

DEC 11 2007

ENFORCEMENT  
COMMISSION

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of Ronald Nault and  
Luchs Consulting Engineers, LLC

File No. 2007-353

AGREEMENT CONTAINING CONSENT ORDER AND  
PAYMENT OF A CIVIL PENALTY FOR VIOLATIONS  
OF CONNECTICUT GENERAL STATUTES § 9-612(g).

This agreement by and between Ronald Nault of the Town of Guilford, County of New Haven, hereinafter referred to as Respondent, and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. On October 4, 2007, the Commission received a letter from Respondent, President of Luchs Consulting Engineers, LLC (hereinafter "Luchs"), pertaining to a \$200 contribution made by Respondent to the political committee Connecticut First on or about March 7, 2007, and the effect it may have on his company's contractual relationship with the Department of Transportation (hereinafter "DOT").
2. Respondent disclosed that he was a principal of a state contractor on a contributor card that was included with his contribution check made to Connecticut First. Connecticut First was an ongoing political committee of two or more individuals registered with the Commission to conduct political activities and was authorized to make contributions to statewide and General Assembly candidates. Connecticut First terminated with the October 10, 2007 filing.
3. Respondent's contribution was disclosed by Luchs on an August 15, 2007 DOT "Gift and Campaign Contribution Certification" as part of the processing of a supplemental agreement between Luchs and DOT pertaining to Project No. 34-288. Luchs disclosed that the contribution was made on March 7, 2007, and identified Connecticut First as a "Molloy (sic) PAC"
4. The contribution to Connecticut First related to a March 16, 2007 St. Patrick's Day Luncheon hosted annually by City of Stamford Mayor Dannel Malloy, who was also a gubernatorial candidate at the 2006 Democratic Primary. Respondent's contribution to Connecticut First was ultimately returned to Respondent in September 2007.
5. Respondent's October 4 letter resulted in this investigation by the Commission into the contribution made by Respondent on March 7, 2007 to Connecticut First, specifically, to determine whether Respondent's contribution to Connecticut First,

and/or attendance at the March 16, 2007 fundraiser was prohibited by Conn. Gen. Stat. § 9-612(g).

6. Connecticut General Statutes § 9-612, as amended by Public Act 07-1, provides in pertinent part:

(g)(1)(C) "State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, *having a value of fifty thousand dollars or more*, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. . . .

(D) "State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. . . .

(F) "Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) *an individual who is employed by a state contractor* or prospective state contractor, which is a business entity, *as president*, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

[Emphasis added.]

7. Luchs has had a consultant services agreement Project No. 34-288 with DOT since March 23, 2001. Project No. 34-288, involves the design and proposed reconstruction of a portion of U.S. Route 6 in the City of Danbury. Earlier in 2007, DOT decided to supplement Luchs' agreement to provide for additional design services and additional funds for the services pertaining to this project.
8. The DOT currently contracts with Luchs for various other services and projects. Respondent is also employed as a consultant with the engineering firm DeCarlo & Doll, Inc., which is a state contractor and is in the process of soliciting additional work from the DOT.
9. As of October 11, 2007, the state reported payments and amounts owed to Luchs totaling \$3,156,040, which exceeds the annual threshold contract value amount. Accordingly, Luchs is a state contractor within the meaning of Conn. Gen. Stat. § 9-612(g).
10. The Commission concludes Respondent as President of Luchs is a principal of a state contractor, and therefore covered by the state contractor contribution and solicitation ban pursuant to Conn. Gen. Stats. § 9-612(g).
11. The contractor contribution and solicitation ban enacted in Oct. 25 Special Session Public Act 05-5, provides that if a violation of the ban occurs, a state agency may void an existing contract, but shall not award a new contract or amend an existing contract. At the time of this investigation the Commission has been apprised that the DOT has not awarded the supplemental contract, pending the Commission's resolution of this matter.
12. This is a case of first impression for the Commission, pursuant to new authority granted to it by Public Act 07-1, which became effective February 8, 2007. Public Act 07-1 provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether "mitigating circumstances" exist concerning the violation. If mitigating circumstances concerning the violation are found by the Commission, the contractual penalty is not automatic, but the awarding agency retains discretion to amend a contract or award a new contract. The agency may still void a contract in its discretion if a violation of the state contractor contribution or solicitation ban occurs, even if mitigating circumstances are found.
13. Connecticut General Statutes § 9-612(g), as amended by Public Act 07-1, provides, in pertinent part:

(2)(A) *No* state contractor, prospective state contractor, ***principal of a state contractor*** or principal of a prospective state contractor, with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification

certificate, *shall make a contribution to, or solicit contributions on behalf of* (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) *a political committee authorized to make contributions or expenditures to or for the benefit of such candidates*, or (iii) a party committee; . . .

