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**STATE OF NEVADA
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion
Concerning the Conduct of ROSS MILLER
Secretary of State,
State of Nevada,**

Request for Opinion No.: 10-23C

Subject. /

INVESTIGATOR'S REPORT (Tab A)

Introduction

1. Request for Opinion No. 10-23C (Ethics Complaint). (Tab B):

On April 16, 2010, Requester Sherry Dilley filed an Ethics Complaint against public officer Ross Miller, Nevada Secretary of State, alleging that Miller violated various provisions of the Ethics in Government Law set forth in NRS 281A, including:

1) NRS 281A.400(2) when he used his position in government to secure unwarranted privileges, preferences, exemptions or advantages by placing his office telephone number on his 2010 Financial Disclosure, Candidate Filing Partisan Office, and Declaration of Candidacy forms, which resulted in his office telephone number being posted in the candidate information publicized on the State's elections website. The Complaint further alleges that campaign-related calls were placed to Miller's office, which caused Miller's staff to use government time, equipment, and facility to further his personal interest in being re-elected as Secretary of State. Additionally, it alleges that Miller used his position in government to promote his campaign by appearing on a US Census television public service announcement (PSA);

2) NRS 281.400(7) by causing his office staff to use government time, property, equipment or other facility as they participated during work hours in his campaign; and

1 3) NRS 281A.520 when he requested or otherwise caused a governmental entity to incur an
2 expense or make an expenditure to support him as a candidate by appearing in the US
3 Census/UFC television PSA.

4
5 **2. Jurisdiction:**

6
7 As the Secretary of State, no dispute exists that Miller is a public officer as defined in
8 NRS 281A.160. The Nevada Commission on Ethics has jurisdiction to investigate and take
9 appropriate action regarding allegations involving public officers, and therefore has jurisdiction
10 in this matter pursuant NRS 281A.280 and NRS 281A.440.

11
12 **3. Issues:**

13 The issues are whether Miller violated:

- 14
15 **I.** NRS 281A.400(2) by using his position in government to secure unwarranted
16 privileges, preferences, exemptions or advantages by placing his government
17 office telephone number on a candidate form and on the State website, and by
18 appearing in a television PSA during his campaign for re-election to the office of
19 Secretary of State.
- 20 **II.** NRS 281A.400(7) by using government time, property, equipment and other
21 facility by causing and allowing the Secretary of State's Office employees to
22 respond to calls to the government office which were related to his campaign.
- 23 **III.** NRS 281A.520 by appearing in a television PSA paid for in part by the State, and
24 using the PSA to promote his campaign.

25
26 **4. Notices to Subject: (Tab C):**

27 A Notice to Subject of the Complaint (RFO 10-23C) was issued to Miller on April 22,
28 2010. A record indicates that Miller received the Notice on April 24, 2010. (Tab C).

1 **2. Documents. (Tab F):**

2
3 I obtained and reviewed the following relevant documents and materials:

- 4
5 • Print out of Nevada Secretary of State Website on April 23, 2010. (Exhibit 1).
- 6 • Screen shot of Ross Miller's website RossMiller2010.com on May 7, 2010. (Exhibit 2).
- 7 • Screen shot of Ross Miller's Facebook page on May 7, 2010. (Exhibit 3).
- 8 • Screen shot of Ross Miller's Twitter page on May 7, 2010. (Exhibit 4).
- 9 • Declaration of Ross Miller dated May 4, 2010. (Response, Tab D, Exhibits, pp.2-6).
- 10 • Declaration of Anne Della Rosa dated May 4, 2010. (Response, Tab D, Exhibits, pp. 17).
- 11 • Declaration of Matt Griffin dated May 3, 2010. (Response, Tab D, Exhibits, pp. 11-12).
- 12 • Declaration of Sallie Lincoln dated May 4, 2010. (Response, Tab D, Exhibits, pp. 14-15)

