BEFORE THE WEST VIRGINIA ETHICS COMMISSION

In Re:

DANNY MILAM
Former Recorder, Town of Rainelle

COMPLAINT NO. CIC 2013-01

CONCILIATION AGREEMENT

The West Virginia Ethics Commission and Danny Milam freely and voluntarily enter into the following Conciliation Agreement pursuant to West Virginia Code § 6B-2-4(s) to resolve all potential charges arising from allegations in the above-referenced Complaint.

FINDINGS OF FACT

1. Danny Milam served, at all pertinent times herein, as the Recorder for the Town of Rainelle, West Virginia. He no longer serves in this or any other public position or employment.

2. Mr. Milam was at all pertinent times herein, subject to the West Virginia Governmental Ethics Act, W.Va. Code § 6B-1-1, *et seq*.

3. In approximately 2011 to 2012, the Town of Rainelle hired a contractor to repair and replace gutters and stucco on town hall.

4. Mr. Milam asserts that he believed he had full authority to make all decisions regarding this town hall project.

5. Mr. Milam admits that he agreed with the same contractor that the cost of the necessary project materials would be purchased using the Town's funds, so that the town hall project could begin in a timely fashion. Respondent agreed with the contractor that this amount would later be reimbursed by the contractor or deducted from the contract amount paid to the contractor.

DM (DM)

6. After the town hall project was completed, an attorney sent a July 19, 2012, letter on behalf of the Town to the contractor seeking reimbursement for the cost of the town hall project materials. The contractor refused to reimburse the cost of materials. To date, the cost of the materials has not been reimbursed to the Town.

7. Mr. Milam further admits that he entered into a paid sub-contract relationship with the town's contractor on the town hall project in which Respondent agreed to remove the gutters for this town hall project.

8. Mr. Milam admits that his involvement as a subcontractor in this public project for the Town of Rainelle was inappropriate due to his financial interest in the contract.

9. Mr. Milam also admits that he suggested to Town Council that it hire his private construction company to build a new pump house for the Town in approximately April 2013.

10. During this pump house project, Mr. Milam placed his private employees on the Town's payroll as temporary employees while they worked on this project.

11. Mr. Milam admits that his involvement in the Town Council discussion of hiring his private construction company to perform the public project for the Town was inappropriate due to his financial interest.

12. Mr. Milam admits that the Nepotism Guidelines, W.Va. 158 C.S.R. § 6-3 (Nepotism) below were not followed, including giving notice of the availability of the jobs and staying out of the selection process altogether.

(DM)

13. Mr. Milam acknowledges that his actions in paragraphs one through 12 above violated the West Virginia Governmental Ethics Act and he desires to resolve this matter.

RELEVANT LEGAL PROVISIONS

W. Va. Code § 6B-2-5(b) provides:

> (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W.Va. Code § 6B-2-5(d) prohibits elected officials from having a financial interest in a public contract. This code provision reads in part:

> (1) [N]o elected. . .public official. . .or business with which he or she is associated with may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control.
>
> (3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest.

Where a public official is among the candidates to be hired for a public employment position, favoritism may not be shown and the Nepotism Guidelines must be followed.

(DM)

§ 158-6-3 Nepotism states in relevant part:

> 3.3 A public official or public employee may avoid the appearance of nepotism by following these steps. . .
>
> a. The public should be given reasonable advance notice of the availability of a job.
>
> b. An objective, independent third party should be involved in the selection. . .
>
> 1. To the extent possible, the public official or public employee should stay out of the selection process altogether. If he or she is one of several people with authority to hire, others with authority should make the selection. If appropriate, the matter should be handled by his or her supervisor, or in the case of an elected official by a qualified person in another office.

CONCILIATION OF VIOLATIONS

I, Danny Milam, agree that I violated the West Virginia Governmental Ethics Act. In order to resolve this matter, I enter into this Agreement. For this Conciliation Agreement to be finalized, the Commission must approve the Agreement and must further determine which sanctions to impose. In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. Public Reprimand;
2. A fine in the amount of $2000, payable by May 1, 2016; and
3. Training regarding the West Virginia Governmental Ethics Act, which may be fulfilled by viewing a video on the Ethics Commission's website, at www.ethics.wv.gov, or as otherwise provided by the Ethics Commission, on or before May 1, 2016. I shall notify the Commission in writing upon my completion of this training.

_____ (DM)

I understand and agree that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void and the complaint will be referred back to the Probable Cause Review Board where the Complaint will continue to be processed in accordance with the West Virginia Code and the Ethics Commission's Legislative Rules.

If the Ethics Commission approves the Agreement, it will enter an Order which approves the Agreement and sets forth the sanctions listed above.

Both parties understand that, pursuant to W.Va. Code § 6B-2-4(s), the Conciliation Agreement and Commission Order must be made available to the public.

4/7/16
Date

Robert J. Wolfe, Chairperson
W.Va. Ethics Commission

March 5, 2016
Date

Danny Milam, Respondent

(DM)

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

COMPLAINT NO. CIC 2013-01

DANNY MILAM
Former Recorder, Town of Rainelle

COMMISSION'S ORDER

After considering the FINDINGS OF FACT, RELEVANT LEGAL PROVISION and CONCILIATION OF VIOLATION in the Conciliation Agreement, the West Virginia Ethics Commission finds that the Conciliation Agreement is in the best interest of the State and Danny Milam as required by W.Va. Code § 6B-2-4(s). In accordance with W.Va. Code § 6B-2-4(r), the Commission imposes the following sanctions:

1. Public Reprimand;
2. A fine in the amount of $2000, payable by May 1, 2016; and
3. Training regarding the West Virginia Governmental Ethics Act, which may be fulfilled by viewing a video on the Ethics Commission's website, at www.ethics.wv.gov, or as otherwise provided by the Ethics Commission, on or before May 1, 2016. Danny Milam shall notify the Commission in writing upon completion of this training.

4/7/16
Date

Robert J. Wolfe, Chairperson
West Virginia Ethics Commission