

REP. GARY G. MILLER

Rep. Gary G. Miller (R-CA) is a fifth-term member of Congress, representing California's 42nd congressional district. Rep. Miller's ethics issues stem from an FBI investigation into apparent tax evasion relating to California land deals, his relationship with Lewis Operating Corporation and earmarks by which he has profited personally. Rep. Miller is currently the target of a Department of Justice investigation and was included in CREW's 2006 and 2007 report.

California Land Deals

Rep. Miller has invoked Internal Revenue Code ("IRC") § 1033 on three separate real estate sales to the cities of Monrovia, California and Fontana, California since 2002.¹ In this way, he was able to avoid capital gains taxes from the proceeds of the sales. In 2002, Rep. Miller sold 165 acres to the city of Monrovia, making a profit of approximately \$10 million.² In 2004, Rep. Miller reinvested the proceeds of the sale in land and building purchases in Fontana, California, and Rancho Cucamonga, California.³ Rep. Miller again claimed IRC § 1033 exemption when he sold some of his Fontana land and building acquisitions in April and June of 2005.⁴ He used proceeds from this sale to purchase additional land in Fontana, which he subsequently sold to the city in 2006 for \$50,000 more than his original purchase price.⁵

Despite Rep. Miller's claims of eminent domain, his sale of land in 2002 to the city of Monrovia was not an involuntary conversion within the meaning of IRC § 1033. Rep. Miller had taken an aggressive, public campaign to sell his property to the city for several years prior to the sale. He was videotaped at a February 2000 City Council meeting repeatedly asking the city to purchase his property.⁶ Monrovia purchased Rep. Miller's property in 2002 pursuant to a state statute that prohibited the use of eminent domain proceedings, according to Glen Owens, a member of Monrovia's planning commission and Scott Ochoa, then assistant city manager.⁷ A May 2002 letter from the

¹ William Heisel, Official's Tax Break: On Firm Ground?, *Los Angeles Times*, August 13, 2006 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Martin Wisckol and Norberto Santana Jr., Miller's Land Deals Ethically Questionable, *Orange County Register*, August 10, 2006 (Exhibit 2).

⁶ Heisel, *Los Angeles Times*, Aug. 13, 2006.

⁷ Id.

Monrovia City Manager confirmed that all property owners were “willing sellers.”⁸ On Aug. 1, 2002, in an amendment to his escrow instructions for the transaction Rep. Miller confirmed that the Monrovia sale was not a forced condemnation.⁹

Rep. Miller’s sales of land and buildings to the city of Fontana in April and June of 2005 also were not involuntary conversions within the meaning of IRC § 1033. A March 22, 2005 letter from City Manager Kenneth Hunt stated that the “redevelopment plan for this project area does not currently authorize the use of eminent domain.”¹⁰ In addition, both Clark Alsop, the attorney representing Fontana in the transaction, and Ray Bragg, the Fontana redevelopment director, have stated publicly that the city did not even threaten the use of eminent domain in the land acquisition.¹¹

Internal Revenue Code Violations

Federal tax law protects property owners from facing unexpected capital gains taxes due to involuntary conversion by government entities through eminent domain proceedings.¹² The law allows a taxpayer, at his or her option, up to two years to reinvest any capital gains realized from a forced sale in replacement property that is similar or related to the converted property.¹³ A taxpayer who voluntarily sells his property to a government entity does not qualify for the non-recognition of capital gains pursuant to the Code.¹⁴ The taxpayer would then be subject to taxation on those capital gains.¹⁵ A taxpayer who fails to report these capital gains on a federal income tax return is in violation of IRC § 6011(a), and is subject to civil and criminal penalties for tax evasion pursuant to IRC § 7201.

It appears that Rep. Miller has engaged in three counts of tax evasion in violation of IRC § 7201 by improperly claiming IRC § 1033 exemptions on capital gains from the sale of real estate that was not due to involuntary conversion through eminent domain proceedings. The IRS should conduct a full-scale investigation to determine whether Rep. Miller’s 2002 and 2005 real estate transactions qualified for non-recognition of capital gains pursuant to IRC § 1033.

⁸ Id.

⁹ Id.

¹⁰ Heisel, *Los Angeles Times*, Aug. 13, 2006.

¹¹ Id.

¹² IRC § 1033.

¹³ IRC § 1033(a)(2)(B)(i).

¹⁴ *See* IRC § 1033(a).

¹⁵ IRC § 1(h)(1).

