



OKLAHOMA ETHICS COMMISSION

PHONE: (405) 521-3451 • FAX: (405) 521-4905 • WEBSITE: WWW.ETHICS.OK.GOV

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| In the matter of: |) | |
| |) | |
| OKLAHOMAN’S FOR HEALTHY LIVING, |) | Ethics Commission |
| JAMES MILNER, Chair, and JAMES |) | Case No. 2017-10 |
| MCSPADDEN, Treasurer, |) | |
| |) | |
| Respondents. |) | |

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), between the Oklahoma Ethics Commission (“Commission”) and James Milner, personally and in his named capacity as Chairperson of Oklahoman’s for Healthy living (“Respondent” or “Milner”), is conditioned on approval by the Commission and will become effective upon such approval. This Agreement is limited to James Milner and no other Respondent in Case No. 2017-10.

A. The Commission and Respondent both acknowledge the following:

1. That the Commission is authorized to initiate investigations on possible violations of the Oklahoma Ethics Rules and to resolve investigations through civil prosecution or Settlement Agreements, pursuant to Article XXIX, Section 4 of the Oklahoma Constitution and 74 O.S., Ch. 62 Appendix I (the “Ethics Rules”).
2. That on December 8, 2017, pursuant to Ethics Rule 6.7, the Commission determined there was reasonable cause to believe that a violation of the Ethics Rules may have occurred and authorized an investigation into Oklahoman’s for Healthy Living political action committee (“PAC”), James Milner, individually and as Chairperson, and others.
3. That on October 18, 2019, the Commission filed a lawsuit against James Milner, individually and as Chairperson, and others before the Oklahoma District Court of

Oklahoma County, styled *State of Oklahoma ex rel. Oklahoma Ethics Commission v. Oklahoman's for Healthy Living, et al.*, Case No. 2019-5908 (“lawsuit”).

4. That since January 29, 2015, PAC has been registered with the Commission in The Guardian System as a limited political action committee under Oklahoma law and states on its Statement of Organization it was formed to support candidates.
5. That prior to registration in The Guardian System, Respondent formed PAC, pursuant to Commission rules then in effect, at the request of a specific client by filing an SO-2 on February 6, 2013.
6. That Respondent knew, or should have known, limited political action committees are prohibited from accepting corporate contributions under Ethics Rule 2.23.
7. That Respondent knew, or should have known, that the contributions he was making on behalf of PAC to Oklahoma political committees were funded with corporate funds.
8. That Respondent knew, or should have known, that the failure to report the source of the contributions concealed from the public that the contributions were made with corporate funds.
9. That Respondent knew, or should have known, that the failure to report the source of the contributions prevented recipients of contributions from identifying the source of the contributions, as required in the Ethics Rules, from publicly available information as.
10. That Respondent knew, or should have known, limited political action committees with twenty-five or less contributors, under Ethics Rule 2.34, are prohibited from providing a contribution, in any amount, to another limited committee.
11. That Respondent knew, or should have known, Ethics Rules 2.21 and 2.22 provide officers of political action committees ten (10) business days to determine whether a contribution is from an entity from which a contribution can be accepted.