13
14 **3. Relevant Statutes and Commission Opinions. (Tab G):**

- 15
16 • NRS 281A.400(2) and (7).
- 17 • NRS 281A.520.
- 18 • In re Stix, Jr., NCOE RFO No. 06-71.
- 19 • In re Krolicki, NCOE RFO No. 06-49.
- 20 • In re Swafford, NCOE RFO No. 06-44. (Executive Director's Recommendation and
- 21 Panel Determination only).
- 22 • In re Pierini, NCOE RFO No. 06-19.
- 23 • In re Augustine, NCOE RFO 04-47. (Stipulation Agreement).
- 24 • In re Heller, NCOE RFO No. 02-19.
- 25 • In re Kirkland, NCOE RFO No. 98-41.
- 26 • In re Titus, NCOE RFO No. 96-60.

1 **Investigative findings:**

2
3 Miller was elected Nevada Secretary of State in the 2006 election and was sworn into
4 his office in January 2007. Miller's term expires in 2010. He is currently running for re-
5 election.

6 On March 1, 2010, Miller filed a Declaration of Candidacy, a mandatory form required
7 to be completed by every candidate for office. In completing the form, Miller listed his
8 government office telephone number, 775-684-5709, in the blank marked "Telephone Number."
9 (Response, Tab D, Exhibits, p. 9 of 142). Additionally, Miller submitted the Candidate Filing
10 for Partisan Office form, where he listed the same number: 775-684-5709. (Complaint, Tab B,
11 p. 21). Finally, the same day, March 1, 2010, Miller filed a Candidate Media Sheet, a voluntary
12 form that contains information to be distributed to all media outlets. Under "Campaign
13 headquarters address and phone number," Miller wrote his campaign headquarters' address in
14 Henderson, NV and listed his campaign manager's telephone number.

15 On or about March 1, 2010, the Election Department of the Secretary of State's office
16 reviewed the Declaration of Candidacy forms and used the listed telephone numbers from those
17 forms on State's website as a part of the list of candidates running for upcoming election. On
18 March 22, 2010, Miller completed a Financial Disclosure Statement¹ where he listed his office
19 telephone number. (Complaint, Tab B, p. 7).

20 The complaint alleges that by listing his government office number, Miller violated
21 provisions of NRS 281A because he used government time, equipment, property or other
22 facility and therefore, he received an unwarranted benefit.

23 In addition, the complaint alleges that Miller violated several provisions of NRS 281A
24 by appearing in a television PSA ("US Census/UFC PSA") partially paid by the State of
25 Nevada. UFC paid the cost of production and the broadcasting was paid by the State of Nevada
26 after approval by the Board of Examiners. (Response, Tab D, Exhibits, p. 76 of 142). The PSA
27

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¹ Miller completed two required Financial Disclosure Statements (FDS). The annual FDS filed by public officers by January 14, 2010, and the FDS required to be filed by candidates by March 22, 2010. (NRS 281A.610).

1 was intended to target the 18-24 year old male population to promote the importance of
2 completing the 2010 US Census forms. (Response, Tab D, Exhibits, Declaration of Miller, p. 5
3 of 142). The Complaint alleged that the PSA was aired, containing Miller's appearance after he
4 had filed his Declaration of Candidacy form, and therefore he used government resources as a
5 tool for his campaign. (Complaint, Tab B, p. 3).

6
7 **Telephone interview with Ross Miller on May 7, 2010.**

8 I spoke to Ross Miller on May 7, 2010, and asked why the Declaration of Candidacy
9 form requested contact information. Miller stated that the telephone number he provided on the
10 form was meant to be the easiest way to contact him if the Elections Office had any questions,
11 and added that "the number was not listed to answer any campaign-related questions; it was just
12 the best way to contact me directly." Miller stated that he gave the number for his campaign
13 manager on the Candidate Media Sheet, and that the campaign manager is the person most
14 familiar with his campaign. The Candidate Media Sheet is distributed to all media outlets and
15 the number listed there is the number that would be most beneficial to his supporters.