House Rule 23

Rule 23 of the House Ethics Manual requires all members of the House to conduct themselves “at all times in a manner that reflects creditably on the House.”¹⁶ This ethics standard is considered to be “the most comprehensive provision” of the code.¹⁷ When this section was first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that it was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.¹⁸ This rule has been relied on by the Ethics Committee in numerous prior cases in which the Committee found unethical conduct including: the failure to report campaign contributions,¹⁹ making false statements to the Committee,²⁰ criminal convictions for bribery,²¹ or accepting illegal gratuities,²² and accepting gifts from persons with interest in legislation in violation of the gift rule.²³

¹⁶ Rule 23, cl. 1.

¹⁷ House Comm. on Standards of Official Conduct, House Ethics Manual, p. 12.

¹⁸ House Comm. on Standards of Official Conduct, Report Under the Authority of H. Res. 418, H. Rep. No. 1176, 90th Cong., 2d Sess. 17 (1968).

¹⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. No. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); *In the Matter of Representative Edward R. Roybal*, H. Rep. No. 95-1743, 95th Cong., 2d Sess. 2-3 (1978).

²⁰ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. No. 95-1743(Counts 3-4).

²¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. No. 96-1387, 96th Cong., 2d Sess. 2, 5 (1980); see 126 Cong. Rec. 28953-78 (Oct. 2, 1980) (debate and vote of expulsion); *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. No. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); *In the Matter of Representative Raymond F. Lederer*, H. Rep. No. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion). In another case, the Committee issued a Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (*In the Matter of Representative Daniel J. Flood*, H. Rep. No. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

²² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending).

²³ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. No. 96-930, 96th Cong. 2d

The House Committee on Standards of Official Conduct should investigate Rep. Miller's land transactions as tax evasion does not reflect creditably on the House.

Relationship with Lewis Operating Corp.

Before entering Congress, Rep. Miller had a lucrative career as a developer of planned communities. After launching G. Miller Development Co. in his twenties, Rep. Miller found himself in competition with Richard Lewis, the owner of Lewis Operating Corp.²⁴ The two men have had a relationship for over 30 years.²⁵

Lewis Operating, Mr. Lewis and several of his family members have been Rep. Miller's top campaign donors since he was elected to Congress in 1998.²⁶ Since that time, Lewis Operating employees have donated \$19,300 to Rep. Miller's campaign committees.²⁷ The National Association of Home Builders, of which Mr. Lewis is a member, has also donated \$44,000 to Rep. Miller.²⁸ In addition, Rep. Miller has been involved in a number of land transactions with Lewis Operating.²⁹ In 2005 alone, Rep. Miller made between \$1.1 and \$6 million off of land deals with Lewis Operating.³⁰

In 2004, Rep. Miller took out three separate promissory notes from the Lewis Operating group of companies: \$4.75 million from Lewis Investment Co.; \$1.26 million from Fontana Library Co.; and \$1.45 million from Church Haven Co.³¹ All three companies share Lewis Operating Company's southern California office address.³² Using the money obtained through these loans, Rep. Miller bought land from Lewis

Sess. 4-5 (1980); *see* 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

²⁴ Susan Crabtree, Miller Helped Free Land For A Business Partner, *The Hill*, March 30, 2006 (Exhibit 3).

²⁵ Id.

²⁶ Id.

²⁷ Susan Crabtree, Miller May Have Violated House Ethics Rules By Borrowing \$7.5M, *The Hill*, August 9, 2006 (Exhibit 4).

²⁸ Crabtree, *The Hill*, Mar. 30, 2006.

²⁹ Id.

³⁰ Id.

³¹ Susan Crabtree, Miller Borrowed \$7.5M To Buy Contributor's Land, *The Hill*, July 13, 2006 (Exhibit 5).

³² Id.

Investment in “seller-financed” deals, which often result in better deals for the person buying the land.³³

House Rule 26

House rules provide that members, officers and employees may accept opportunities and benefits that are "in the form of loans from banks and other financial institutions on terms generally available to the public."³⁴ In addition, the Committee on Standards of Official Conduct has determined that members and staff may accept a loan from a person other than a financial institution, provided that the loan is on commercially reasonable terms, including requirements for repayment and a reasonable rate of interest.³⁵ That determination was based on a separate provision of the gift rule, clause 5(a)(3)(A), which allows the acceptance of "[a]nything for which the Member . . . officer, or employee pays the market value."³⁶

The Committee has further stated

Whether a loan from a person other than a financial institution is on terms that are “commercially reasonable,” and hence acceptable under the Committee’s determination, will depend on a number of facts and circumstances. Thus, *before* entering into a loan arrangement with a person other than a financial institution, Members and staff should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule.³⁷

Rep. Miller’s office has refused to state whether the loans he received from Lewis Operating were reviewed by the ethics committee,³⁸ suggesting that they were not. Given the extensive business relationship between Rep. Miller and Lewis Operating, the significant financial benefits both have realized from that relationship and Rep. Miller’s refusal to verify whether the ethics committee has reviewed these substantial loans, the ethics committee should investigate whether, by accepting loans from Lewis Operating, Rep. Miller violated House Rule 26.

