

COMPLAINT TO THE OHIO ELECTIONS COMMISSION

FROM: Secretary of State Jennifer Brunner
180 East Broad St.
Columbus, Ohio 43215 (614) 466-3111

NAME OF ENTITY:	COMMITTEE TO ELECT RAY MILLER 550 E. WALNUT ST. COLUMBUS, OH 43215	CANDIDATE:	RAY MILLER 3040 ELBERN AVE. COLUMBUS, OH 43209
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TREASURER: JESSE HEMPHILL
471 W. BROAD ST. #1800
COLUMBUS, OH 43215

THE ABOVE NAMED PERSONS ARE BEING REFERRED TO THE OHIO ELECTIONS COMMISSION (the "COMMISSION") PURSUANT TO DIVISION (C) OF OHIO REVISED CODE SECTION 3517.11 FOR THE FOLLOWING VIOLATIONS OF CAMPAIGN FINANCE LAW:

- R.C. 3517.10(A): Failure to file a full, true, and itemized statement.
- R.C. 3517.10 (D): Failure to keep a strict and accurate account.
- R.C. 3517.11(B)(3): Failure to file an addendum, amendment, or other correction to complete or correct a statement.

On February 28, 2008, the Committee to Elect Ray Miller (the "Committee") filed sixteen overdue reports with the Secretary of State (the "Secretary"), including a combination of original reports and amendments to previously-filed reports for the time period from 2002 through 2007. On April 9, 2008, the Secretary of State sent the Committee a fifty-one page audit letter indicating that additional information was required to complete the Committee's reports. See Exhibit A. On May 23, 2008, the Committee responded to the audit letter by providing some of the information requested by the Secretary and filing additional receipts for expenditures. See Exhibit B. On August 25, 2008, the Secretary sent the Committee a forty-one page re-audit letter explaining that additional information was required to conclude the Secretary's examination of the Committee's reports. See Exhibit C. The Committee responded to the Secretary's re-audit letter on November 24, 2008. See Exhibit D.

As evidenced by the Secretary's audit and re-audit letters, the Committee and its treasurer have failed to file complete and accurate reports, verify expenditures, retain relevant documents to verify expenditures, and keep a strict accounting of all expenditures. For these reasons, the Committee has violated sections 3517.10(A), 3517.10(D), and 3517.11(B)(3) of the Revised Code.

The Secretary provides the following as examples of the Committee's failure to comply with Ohio's campaign finance reporting requirements.

Failure to Verify Expenditures to Sen. Ray Miller

Between 2002 and 2007, the Committee disbursed \$27,460.09 to Sen. Miller. The Committee has attempted to verify these expenditures to Sen. Miller by attaching copies of receipts to the corresponding canceled checks issued to Sen. Miller. See Exhibits A, B, C, and D.

The receipts, however, do not reconcile with the checks issued to Sen. Miller. See Exhibit C at 1-15. The Committee has failed to appropriately respond and fully verify almost forty checks issued to Sen. Miller, totaling \$16,207.11. Fourteen checks issued to Sen. Miller do not include any underlying documentation to support the expenditure. Thirty-one checks include documentation validating only a portion of the alleged expenditure, and some checks were written by the Committee and cashed by Sen. Miller before the expense was incurred. Additionally, rather than submitting receipts for some of the expenses, the Committee submitted handwritten notes describing Sen. Miller's expenses. The handwritten notes are not a valid form of verification for the Committee's expenditures.

To summarize the Committee's failure to verify the expenditures to Sen. Miller, the Secretary created Exhibit E, a list of the **unverified** checks issued to Sen. Miller, and Exhibit F, a list of **all** reimbursement checks issued to Sen. Miller with a breakdown of the amount validated by mileage or receipts, the amount allegedly validated by handwritten note, and the amount that has not been verified.

The Secretary previously directed Sen. Miller to return any unverified amounts of a reimbursement check to the Committee. See Exhibits A and C. The Committee argues that it is not statutorily required to submit any documentation verifying the payments to Sen. Miller. See Exhibit D at 1-2,

The Secretary has a duty to examine all campaign finance statements for compliance with Ohio's campaign finance laws. R.C. 3517.11(B)(4)(a) & R.C. 3517.11(C). Under R.C. 3517.13(0)(1), a campaign fund beneficiary may only be reimbursed from the campaign fund if the beneficiary incurs "legitimate and **verifiable** prior campaign expenses" or "legitimate and **verifiable** ordinary and necessary prior expenses incurred by the beneficiary in connection with the duties as the holder of a public office." Thus, any Committee expenditure to reimburse the candidate must be **verifiable**, and the Secretary has authority to request that verification to ensure compliance with Ohio's campaign finance law. Without the ability to require verification, the Secretary cannot perform her statutory duty to examine all campaign finance filings for compliance with Ohio law.

