



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. /**

**EXECUTIVE DIRECTOR'S RECOMMENDATION  
AND APPROVAL OF INVESTIGATOR'S REPORT**

The following is the Executive Director's recommendation based on consideration and investigation of the Ethics Complaint filed against Nevada Secretary of State ROSS MILLER ("Subject"), a public officer, and on the Subject's written response to the Complaint, attached to the Investigator's Report. That Report is approved and is attached for the consideration of the two-commissioner investigatory panel.

**Allegations:**

The main allegation is that Secretary Miller listed his government office telephone number on various forms related to his campaign for re-election, which caused State equipment, State employees and a State website to benefit his private interest in being re-elected and was a means to secure an unwarranted privilege or advantage.

The other allegation relates to Miller's 6-second appearance in a 30-second public service advertisement (PSA) promoting the US Census, targeting 18-24 year-old males and featuring Ultimate Fighting Championship stars, which aired during the national effort to have US Census forms returned, but after Miller filed his Declaration of Candidacy.

**Facts:**

The main parties involved are Secretary Ross Miller; his Elections Deputy Matt Griffin; a telephone receptionist in his office, Anne Della Rosa; and Sallie Lincoln, his Executive Assistant.

**Nevada Revised Statutes (NRS) and case law:**

The applicable statutes are NRS 281A.400(2) – using public position to secure an unwarranted benefit; NRS 281A.400(7) – using government resources to further a personal interest; and NRS 281A.520 – causing a government to support a candidate for office.

### **Allegations related to telephone number and use of State resources:**

After reviewing the evidence and NRS 281A.400(2) and (7), I recommend that the Investigatory Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on the allegations that Secretary Miller used his position in government to secure an unwarranted benefit or used government staff, equipment or a website to further his personal interest by listing his government office telephone number on the forms related to filing his candidacy for re-election.

The handful of telephone calls Miller's office received about his campaign for re-election may or may not have been linked to the phone number he listed on those forms, as the callers may have obtained the Secretary of State's office telephone number from a wide variety of sources. No evidence was presented that any of the callers (other than Mr. Lauer) obtained the number from the candidacy-related forms or from the State Candidates' website. The declarations of the Secretary of State's staff who fielded the calls provided no indication that the callers had obtained the telephone number from the forms or from the website. Therefore, pursuant to NAC 281A.435, the available **evidence is insufficient** to form a reasonable belief that the matter should proceed to hearing.

Presumably the Secretary of State's office developed and is familiar with the Declaration of Candidacy form and the Candidate's Media Information forms it distributes and collects. Certainly the Secretary of State's office was aware that the voluntarily completed media form specifically requested campaign contact information. Yet when the office compiled and posted public information for the filed candidates on its website, it used the data collected from the Declaration of Candidacy forms and not from the media information forms. However, this misstep affected all candidates, and did not specifically provide Secretary Miller any benefit or advantage.

The report of Investigator Vavra, the Subject's thorough Response and the materials filed with the Complaint support this recommendation.

### **Allegations related to participation in the census PSA**

After reviewing the evidence and NRS 281A.520, I recommend that the Investigatory Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on the allegations that Secretary Miller's appearance in the US Census/UFC PSA improperly caused the State to incur an expense to support a candidate, since it falls **squarely within the exception provided in NRS 281A.520(4)** permitting a description of the functions of his office as Secretary of State, and his status as the State's "Complete Count Chairman," the public officer in charge of encouraging Nevada's US Census compliance.

Secretary Miller had no control over Census compliance timing – whether before or during his candidacy period - as that is wholly controlled by the federal government. Further, his campaign website's use of the PSA as an example of his work as Secretary of State does not seem to implicate any ethics in government laws.

The report of Investigator Vavra, the Subject's thorough Response and the materials filed with the Complaint support this recommendation.

**NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)**

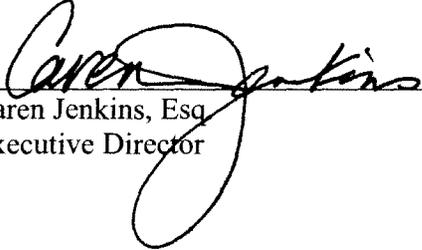
1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics complaint **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics complaint must be unanimous.

3. As used in this section, **“credible evidence” means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

Therefore, I recommend that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion on whether ROSS MILLER violated NRS 281A.400 or NRS 281A.520 for the reasons stated above.

**I hereby approve the attached Investigator’s Report and provide my recommendation to this honorable investigatory panel.**

  
Caren Jenkins, Esq.  
Executive Director

Date: 5/10/10