12. That since January 1, 2015, although required to disclose all contributions received and expenditures made pursuant to Ethics Rule 2.105, PAC failed to report any of the contributions it received or expenditures it made, other than a single \$8,000 expenditure to Oklahoma Family Focus (an unlimited committee that may accept corporate contributions) on reports filed with the Oklahoma Ethics Commission.
13. That, since January 29, 2015, Respondent has been listed as the Chairperson on the Statement of Organization for PAC in The Guardian System.
14. That, since October 31, 2015, James McSpadden has been listed as the Treasurer on the Statement of Organization for PAC.
15. That Respondent knew, or should have known, that he could have been named in the PAC's Statement Organization as both Chair and Treasurer, pursuant to Ethics Rule 2.81.
16. That, on October 31, 2019, Respondent submitted an Affidavit to the Commission attesting that James McSpadden "took over as Treasurer of [PAC] on October 31, 2015," but Mr. McSpadden "had no active involvement with the PAC at any time, was never on the PAC's bank account, did not have possession of the PAC's checkbook or financial records, and upon information and belief, had no knowledge of contributions made to or from the PAC at any time."
17. That Respondent knew, or should have known, that although Respondent was not listed as the Treasurer for PAC, Respondent was in fact Treasurer of PAC by: performing treasurer activities; not providing the named Treasurer for the PAC, James McSpadden, the information regarding contributions and expenditures being made by Respondent on behalf of PAC; filing, or causing to be filed, reports for PAC; and, according to the submitted affidavit referenced in ¶16 performing those activities knowing Mr. McSpadden had no access to the depository and was not a signatory on the bank account,

18. That Respondent knew, or should have known, that an amended Statement of Organization listing himself as Treasurer should have been filed with the Commission within 30 days of any vacancy in the position of Treasurer, in accordance with Ethics Rule 2.74.
19. As set forth in this agreement, Respondent knew, or should have known, that he failed to fulfill the duties of Treasurer as required under Ethics Rules 2.83, 2.95, and 2.105 in the following ways:
- a. By allowing Forty-Two Thousand Dollars (\$42,000.00) worth of prohibited contributions from corporations to be unlawfully accepted and deposited into the PAC's depository despite having ten (10) business days to determine whether a contribution could be accepted by PAC;
 - b. By unlawfully expending Twenty-Seven Thousand Seven Hundred and Fifty Dollars (\$27,750) of prohibited corporate contributions from PAC's depository to other political committees in Oklahoma;
 - c. By unlawfully expending Eight Thousand Five Hundred Dollars (\$8,500) of the Twenty-Seven Thousand Seven Hundred and Fifty Dollars (\$27,750) of prohibited corporate contributions PAC accepted from the depository of PAC, a type of limited committee that has fewer than 25 contributors, and unlawfully contributing to limited committees.
 - d. By not keeping PAC's financial records and accounts;
 - e. By not maintaining the documents necessary to substantiate and file PAC's Reports of Contributions and Expenditures at all, much less for the required period of at least four (4) years as required in Ethics Rule 2.83; and
 - f. By not ensuring the timely and accurate filing all Reports of Contributions and Expenditures for PAC.

20. That Respondent knew, or should have known, pursuant to Ethics Rule 2.80, that a political action committee is required to renew its registration until such committee has filed a final Report of Contributions and Expenditures and is dissolved in accordance with the Ethics Rules.
21. That, although Respondent did not cooperate with the Commission for a significant period of time in 2018 and 2019, Respondent has since voluntarily cooperated in the investigation, disclosed the corporate source of the contributions, and produced requested documents.
22. That, Respondent knowingly requested the District Attorney's office of Oklahoma County ("DA") be included to participate in the Commission's investigation due to potential violations of both the civil and criminal law via the PAC's acceptance and expenditure of corporate funds in order to facilitate a settlement that would, if necessary, address both the potential civil and criminal law violations, and willingly met with investigators from the Commission and DA.
23. That Respondent acknowledges the Commission filed the lawsuit in order to toll the statute of limitations, that the Commission provided a copy of the Petition the day it was filed, but delayed service to Respondent until the time to serve the Petition would expire.
24. That, as the time to serve the Petition was expiring, Respondent voluntarily entered into an agreement with the Commission to waive service upon entering an appearance in the lawsuit, and the Commission agreed to an unspecified extension of time for Respondent to file an Answer in the lawsuit in order to provide sufficient time for the DA's office to conclude its investigation.
25. As set forth in this agreement Respondent acknowledges that PAC served as a straw donor to hide the true source of contributions to Oklahoma political committees and failed to file reports disclosing the corporate source of the contributions. Such activity prevented

Oklahoma political committees, which are prohibited from receiving corporate contributions, and the public from having the opportunity to identify from PAC's reports that the contributions were corporate funds.