16 Miller added that in his opinion, listing his office number on the State website and on
17 the Declaration of Candidacy form resulted in detriment rather than benefit to his supporters. He
18 explained that if a supporter calls his government office number, the staff would direct the caller
19 to his website or to his campaign manager's telephone number. Therefore, the supporter would
20 need to make two calls instead of one.

21 In addition, Miller stated that his office staff was instructed not to engage in any
22 campaign related activities and to direct any campaign related calls to a different number. Miller
23 then added that he knew of very few calls received by his office and that he believed those
24 callers were promptly directed to his website or to his campaign manager.

25 As to the US Census/UFC PSA, Miller stated the following: The PSA was prepared and
26 approved by the Board of Examiners before he filed the Declaration of Candidacy form. The
27 production cost was paid by the UFC; the broadcasting was paid by the State of Nevada. The
28 funds used for the PSA came from a litigation settlement and State general fund money was

1 used. (Response, Tab D, Exhibits, Declaration of Miller, p. 5 of 142). Finally, I asked Miller
2 why he has the US Census/UFC PSA posted on his campaign website. Miller replied that he
3 posts Census-related materials on his campaign website, Facebook or Twitter to further promote
4 the importance of Census, and he emphasized that all those communication tools are privately
5 funded.

6 **Telephone interview with Rob Lauer on May 7, 2010.**

7 I spoke to Rob Lauer on May 7, 2010, and questioned him as to the call he placed to the
8 Secretary of State's office. (Complaint, Tab B, p. 15). Lauer stated that he called on April 9,
9 2010, using the number for Ross Miller that he obtained from the list of candidates posted on
10 the State website. Lauer introduced himself as a Miller supporter, and spoke to an employee he
11 believed to be named Suzanne. Lauer asked how he could donate to Miller's campaign. The
12 employee referred him to Miller's website, RossMiller2010.com, but Lauer insisted on a mailing
13 address since he claimed a desire to send a check. The employee provided him with the address
14 for the Miller campaign headquarters in Henderson, NV. I asked Lauer if he was certain the
15 employee's name was "Suzanne." Lauer replied that he was absolutely positive because he had
16 spoken to "Suzanne" in the past regarding a different issue. I asked Lauer if he knows
17 "Suzanne's" last name, but he could not recall. I conducted a search of employees in Secretary
18 of State's office using the State telephone directory. The search resulted in 116 names, but not
19 one "Suzanne." Lauer may have been mistaken as to the name of the individual he had spoken
20 to. Based on the available evidence, the individual Lauer had spoken to was most likely Anne
21 Della Rosa, an administrative assistant employed in Miller's office. However, it is this
22 Investigator's opinion that Lauer's apparent mistake does not play a significant role in the issue
23 at hand.

24 I asked Lauer to identify Miller's conduct that violated the Ethics in Government Laws.
25 Lauer stated that Miller's employees were involved in his campaign using the State's time and
26 resources and that Miller's appearance in the US Census/UFC PSA was intended to promote his
27 re-election. Lauer argued that Miller was running a "shadow campaign" using State funds and
28 added that Miller should reimburse the State for the costs of the US Census/UFC PSA since it

1 was a tool to promote his campaign. Lauer noted that Miller's use of the PSA on his campaign
2 website confirms his allegation.

3 Additionally, Lauer stated that he is familiar with the Advisory Opinion that the
4 Commission issued to Lieutenant Governor Brian Krolicki (In re Krolicki, RFO 06-49, Tab G),
5 and argued that although the issue is similar to Miller's, there is a difference. Lauer noted that
6 Krolicki was not found to have violated the Ethics in Government Laws since his appearance in
7 the television PSA ceased before Krolicki filed his Declaration of Candidacy form.

