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NOV 13 2013

November 13, 2013

Texas Ethics Commission

Ian M. Steusloff
Assistant General Counsel
Texas Ethics Commission
201 East 10th Street, 14th Floor
Austin, Texas 78701

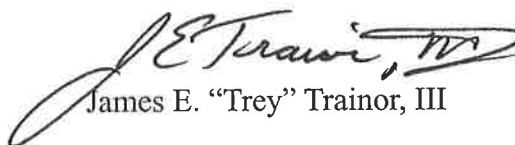
Via Messenger

Re: Response to proposed settlement of sworn complaints SC-3120487 and SC-3120488

Dear Mr. Steusloff:

Please find enclosed the response of my client to the settlement offer proposed by the Texas Ethics Commission in sworn complaints SC-3120487 and SC-3120488.

Sincerely,



James E. "Trey" Trainor, III

Enclosure



TEXAS ETHICS COMMISSION

P. O. Box 12070, Capitol Station
Austin, Texas 78711-2070

Jim Clancy
Chair

Paul W. Hobby
Vice Chair

David A. Reisman
Executive Director

November 5, 2013

Commissioners

Hugh C. Akin
Tom Harrison
Bob Long
Paula M. Mendoza
Tom Ramsay
Chase Untermeyer

Mr. James E. Trainor, III
Beirne, Maynard & Parsons, L.L.P.
401 West 15th Street, Suite 845
Austin, Texas 78701-1667

DELIVERY CONFIRMATION NO.
9114 9010 7574 2659 9918 63

Re: Order and Agreed Resolution, SC-3120487 and SC-3120488 (Michael Quinn Sullivan)

Dear Mr. Trainor:

Enclosed is a proposed resolution that may resolve sworn complaints SC-3120487 and SC-3120488, which were filed against Michael Quinn Sullivan.

The Texas Ethics Commission is required by law to resolve and settle sworn complaints, if possible. The enclosed proposal attempts to accomplish that goal. Please note that the commission met on November 4, 2013, and voted to propose the enclosed resolution to the respondent, to which the respondent may agree by November 21, 2013.

Once the Ethics Commission receives the signed original, and the respondent has fully complied with the terms stated in the order, these sworn complaints will be resolved. To be effective, all pages of the signed proposal must be returned.

If your client does not *both* return the signed order by November 21, 2013, and fully comply with the terms stated in the order within 30 days of the date on which your client agrees to the order, or if your client does *not* agree to the proposed resolution, then these complaints will be scheduled for a formal hearing before the commission. You will be given notice of the time, place, and date of the hearing and will be provided with an opportunity to appear.

Please call me at (512) 463-5800 if you have any questions about the proposed resolution.

Sincerely,

Ian M. Steusloff
Assistant General Counsel

Come visit our home page at <http://www.ethics.state.tx.us> on the Internet.

(512) 463-5800 • FAX (512) 463-5777 • TDD 1-800-735-2989

The Texas Ethics Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

TEXAS ETHICS COMMISSION

IN THE MATTER OF

MICHAEL QUINN SULLIVAN,

RESPONDENT

§
§
§
§
§

BEFORE THE

TEXAS ETHICS COMMISSION

SC-3120487 AND SC-3120488

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on October 29, 2013, and November 4, 2013, to consider sworn complaints SC-3120487 and SC-3120488. A quorum of the commission was present. The commission determined that there is credible evidence of violations of section 305.003 of the Government Code, a law administered and enforced by the commission. To resolve and settle these complaints without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaints alleged that the respondent did not file a registration as a lobbyist for calendar years 2010 and 2011, as required by section 305.003 of the Government Code.

III. Facts Supported by Credible Evidence

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

1. The respondent is the president of Empower Texans (ET), a non-profit, 501(c)(4) organization in Austin, Texas. The respondent was also named as a director of ET by a November 13, 2006, amendment to ET's articles of organization.
2. The respondent is also a director of Empower Texans Foundation (ETF), a non-profit, 501(c)(3) organization in Austin, Texas.
3. The complaints alleged that, during the last quarter of 2010 and during the 2011 regular and called (or "special") legislative sessions, the respondent communicated directly with one or more legislators or their staff to influence legislation (including the election of the speaker of

the Texas House of Representatives) by expressing the action on legislation that was preferred by either of the respondent's employers, ET and ETF. The complaints also alleged that the respondent was compensated more than \$1,000 in a calendar quarter by ET or ETF, or received compensation in the course of his regular employment with ET or ETF, for communicating directly with members of the legislative branch during that time period to influence legislation, and that the respondent did not file a lobby registration with the commission for either calendar year 2010 or 2011.