26. That Respondent is voluntarily agreeing to the remedies set forth below to avoid additional disputes, proceedings, and expenses with regard to PAC.

27. That the Oklahoma County District Attorney has been involved in the investigation and is aware of the settlement negotiations to resolve the Commission's investigation. The District Attorney has independently reviewed the allegations against the Respondent. The District Attorney has determined that any potential violations of the Oklahoma Criminal Statutes, specifically related to the allegations considered in this investigation, and known at this time, will not be prosecuted. The District Attorney's decision has been made independently and separate from this settlement agreement between the Commission and the Respondent. A formal letter of Declination to Prosecute will be issued by the District Attorney at a later time. The District Attorney is not a Party to this agreement.

B. THEREFORE, the Commission and Respondent agree:

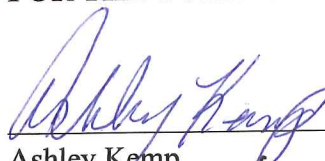
1. That within 90 days of the Commission's approval of this agreement: Respondent shall pay, by certified check to the State of Oklahoma general revenue fund, Sixty-Five Thousand Dollars (\$65,000) and provide proof of said payment to the Commission. This amount represents disgorgement of the unlawful corporate contributions accepted by PAC; expenditures of unlawful corporate funds by PAC to political committees unable to accept corporate funds; contributions to limited committees by PAC, a committee unable to make contributions to limited committees; penalties for systematically failing to file accurate and timely reports of PAC's activity with the Commission; and depriving the public of information to which they are entitled pursuant to Oklahoma law.

2. Within 90 days of the Commission's approval of this agreement, Respondent will ensure PAC comes into compliance with the filing requirements of the Ethics Commission and dissolve the PAC in accordance with the Ethics Rules, which includes: amending and filing, as necessary, any and all outstanding reports, whether Contributions and Expenditure Reports or Statements of Organization, to reflect the actual activity of the PAC, since its organization in 2013; sell assets, if any of PAC and deposit resulting funds into PAC depository; pay registration fees for renewing PAC registrations; forfeit any funds remaining in PAC's depository to the State of Oklahoma general revenue fund; close depository accounts used for PAC; and otherwise dissolve PAC in accordance with the Ethics Rules, including filing a final report with the Commission. Respondent shall provide proof of any forfeiture of funds to the general revenue fund and closure of PAC depository to Commission.
3. That Respondent will abstain from ever serving as Chairman, Treasurer, Deputy Treasurer, Designated Filing Agent, or Registered Agent for a political action committee.
4. Should Respondent act as a consultant for a political action committee, Respondent shall notify the committee of the value of the services and that the committee should report the activity in accordance with Campaign Finance Ethics Rule 2.
5. That within Thirty (30) days of receiving notice of Respondent's compliance with sections (B)(1)-(2) *supra*, the Commission will dismiss the lawsuit with prejudice.
6. That this Agreement shall become effective upon the date of its approval by the Commission.
7. That this Agreement constitutes the entire agreement between the parties on the matters raised within, and no other statement, promise, or agreement, either written or oral, made

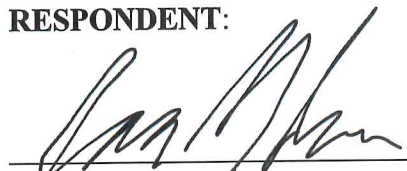
by either party or by agents of either party, that is not contained within this written agreement shall be enforceable.

8. That this Agreement is limited to the facts of this case and shall not have binding precedential effect for any other matter currently pending before the Commission or that may come before the Commission at a future date.

FOR THE COMMISSION:


Ashley Kemp, 12/31/2020
Executive Director DATE

RESPONDENT:


James Milner, 12/31/2020
Respondent DATE