8
9 **Telephone interview with Anne Della Rosa, May 7, 2010.**

10 I spoke to Anne Della Rosa on May 7, 2010. Della Rosa recalls receiving only three
11 campaign related calls. As instructed by Miller, she did not engage in any campaign-related
12 discussion and directed the callers to Miller's campaign telephone number. Della Rossa stated
13 that she recalls a telephone call where a caller introduced himself as a Miller supporter and
14 inquired about mailing address so he can mail a check. Della Rossa stated that she did not know
15 the address so she used Google's search engine to locate it. She found Miller's website and
16 provided the caller with mailing address in Henderson, NV. (Response, Tab D, Exhibits,
17 Declaration of Della Rosa, p. 17 of 142). The similarities between this call and the call placed
18 by Lauer are striking. Therefore, it is most likely that Lauer had spoken to Anne Della Rosa and
19 mistook her name as "Suzanne."

20 I asked Della Rossa what instructions she received from Miller regarding campaign
21 inquiries. Della Rosa responded that the employees were instructed not to engage in any
22 campaign-related discussions and direct the callers to campaign headquarters' or campaign
23 managers' telephone number. Della Rosa noted that "Mr. Miller never asked me to work on his
24 campaign" and added that she would not do it during her work hours anyway.

25
26 **Telephone interview with Matt Griffin on May 6, 2010.**

27 I spoke to Matt Griffin, Deputy Secretary of State for Elections, on May 6, 2010 and
28 questioned him as to the purpose of asking for a phone number on the candidacy form and the

1 procedure used for placing information on the State website. Griffin stated that, in his opinion,
2 the number listed should be the easiest way to reach the candidate if there were any question
3 regarding the candidacy, not regarding the campaign. Griffin added that if an issue arose, he
4 would need to speak to a candidate, not to a campaign manager or someone in the campaign
5 headquarters. Griffin stated that Miller never asked him to perform any campaign work and he
6 had never done so. (Response, Exhibits, Tab D, Declaration of Griffin, p. 11 of 142).

7 I questioned Griffin as to the procedure of posting candidate's contact number on the
8 State website. Griffin explained that posting the list of candidates and their contact numbers is
9 not mandatory; it is a courtesy of the Election Department. Griffin noted that the Election
10 Department staff takes the Declaration of Candidacy form and uses the same number listed as
11 the contact number on the State website; the staff does not scrutinize the number. Griffin added
12 that after issue regarding Miller's number arose, the Election Department started posting the
13 numbers listed on the Candidate Media Sheet instead.

14
15 **Telephone interview with Sallie Lincoln on May 6, 2010.**

16 I spoke to Miller's Executive Assistant, Sallie Lincoln, on May 6, 2010, and questioned
17 her regarding her receipt of calls inquiring about Miller's campaign. Lincoln stated that the 775-
18 684-5709 number that Miller listed is a direct number to her desk. Lincoln recalls receiving only
19 two calls inquiring about Miller's campaign. The callers did not introduce themselves and before
20 Lincoln had a chance to direct them to Miller's campaign website, the callers hang up.
21 (Response, Tab D, Exhibits, Declaration of Lincoln, p. 14 of 142).

22 I asked Lincoln what instructions she received from Miller regarding campaign
23 inquiries. Lincoln stated that the office staff was instructed not to engage in any campaign-
24 related activities and she was never asked by Miller to do so. In addition, Lincoln stated that she
25 is enough familiar with Ethics in Government Laws to know that it would be inappropriate and
26 she would never participate in any campaign-related activities while at work.

Telephone interview with Sherry Dilley

I attempted to contact the Requester, Sherry Dilley, on several different occasions using the telephone number she provided on the Complaint. After several unsuccessful attempts, on May 7, 2010, I spoke to Ciara Turns, the communication director of Nevada Republican Party and asked whether she knew of a different means of contacting Dilley. She did not. I also asked whether she could forward a message and ask her to contact me. Turns gladly agreed, and I provided her with both my office number and a private number. As of the completion of this report, I received no call back from Dilley.