Failure to Retain Verification Documents

In the Committee's November 24, 2008 response to the Secretary's re-audit letter, the Committee stated that its efforts to identify underlying documentation for many of the expenditures to Sen. Miller were "hampered by the age of the expense going all the way back to 2002 and the accidental destruction of a large box of committee records in May 2006 in the course of Senator Miller moving his business office and discarding old business records that were no longer needed." Exhibit D at 2. The Committee has a duty to keep a strict account of all expenditures, which includes retaining underlying documentation to verify an expense.

Failure to Reconcile Credit Card Accounts

Sen. Miller used three personal credit cards to make Committee-related purchases. The amounts paid by the Committee for credit card expenses, however, do not reconcile with the total campaign-related expenses paid for by the credit card as listed in the Committee's reports. As demonstrated by Exhibit G, the Committee overpaid two credit card companies and underpaid the third company. Regardless of the net amount overpaid or underpaid, the inability to reconcile demonstrates another failure to keep a strict and accurate account of the Committee expenditures.

Additionally, many expenditures were apparently paid by credit card and separately reimbursed to Sen. Miller. For example, the Committee listed a 1/31/2007 expenditure at The Clarmont restaurant for \$21.35 as being paid with the American Express credit card. The Committee also issued check number 3899 to Sen. Miller for reimbursable expenses, one of which was the same expense at The Clarmont. When asked to explain the Committee's use of credit cards, the Committee responded:

The Committee did not have a credit card in its name. All committee related credit card charges were paid by a committee check to the credit card company's bank. Sen. Miller wrote personal checks to the credit card company's bank for non-committee charges on the card. Reimbursement checks to Senator Miller were for expenses not charged to a credit card.

Exhibit D at 4.

If this statement is true, the Committee paid many expenses twice: once to the credit card company and then through reimbursement check to Sen. Miller. Attached as Exhibit H is a table showing the expenditures that the Committee reported as paid by credit card and by reimbursement check to Sen. Miller.

Failure to Prevent Duplicate Reimbursements

Because of the Committee's failure to keep a strict and accurate account of its expenditures, the Committee allowed duplicate reimbursements to Sen. Miller for the same expense. For example, in its May 2008 filings, the Committee submitted canceled check number 3516, dated 4/30/2004, from the Committee to Ray Miller for \$1,459.77. Supporting documentation submitted with the canceled check indicates that a portion of the money was for mileage to Youngstown/Girard on April 17, 2004, and Akron on May 13, 2004. Exhibit I.

The Committee also submitted canceled check number 3517, dated 5/13/2004, from the Committee to Ray Miller for \$879.80. The supporting documentation for this canceled check includes a Visa credit card account statement, which includes credit card charges at gas stations on April 17, 2004, in Sunbury, Ohio, and in Youngstown, Ohio, and gas station purchases on May 13, 2004, in Lodi, Ohio, and Sunbury, Ohio. Exhibit J.

It appears that the Committee reimbursed Sen. Miller for mileage for the trips to Youngstown on April 17, 2004, and Akron on May 13, 2004, through reimbursement canceled check 3516. However, the Committee then reimbursed Sen. Miller for gas station purchases on the same dates through canceled check 3517.

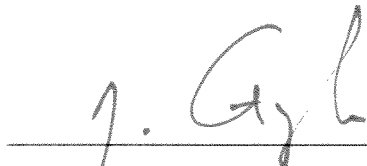
Improper Reimbursements

Because of the Committee's failure to keep a strict and accurate account of all expenditures, the Committee appears to have issued reimbursement checks to the wrong person. For example, the Committee's May 2008 filings included canceled check number 3647, dated 7/2/2004, for \$420.42 from the Committee to Ray Miller for "Expense Reimbursement." Exhibit K. Supporting documentation submitted with the canceled check included a \$25.00 expense to the "Col Metropolitan Club" on 1/21/2004 and a 6/9/2004 expense of \$25.95 to "Book- Who's Who." Exhibit L. The receipts submitted for these expenses, however, show that "Professional Employment Services of America" paid the expenses to *Columbus Metropolitan Club* and *Who's Who Publishing* – not Sen. Miller, to whom the reimbursement check was issued. Exhibit M.

In the Secretary's April 9, 2008 audit letter, the Secretary requested Sen. Miller to return the \$25.00 and \$24.95 to the Committee as Sen. Miller was paid for an expense he had not incurred. Exhibit A at 9. The Committee responded that the "Who's Who and Metropolitan Club expense reimbursements have been removed." Exhibit D at 4. The Committee's response does not appropriately respond to the request to reimburse the Committee for the expense paid to Sen. Miller, nor does it offer any replacement expenses to reconcile the reimbursement amount that was paid to Sen. Miller.

Conclusion

The foregoing are examples of the Committee's recurring failure to strictly account for expenditures and correct its reports over a five year period in violation of Ohio's campaign finance laws.

 _____ J. Curtis Mayhew Campaign Finance Administrator	<u>13 Feb 09</u> Date
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