³³ Crabtree, *The Hill*, Aug. 9, 2006.

³⁴ House Rule 26, cl. 5(a)(3)(R)(v).

³⁵ House Comm. on Standards of Official Conduct, Gift and Travel Booklet.

³⁶ Id.

³⁷ Id.

³⁸ Id.

Diamond Bar Village and Rialto Airport

In a 2005 highway bill, Rep. Miller earmarked \$1.28 million for street improvements near Diamond Bar Village, a planned residential and commercial development in Diamond Bar, California, that Rep. Miller co-owns with Lewis Operating.³⁹ The proposed development will include a Target, 70 single-family homes, 110 condos and two restaurants.⁴⁰ The earmarks will likely improve the value of the land.

In 2005, Rep. Miller, as a member of the House Committee on Transportation and Infrastructure, pushed for a provision in a highway bill that allowed the city of Rialto to close down its airport. This is the first time the legislative process has been used to allow a city to close its airport; normally the Federal Aviation Administration (FAA) has sole authority to close airports.⁴¹ The FAA opposed the closing. Rialto has borrowed \$15 million in federal government loans since 1984 to improve the airport.⁴² Closing the airport allowed Lewis Operating to win a contract from the city of Rialto to develop the airport land and build a planned community consisting of 2,500 homes, parks and 80 acres of retail space on the former airport and adjacent land.⁴³

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁴⁴ House members are directed to adhere to 5 C.F.R. § 2635.702(a), issued by the U.S. Office of Government Ethics for the Executive Branch, which provides:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person to provide any

³⁹ Jonathan Weisman, Lawmakers’ Profits Are Scrutinized, *Washington Post*, June 22, 2006 (Exhibit 6).

⁴⁰ Congressman Gary Miller’s Business Dealings Scrutinized, *Associated Press*, January 10, 2006 (Exhibit 7).

⁴¹ Crabtree, *The Hill*, Mar. 30, 2006.

⁴² Id.

⁴³ Id.

⁴⁴ House Comm. on Standards of Official Conduct, Memorandum For All Members, Officers and Employees, Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

By using his position to earmark funds to increase the value of his own property and by using his position to close an airport for the benefit of Lewis Operating, Rep. Miller likely violated 5 C.F.R. § 2635.702(a).

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.⁴⁵ To do so “would raise the appearance of undue influence or breach of the public trust.” Rep. Miller’s use of his position to benefit himself and Lewis Operating violates this prohibition.⁴⁶

In addition, Rep. Miller’s record of assistance to Lewis Operating, which in turn has generously donated to his campaigns and has cut him in on lucrative land deals, does not reflect creditably on the House.

2007 Update

California Land Deals

The FBI has opened an investigation into Rep. Miller’s California land deals involving the cities of Fontana and Monrovia.⁴⁷ As part of that probe, investigators have obtained a video recording of the February 29, 2000 Monrovia City Council meeting during which Rep. Miller asked the city to purchase his property.⁴⁸ The FBI has also interviewed a number of current and former city officials in Fontana and Monrovia.⁴⁹

In addition, former aides of Rep. Miller have accused him of other abuses of power, such as requesting his staff to perform personal errands for him, his family and

⁴⁵ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).

⁴⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H.Rep.No. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending); House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H.Rep.No. 969-930, 96th Cong., 2d Sess. 4-5 (1980); see 126 Cong. Rec. 13801-20 (June 10, 1980) (debate and vote of censure).

⁴⁷ Fred Ortega and Gary Scott, FBI Examining Video in Miller Land Probe, *San Gabriel Valley Tribune*, January 30, 2007 (Exhibit 8).

⁴⁸ Id.