1. Allegation one: Between March 1, 2010 and or about April 13, 2010, Miller violated NRS 281A.400(2) by placing his office telephone number on the Financial Disclosure form, Candidate Filing Partisan Office form, and Declaration of Candidacy form, which resulted in the same being posted on the list of candidates publicized on the State website. Subsequently, campaign-related calls were placed to Miller's office, which caused Miller's staff to use government time, equipment, and facility. Additionally, Miller used his position in government to promote his campaign by appearing on the US Census/UFC television PSA. Therefore, all of the above resulted in an unwarranted benefit to Miller.

- NRS 281A.400(2) provides, in relevant part:

A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281A.420.

(b) "Unwarranted" means without justification or adequate reason.

1 As to the allegation that Miller used his position in government to secure unwarranted
2 privileges, preferences, exemptions or advantages by using government time, equipment
3 property or other facility, the evidence is as follows:

4 Miller listed his office number on the Declaration of Candidacy form on March 1, 2010.
5 The same number was listed on the State's website by the office staff of the Election
6 Department. The evidence provided hereto shows only what appear to be five calls received
7 from Miller's alleged supporters including a call from Lauer who introduced himself as such.
8 Furthermore, Lauer claims that Miller's office staff directed him to call different number and
9 provided him with an address in Henderson, NV, which appears to follow direction that Miller
10 gave to his office staff. Furthermore, the number listed on the State website is not specific as to
11 the type of the number required (e.g. campaign headquarters number, work number). Similarly,
12 the Financial Disclosure Statement form, Declaration of Candidacy form, and Candidate Filing
13 for Partisan Office form do not ask for a specific number to be listed. The only document
14 directing the candidate to use a campaign headquarters address and a telephone number is the
15 Candidate Media Sheet. In this case, the campaign headquarters' address and the campaign
16 manager telephone number were provided. (Complaint, Tab B, p. 29). Aside from the call
17 placed by Lauer, the complaint does not provide any support for the claim that Miller's office
18 staff was engaged in Miller's campaign using the State's time, property, equipment or other
19 facility or that Miller received an unwarranted benefit as provided in subsection 2 of NRS
20 281A.400.

21 As to the US Census/UFC PSA, the PSA was broadcasted between March 10 and April
22 3, 2010. Its purpose appears to be promoting the importance of US census; it did not support,
23 opposed, or made any references to Miller's campaign.

24 Finally, it is this Investigator's opinion that similarities and differences to this case may
25 be found in several Opinions issued by the Commission in the past, notably: a non-binding
26 panel determination, In re Swafford, RFO 06-44, (use of government telephone number on a
27 campaign-related materials); In re Pierini, RFO 06-19; In re Krolicki, RFO 06-49, (appearance
28

1 in the television PSA); and In re Augustine, 04-77, (use of government time, property,
2 equipment or other facility).

3
4 **2. Allegation two:** Between March 1, 2010 and or about April 13, 2010, Miller
5 violated NRS 281A.400(7) by causing and allowing his office's employees to
6 use their government time, government property equipment or other facility by
7 working on his campaign.
8

- 9 ■ NRS 281A.400(7) provides, in relevant part:

10 A public officer or employee, other than a member of the Legislature, shall not
11 use governmental time, property, equipment or other facility to benefit his
12 personal or financial interest. This subsection does not prohibit:

13 (a) A limited use of governmental property, equipment or other facility for
14 personal purposes if:

15 (1) The public officer who is responsible for and has authority to authorize the
16 use of such property, equipment or other facility has established a policy
17 allowing the use or the use is necessary as a result of emergency circumstances;

18 (2) The use does not interfere with the performance of his public duties;

19 (3) The cost or value related to the use is nominal; and

20 (4) The use does not create the appearance of impropriety;

