

**BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON**

In the Matter of Enforcement Action  
Against:

Mike Miller

Respondent.

Case No. ~~12-145~~ 14-039 (TP)

STIPULATION AS TO FACTS,  
VIOLATION AND PENALTY

The parties to this Stipulation, namely, the Public Disclosure Commission Staff, through its Executive Director, Andrea McNamara Doyle, and Respondent Mike Miller, through his attorney, Michael Gawley, submit this Stipulation as to Facts, Violations and Penalty in this matter. The parties agree that the Commission has the authority to accept, reject or modify the terms of this Stipulation. The parties further agree that in the event that the Commission suggests modification to any term of this agreement, each party reserves the right to reject that modification. In the event either party rejects a modification, this matter will proceed to hearing before the Commission.

**JURISDICTION**

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to RCW 42.17A, the Public Disclosure Act; RCW 34.05, the Administrative Procedure Act; and WAC 390.

**FACTS**

1. In the November 8, 2011 general election, Deana Brower was a candidate for School Director for Spokane School District 81. Ms. Brower was elected to the school board in that election.
2. Respondent Mike Miller held a teaching position at Shadle Park High School in June of 2011.
3. At 8:44 am on Monday, June 6, 2011, while on paid agency time, Mr. Miller used his Spokane Schools email address to send an email to Shadle Park staff. In his email, Mr.

Miller invited staff to meet with school board candidate Deana Brower prior to the school day on June 15, 2011, the last day of the school year: *"School Board Candidate Deana Brower will be at Shadle Wednesday morning, 6/15/11 in our staff room to get your insights of what you'd like from the school board. Deana (pronounced 'Dee-na'), is very much interested in getting into schools to meet with staff, so I've invited her for an 'SEA 10-minute meeting' at 7:15 that Wednesday to talk to you. After meeting with Deana on a number of occasions, I'm interested to hear your feedback on what she has to say. As a former secondary social studies teacher, she brings a 'classroom perspective' and wants to hear what perspective you have."*

4. At 9:00 am and again at 11:57 am on Monday, June 6, 2011, while on paid agency time, Mr. Miller used his Spokane Schools email address exchange email messages with Lisa Peterson at her Spokane Schools address. (The exchange began with an email from Ms. Peterson copied to Mr. Miller. Ms. Peterson's email was not campaign-related.) In his reply, Mr. Miller promoted Deana Brower's candidacy for School Director: *"I've spent the last 3 days at WEA getting ready for school-board elections. We've vetted an INCREDIBLE candidate who's a former social studies teacher. Deana Brower will be a great addition to the board, with her classroom perspectives. I'm hoping for somewhat of a shakeup."* In a subsequent email to Ms. Peterson that morning, he stated that Ms. Brower *"will be a breath of fresh air who doesn't mind shaking things up. Enough of the speech from a campaigner."*
5. At 9:13 am on Monday, June 6, 2011, while on paid agency time, Mr. Miller used his Spokane Schools email address to send an email to Mike Campbell at his Spokane Schools address. In his email, Mr. Miller discussed a possible "meet and greet" event with Deana Brower prior to the school day at Lewis & Clark high School, similar to the event planned for Shadle Park High School. He concluded, *"Let the campaign begin."*
6. At 8:49 am and again at 11:51 am on Monday, June 6, 2011, while on paid agency time, Mr. Miller used his Spokane Schools email address to exchange email messages with Jenny Rose, President of the Spokane Education Association. In his emails, Mr. Miller discussed his efforts and those of the union to assist Ms. Brower's campaign: *"Deana kept telling me that she wanted to get into the buildings. 'Fine', I said. 'June 15th, 7:15'. She said, 'Sure, I'll*

*put it down. Don't forget to send me an email to remind me.' Honestly, as we were going from the airport to the motel, I didn't know if I was talking to a school board candidate or a colleague from down the hall. Folks at Shadle are looking forward to her visit. I'll hype her visit every other day (in true campaign style) until Wednesday."* In response to Ms. Rose's request to use Mr. Miller's email invitation as a model for other union reps to invite their staff to meet Ms. Brower, Mr. Miller replied, *"If your sending my 'press release' will help get Deana to meet the staff, share on!"*

7. At 1:33 pm on Tuesday, June 7, 2011, while on paid agency time, Mr. Miller used his Spokane Schools email address to send an email to Shadle Park staff, reminding them of the upcoming meeting with school board candidate Deana Brower prior to the school day on June 15, 2011. Mr. Miller described the meeting as *"Doughnuts with Deana."*
8. At 12:02 pm on Tuesday, June 14, 2011, while on paid agency time, Mr. Miller used his Spokane Schools email address to send a final email reminder to Shadle Park staff regarding the *"Doughnuts with Deana"* staff event planned for the following morning prior to the school day.

#### STATUTORY AND RULE AUTHORITY

9. **RCW 42.17.130** (effective January 1, 2012, codified as **RCW 42.17A.555**) states: No elective official nor any employee of his [or her] office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board,

council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

10. **WAC 390-03-273** states: Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

### **VIOLATION**

Based on the Stipulation of Facts set forth above, Respondent Mike Miller stipulates to a violation of RCW 42.17.130 for his eight uses of the district email system as described herein.

### **PENALTY**

Based upon the stipulated facts and violations set forth above, Respondent Mike Miller agrees to pay a total civil penalty of \$500, with \$300 suspended on the following conditions:

1. Respondent is not found to have committed further violations of RCW 42.17A within four years from the date of the entry of the Commission's Final Order in this matter;
2. Payment of the non-suspended portion of the penalty (\$200) is made within 30 days from the date of entry of the Commission's Final Order in this matter.

In the event that Respondent fails to meet either of these terms, the suspended portion of the penalty shall become due without any further intervention of the Commission.

Respondent Mike Miller re-affirms his intention to comply in good faith with the provisions of RCW 42.17A in the future.

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Andrea M. Doyle  
Andrea McNamara Doyle, Executive Director  
Public Disclosure Commission

2/19/14  
Date Signed

Michael Gawley #2218  
Michael Gawley, Counsel for Respondent  
Mike Miller

1/27/14  
Date Signed