4. According to records of the Texas Secretary of State, ET is a non-profit corporation that formed on April 14, 2006. ET filed on November 7, 2006, an assumed name certificate in which it stated that it operated under the assumed name of "Texans for Fiscal Responsibility" (TFR). ET's articles were amended on November 13, 2006, to add the respondent as a director.
5. Written and e-mail communications sent by the respondent directly to legislators and legislative employees during the fourth calendar quarter of 2010 and the first two calendar quarters of 2011 were made with the intent to influence legislation, including the election of the speaker of the house.
6. ET's website, www.empowertexans.com, included additional evidence that the respondent directly communicated with legislators during the fourth calendar quarter of 2010 and the first two calendar quarters of 2011 to influence legislation. ET's website also indicated that the respondent communicated to the general public regarding legislation.
7. E-mail communications sent by the respondent to recipients on a mailing list appeared to be newsletters that discussed legislation and that provided recipients with the option of unsubscribing from the mailing list. The newsletters appeared to be intended for the general public.
8. The respondent made the communications at issue as part of his regular employment as president of ET.
9. Internal Revenue Service Form 990s for ET disclosed that the respondent received \$64,148 in reportable compensation from ET in 2010 and received \$38,842 in reportable compensation from ET and worked an average of 40 hours per week in 2011.
10. The respondent has not registered as a lobbyist for any year from 2010 to 2013.
11. The respondent was given the opportunity to testify at the preliminary review hearing but declined the opportunity.

IV. Findings and Conclusions of Law

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

1. A person must register with the commission if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than \$1,000 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. GOV'T CODE § 305.003(a)(2); Ethics Commission Rules § 34.43(a).
2. A person is required to register if the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment. GOV'T CODE § 305.003(b). Compensation is defined as money, service, facility, or other thing of value or financial benefit that is received or is to be received in return for or in connection with services rendered or to be rendered. *Id.* § 305.002(3).
3. "Communicates directly with" or any variation of the phrase means contact in person or by telephone, telegraph, letter, facsimile, electronic mail, or other electronic means of communication. *Id.* § 305.002(2).
4. "Compensation" means money, service, facility, or other thing of value or financial benefit that is received or is to be received in return for or in connection with services rendered or to be rendered. *Id.* § 305.002(3).
5. "Legislation" means, in pertinent part, a bill, resolution, amendment, nomination, or other matter pending in either house of the legislature or any matter that is or may be the subject of action by either house or by a legislative committee, including the introduction, consideration, passage, defeat, approval, or veto of the matter. *Id.* § 305.002(6).
6. "Member of the legislative branch" means a member, member-elect, candidate for, or officer of the legislature or of a legislative committee, or an employee of the legislature. *Id.* § 305.002(7).
7. Compensation a person receives for preparing to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action is included in calculating compensation for purposes of the registration and reporting requirements in Government Code, Chapter 305, and chapter 34 of the Ethics Commission Rules. Examples

of preparation for lobby communications include participation in strategy sessions, review and analysis of legislation or administrative matters, research and communication with the employer/client. A person who does not directly communicate with a member of the legislative or executive branch to influence legislation or administrative action is not required to register because of compensation received for preparing to do so. Ethics Commission Rules § 34.3.

8. For purposes of section 305.003(a)(2) of the Government Code, and chapter 34 of the Ethics Commission Rules, a person is not required to register if no more than 5.0% of the person's compensated time during a calendar quarter is time spent engaging in lobby activity. *Id.* § 34.43(b).
9. "Lobby activity" means direct communication with and preparation for direct communication with a member of the legislative or executive branch to influence legislation or administrative action. *Id.* § 34.1(3).
10. Each person required to register shall file a written registration with the commission and shall submit a registration fee. GOV'T CODE § 305.005(a). A person required to register who has not registered or whose registration has expired shall file the registration form and submit the registration fee not later than the fifth day after the date on which the person or the person's employee makes the first direct communication with a member of the legislative or executive branch that requires the person's registration. *Id.* § 305.005(e).
11. A person commits an offense if, in pertinent part, the person intentionally or knowingly violates the provision that requires filing a registration. An offense under this subsection is a Class A misdemeanor. *Id.* § 305.031(a). This section does not prohibit the commission from imposing a civil penalty for a violation. *Id.* § 305.031(e).
12. In addition to the criminal penalties prescribed by section 305.031 of the Government Code, a person who receives compensation or reimbursement or makes an expenditure for engaging in direct communication to influence legislation or administrative action and who fails to file a registration form or activities report required to be filed shall pay a civil penalty in an amount determined by commission rule, but not to exceed an amount equal to three times the compensation, reimbursement, or expenditure. *Id.* § 305.032.
13. The commission may impose a civil penalty of not more than \$5,000 or triple the amount at issue under a law administered and enforced by the commission, whichever amount is more, for a delay in complying with a commission order or for a violation of a law administered and enforced by the commission. Gov't Code § 571.173.
14. Under section 305.003(b) of the Government Code, a person must register if the person, as part of his regular employment, has communicated directly with a member of the legislative