21 As to the allegation that Miller caused and allowed employees in his office to use
22 government time, property equipment or other facility, the evidence is as follows:

23 The complaint provides evidence of only one telephone call to Miller's office. The caller
24 is a witness to the complaint and stated that he was directed to Miller's campaign website and
25 provided with a mailing address. (Complaint, Tab B, p. 15), (Investigator's Report, Tab A, pp.
26 7-8). (Response, Tab D, Declaration of Della Rosa, Exhibits, p. 17 of 142). It is this
27 investigator's opinion that directing caller to a different number does not constitute "working on
28 Miller's campaign."

1 **3. Allegation three: Between March 10 and or about April 3, 2010, 2010, Miller**
2 **violated NRS 281A.520 by appearing on US Census/UFC television PSA.**

- 3
4 ▪ NRS 281A.520 provides, in relevant part:

5 Except as otherwise provided in subsections 4 and 5, a public officer or
6 employee shall not request or otherwise cause a governmental entity
7 to incur an expense or make an expenditure to support or oppose:

- 8 (a) A ballot question.
9 (b) A candidate.

10 2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an
11 expenditure made by a governmental entity shall be considered
12 an expense incurred or an expenditure made in support of a candidate if:

- 13 (a) The expense is incurred or the expenditure is made for the creation or
14 dissemination of a pamphlet, brochure, publication, advertisement or
15 television programming that prominently features the activities of a current
16 public officer of the governmental entity who is a candidate for a state,
17 local or federal elective office; and
18 (b) The pamphlet, brochure, publication, advertisement or
19 television programming described in paragraph (a) is created or disseminated
20 during the period specified in subsection 3.

21 3. The period during which the provisions of subsection 2 apply to a particular
22 governmental entity begins when a current public officer of that
23 governmental entity files a declaration of candidacy or acceptance of candidacy
24 and ends on the date of the general election, general city election or
25 special election for the office for which the current public officer of the
26 governmental entity is a candidate.

27 4. The provisions of this section do not prohibit the creation or dissemination of,
28 or the appearance of a candidate in or on, as applicable, a
29 pamphlet, brochure, publication, advertisement or television programming that:

- 30 (a) Is made available to the public on a regular basis and merely describes the
31 functions of:
32 (1) The public office held by the public officer who is the candidate; or
33 (2) The governmental entity by which the public officer who is the candidate is
34 employed; or
35 (b) Is created or disseminated in the course of carrying out a duty of:
36 (1) The public officer who is the candidate; or
37 (2) The governmental entity by which the public officer who is the candidate is
38 employed.

39 As to the allegation that Miller violated NRS 281A.520 by appearing on the US
40 Census/UFC add, the evidence is as follows:

1 The evidence shows that the PSA was approved by the Board of Examiners on
2 December 18, 2009 (Response, Tab D, Exhibits, p. 76 of 142). The purpose of the PSA was to
3 promote the importance of US census and it was broadcasted between March 10, 2010 and
4 April 3, 2010. The complaint alleges that Miller appeared in such PSA after filing his
5 Declaration of Candidacy form on March 1, 2010, and used it as a tool to promote himself.

6 The evidence shows that in fact, Miller appeared in the PSA after filing his
7 Declaration of candidacy. Miller's appearance in each 30 second PSA lasted approximately 6
8 seconds and included a caption "Ross Miller, Secretary of State, Complete Count Chairman"
9 however; the PSA did not include any reference to Miller's campaign. It is this investigator's
10 opinion that Miller's appearance in the PSA was permitted under NRS 281A.520(4)(a) as it
11 described the function of his office.

12
13 Dated this 9 day of May 2010.

14 NEVADA COMMISSION ON ETHICS

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A handwritten signature in black ink, appearing to read "Mike Vavra", is written over a horizontal line. The signature is cursive and somewhat stylized.

Mike Vavra, MPA
Investigator