⁴⁹ Id.

friends and having them help his children with their schoolwork.⁵⁰ He also enlisted staff assistance in connection with the sale of his property in 2002 to Monrovia, having staffers write letters and help prepare documentation for Rep. Miller's meetings with city officials regarding the land sale.⁵¹

In an effort to push through the sale of his 165 acres of land to Monrovia, Rep. Miller asked one staff member to find a way to place one of the Monrovia City Council members, Robert Hammond, on the National Park System Advisory Board, though the councilman was a pawnshop owner with no parks experience.⁵² Ultimately, Mr. Hammond was not nominated for the position because there were no openings and he lost interest; nevertheless, he voted in favor of purchasing Rep. Miller's land for approximately \$12 million.⁵³

Pursuant to 31 U.S.C. § 1301(a), “[a]ppropriations shall be applied only to the objects for which the appropriations were made.” Corresponding regulations of the Committee on House Administration provide that “[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.” Committee on House Administration, Staff.

House ethics rules also make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing nonofficial, personal, or campaign duties.”⁵⁴ In addition, Rule 23, clause 8 provides:

A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

⁵⁰ William Heisel, Ex-Aides Allege Abuse Of Power, *Los Angeles Times*, December 12, 2006 (Exhibit 9).

⁵¹ Id.

⁵² Id.

⁵³ Id.

⁵⁴ House Ethics Manual, pp. 267-268, citing United States v. Rostenkowski, 59 F.3d 1291, 1307-11 (D.C. Cir. 1995), *reh'g denied*, 68 F.3d 489 (D.C. Cir. 1995); United States v. Diggs, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

By using staff to perform personal errands on official time and with the use of official resources, Rep. Miller may have violated 31 U.S.C. § 3102(a), House ethics rules and the regulations of the Committee on House Administration.

2008 Update

Disputing a January 2007 *Los Angeles Times* article, Rep. Miller told *The Hill* newspaper in September 2007 that he is not under a FBI investigation.⁵⁵ Aggressively denying any wrongdoing in the 2002 land transaction, Rep. Miller claimed he is being unfairly targeted by angry ex-employees, Democrats and the media.⁵⁶

O.C. Tollway

In 2005, Rep. Miller earmarked \$8 million for a controversial highway improvement plan that would extend the Foothill South toll road.⁵⁷ Since 2000, Rep. Miller has held \$20,000 in bonds with the Foothill/Eastern Transportation Corridor Agency, which oversees the tollway expansion.⁵⁸ The bonds pay investors a fixed rate and are repaid by drivers' tolls.⁵⁹ Currently, costs are exceeding income on the tollway. If this continues, the tollway might default on the bonds, curtailing interest payments and making the bonds hard to sell.⁶⁰ The California Coastal Commission has voiced objections to the project because it would cut through San Onofre State Beach park, threatening endangered species and disrupting a popular nearby campground.⁶¹ Rep.

⁵⁵ Bob Cusack and Susan Crabtree, Rep. Miller Responds to Critics, Says He Is Not Under FBI Scrutiny, *The Hill*, September 5, 2007 (Exhibit 10).

⁵⁶ Id.

⁵⁷ Morgan Cook, Congressman Has Financial Stake in O.C. Tollway, *Orange County Register*, July 15, 2008 (Exhibit 11).

⁵⁸ Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2000, Filed May 15, 2001; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2001, Filed May 8, 2002; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2002, Filed May 15, 2003; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2003, Filed May 11, 2004; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2004, Filed May 16, 2005; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2005, Filed May 15, 2006; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2006, Filed May 8, 2007; Rep. Gary Miller, Personal Financial Disclosure Statement for Calender Year 2007, Filed May 14, 2008 (Exhibit 12).

⁵⁹ Cook, *Orange County Register*, July 15, 2008.

⁶⁰ Id.

⁶¹ Id.

Miller and others sent a letter to the Coastal Commission in February 2008, advocating the extension, but the commission rejected the project. Rep. Miller and others then wrote to the Secretary of Commerce asking him to overturn the commission's decision.⁶²

5 C.F.R. § 2635.702(a)

Members of the House are prohibited from “taking any official actions for the prospect of personal gain for themselves or anyone else.”⁶³ By using his position to earmark funds for a toll road in which he has purchased bonds, Rep. Miller may have violated 5 C.F.R. § 2635.702(a).

In addition, House conflict-of-interest rules provide that a Member should never accept “benefits under circumstances which might be construed by reasonable persons as influencing the performance” of his official duties.⁶⁴ To do so “would raise the appearance of undue influence or breach of the public trust.” By using his position as a member of Congress to advocate for a road in which he has a financial interest, Rep. Miller may have violated this prohibition.

⁶² Id.

⁶³ House Comm. on Standards of Official Conduct, Memorandum For All Members, Officers and Employees, Prohibition Against Linking Official Actions to Partisan or Political Considerations, or Personal Gain, May 11, 1999.

⁶⁴ H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt 2, B12, para. 5 (1958).