director of ECA in the PFS. The allegation is based on franchise tax public information reports that were filed with the Texas Secretary of State (SOS) that indicate that the

respondent was a director of ECA during every calendar year from 2002 to 2008 except for 2005. The most recent franchise tax public information report that was filed on December 31, 2007, and is effective on March 15, 2008, states that the respondent is a director of ECA. The reports also state that the lobbyist was a director of the corporation since 2000. The reports were signed by the chief financial officer of ECA.

4. The respondent also disclosed in his PFS covering 2007 that he held at least 10,000 shares in ECA. ECA is not a publicly traded corporation.

5. In response to the allegations, the respondent swears:

I did not serve on the board of ECA in 2007. Attached are board minutes stating that I left the board in 2005. I deny the allegation.

I corrected my 2007 financial statement on September 25 to show that I own shares in a company, in which a lobbyist also owns shares. I acknowledge this violation.

6. The respondent submitted a copy of minutes of a regular meeting of the board of directors of ECA, dated March 24, 2006. The minutes listed the directors present at the meeting, which did not include the respondent, and indicated that there were no absent directors. The minutes also stated that recommendations were made regarding new directors and the election of officers and that, "It was requested that [an individual] rejoin the Compensation Committee considering the departure of Sid Miller and [a second individual] in 2005 and 2006, respectively."

7. On September 25, 2008, the respondent filed a correction to the PFS covering 2007. The affidavit for the correction states:

On September 24, I learned that I held shares in a company where a registered lobbyist also owned shares. I also listed stock in a company that I forgot to list. I also am listing a LLP that I have with my two sons that was not previously listed on [the form].

8. The correction disclosed that both the respondent and a registered lobbyist held an interest in the corporation, ECA. The respondent also disclosed that he held less than 100 shares of stock in "Ecampusnation L.P." and that he and a registered lobbyist held an interest in the business. Based on SOS records, "Ecampusnation L.P." is a limited partnership that formed on March 30, 2007, with the lobbyist as a limited partner. The respondent also disclosed that he held at least 50 percent of the outstanding ownership of "Lone Oak Landscape LLP" and that the business's assets included machinery and tools valued at less than \$5,000.

9. On September 29, 2008, the respondent filed an additional correction that applied to his PFSs covering 2004 through 2007. The correction disclosed his ownership in “Lone Oak Landscape LLP” and that he and a registered lobbyist held an interest in the corporation, ECA.

IV. Findings and Conclusions of Law

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

1. A partisan candidate for an office as an elected officer shall file with the commission a verified financial statement complying with sections 572.022 through 572.0252 of the Government Code. GOV’T CODE § 572.021.
2. A financial statement must include an account of the financial activity of the individual required to file a financial statement and an account of the financial activity of the individual’s spouse and dependent children if the individual had actual control over that activity for the preceding calendar year. *Id.* § 572.023(a). The account of financial activity consists of, in pertinent part, a list of all boards of directors of which the individual is a member and executive positions that the individual holds in corporations or other business associations and the position held. *Id.* § 572.023(b)(10). The account of financial activity also consists of, in pertinent part, any corporation or other business association, excluding a publicly held corporation, in which both the individual and a person registered as a lobbyist have an interest. *Id.* § 305.023(b)(12).
3. Ethics Commission rules prohibit the commission from considering an allegation barred from criminal prosecution by operation of the applicable statute of limitations. Ethics Commission Rules § 12.5(a). The criminal offense for a violation of section 572.023 of the Government Code is a Class B misdemeanor. GOV’T CODE § 572.034. The statute of limitations for a Class B misdemeanor is two years from the date of the commission of the offense. Code of Criminal Procedure, Article 12.02. The PFS covering calendar year 2005 was required to be filed by February 13, 2006, which is more than two years before the complaint was filed (September 24, 2008) and is, therefore, not within the commission’s sworn complaint jurisdiction.
4. The evidence indicates that the respondent was a member of the board of directors of ECA and that ECA was a corporation that was not publicly traded. The public information reports filed for ECA state that the respondent was a director of ECA in 2006 and 2007, but the respondent swears that he was not a member of the board of ECA in 2007. The meeting minutes provided by the respondent also indicate that he left the board in 2005 and thus corroborate his statement that he was not a director in 2007. However, the public information reports were signed by ECA’s chief financial officer, and indicate that the respondent was a director during the relevant period. Based on the conflicting information

contained in the respondent's sworn statements and the corporation's meeting minutes, and the information contained in the Texas Secretary of State records, there is insufficient evidence that the respondent violated section 572.023(b)(10) of the Government Code by failing to disclose that he was a director of ECA during 2007.

5. The evidence indicates that the respondent and a registered lobbyist both held an interest in ECA on account of their ownership of stock in the corporation. The respondent corrected his PFSs that covered 2006 and 2007 to disclose that he and a registered lobbyist held an interest in ECA. Although the respondent disclosed his ownership of the stock, he did not disclose that both he and a registered lobbyist held an interest in ECA in his PFSs, as required. Therefore, there is credible evidence that the respondent violated section 572.023(b)(12) of the Government 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 a financial statement must include any corporation or other business association, excluding a publicly held corporation, in which both the respondent and a person registered as a lobbyist have an interest. The respondent agrees to comply with this requirement 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 seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$1,000 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-2809326.

AGREED to by the respondent on this _____ day of _____, 20____.

Sidney Miller, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director