- or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment. *See also* Tex. Att’y Gen. Op. H-583 (1975).
15. The evidence indicates that the respondent, as part of his regular employment as president and/or director of ET, sent numerous letters and e-mail communications directly to legislators and legislative staff during the fourth quarter of 2010 and the first and second quarters of 2011 to influence legislation, including the election of the speaker of the house. The respondent’s compensation from ET during each of the relevant calendar quarters exceeded \$1,000.
 16. The respondent provided no evidence to show that no more than 5.0% of the respondent’s compensated time during any relevant calendar quarter was spent engaging in lobby activity, as required to claim the exemption under section 34.43(b) of the Ethics Commission Rules. Therefore, the respondent was required to register as a lobbyist within five days of making the first communication at issue during the fourth quarter of 2010 and within five days of making the first communication at issue during 2011.
 17. In the respondent’s capacity as president and/or director of ET, and as part of his regular employment, the respondent communicated directly with members of the legislative branch to influence legislation during the fourth quarter of 2010 and during the first two quarters of 2011 by sending letters and e-mail directly to members to influence legislation. The respondent’s salary for each quarter in 2010 and 2011 far exceeded \$1,000. Thus, the respondent was required to register for each calendar year. The respondent did not register for either calendar year. Therefore, there is credible evidence of violations of section 305.003(a)(2) of the Government Code.
 18. The evidence also indicates that the respondent made several communications to the general public via ET’s website and newsletters distributed by e-mail. The evidence indicates that members of the legislative branch were recipients of some of the newsletters. There is no evidence regarding the manner in which the mailing list for the newsletters was compiled or whether the respondent was aware that members of the legislative branch were on the mailing list or received the newsletters.
 19. The lobby law requires a person to register only if the person communicates directly with a member of the legislative or executive branch to influence legislation or administrative action. The lobby law does not require a person to register for communicating solely with the general public. A person may be required to register if the person communicates to the general public and takes special action to call that communication to the attention of a member of the legislative or executive branch. Texas Attorney General Op. No. H-583 (1975). *See also* Ethics Advisory Opinion Nos. 85 (1992), 266 (1995). Based on the

available information, there is no credible evidence that the respondent directly communicated with a member of the legislative or executive branch to influence legislation or administrative action by communicating to the general public via ET's website or newsletters distributed by e-mail.

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 these sworn complaints.
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 person must register with the commission if the person receives, or is entitled to receive under an agreement under which the person is retained or employed, compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than \$1,000 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. The respondent acknowledges that this requirement also requires a person to register if the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment.

The respondent also acknowledges that a person must register with the commission if the person makes a total expenditure of more than \$500 in a calendar quarter, not including the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in section 305.006(b) of the Government Code to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action.

The respondent also acknowledges that a person required to register who has not registered, or whose registration has expired, shall file the registration form and submit the registration fee not later than the fifth day after the date on which the person or the person's employee makes the first direct communication with a member of the legislative or executive branch that requires the person's registration.

The respondent also acknowledges that a person who registers or is required to register must file with the commission reports containing the total expenditures specified by section 305.006(b) of the Government Code that the person made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action and that are directly attributable to a member of the legislative or executive branch or the immediate family of a member of the legislative or executive branch. Each report must also include expenditures for the direct communications that other people made on the registrant's behalf if the expenditures were made with the registrant's consent or were ratified by the registrant.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes a violation that the commission has determined is 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 \$1,000 civil penalty. The commission also requires the respondent to, within 30 days of the date on which the respondent agrees to this agreed order and resolution:

1. File electronically with the commission, using commission software, a registration as a lobbyist for each of calendar years 2010 and 2011 that includes all required information under Chapter 305 of the Government Code, including but not limited to information regarding compensation and reimbursement received from Empower Texans to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action;
2. Submit to the commission a registration fee required by section 305.005 of the Government Code for each of calendar years 2010 and 2011; and
3. File electronically with the commission, using commission software, all necessary activities reports for each of calendar years 2010 and 2011 containing all activity as required by Chapter 305 of the Government Code.

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-3120487 and SC-3120488.

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

Michael Quinn Sullivan, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director