(C) *If a state contractor or principal of a state contractor makes or solicits a contribution* prohibited under subparagraph (A) or (B) of this subdivision, *as determined by the State Elections Enforcement Commission*, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited *unless the commission determines that mitigating circumstances exist concerning such violation. No violation* of the prohibitions contained in subparagraph (A) or (B) of this subdivision *shall be deemed to have occurred if, and only if, the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made . . .*

[Emphasis added.]

14. The Commission concludes that principals of state contractors were prohibited from making contributions to Connecticut First, pursuant to §9-612(g), General Statutes, because it was a political committee authorized to make contributions to statewide and General Assembly candidates.
15. The Commission must determine pursuant to § 9-612(g), General Statutes, whether Respondent as a principal of Luchs made a prohibited contribution to or on behalf of Connecticut First by making his March 7, 2007 contribution to the committee.
16. Section 9-612(g), General Statutes, provides that if a contribution is returned by the later of 30 days, or the filing date that corresponds with the reporting period in which the contribution was made, no violation is deemed to have occurred.
17. Respondent's check was not deposited by Connecticut First because the committee treasurer identified the donor as a contractor based on disclosures that Respondent provided with his check on a contributor card. However, the contribution check was not returned to Respondent until September, well after 30

days from which it was made and the filing date that corresponds with the reporting period in which such contribution was made (April 10). Respondent's improper contribution was not returned within the time period required to invoke the statute's safe harbor provision, and therefore, the Commission concludes that a violation of § 9-612, General Statutes, occurred with respect to Respondent's contribution to Connecticut First.

18. The Commission must also determine whether a prohibited solicitation occurred based on Respondent's attendance at the Connecticut First St. Patrick's Day fundraiser on March 16, 2007.
19. Connecticut General Statutes § 9-601, provides in pertinent part:

(26) "*Solicit*" means (A) requesting that a contribution be made, (B) *participating in any fund-raising activities for a* candidate committee, exploratory committee, *political committee* or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, campaign treasurer, deputy campaign treasurer or any other officer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. "Solicit" does not include (i) making a contribution that is otherwise permitted under this chapter, (ii) informing any person of a position taken by a candidate for public office or a public official, or (iii) notifying the person of any activities of, or contact information for, any candidate for public office.
20. The Commission has previously concluded in Declaratory Ruling 2006-1 that attendance at a fundraiser constitutes "participation in a fundraising affair," within the meaning of Conn. Gen. Stat. § 9-601(26).
21. Respondent attended the St. Patrick's Day fundraiser on March 16, 2007. Therefore, the Commission concludes that that an inappropriate solicitation occurred, in violation of Conn. Gen. Stat. § 9-612(g).
22. The Commission's finding of violations of the state contractor contribution and solicitation bans by Respondent pursuant to Conn. Gen. Stat. § 9-612, allow it to determine whether mitigating circumstances exist concerning such violations.
23. In determining whether circumstances are "mitigating," the Commission deems it necessary to consider any circumstances pertaining to the solicitation and contribution by Respondent, as well as contracts and agreements between his employer Luchs and DOT, that would, although not excusing the conduct, tend to reduce the harm the state contractor contribution and solicitation ban is designed

to prevent. The ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who serve as solicitors for political committees could wield over those state actors awarding such contracts and prevent awarding of contracts in exchange for campaign contributions.

24. Pertaining to Respondent, and his prohibited solicitation and contribution to Connecticut First with respect to the St. Patrick's Day fundraiser, the Commission determines that the following mitigating circumstances exist:
- (a) The solicitation was passive rather than active, in that Respondent attended an event rather than asking others to contribute to Connecticut First.
  - (b) Mr. Dannel Malloy, with whom Connecticut First is affiliated, lost his bid for the Democratic nomination for Governor in September 2006, and was not in a position to influence the awarding of contracts with DOT, or amendments thereto, in March 2007 when the political committee fundraiser took place.
  - (c) Respondent disclosed his status as a principal of a state contractor on a contributor card with his contribution to Connecticut First, which lead to the identification and return of his check prior to its deposit.
  - (d) Connecticut First held the check rather than return it, effectively depriving Respondent of the safe harbor in the statute.
  - (e) Luchs voluntarily disclosed the contribution in the supplemental agreement process with DOT on August 15, 2007.
  - (f) If DOT is permitted to proceed with Luchs through a supplemental agreement to complete design of Project No. 34-288, it will proceed without anticipated delays and increased costs to the state caused by barring Luchs from this project.
  - (g) Should Luchs be barred from the supplemental agreement for Project No. 34-288 its environmental permit for the project could potentially expire, which will add additional construction costs, additional work needed, and additional delays in the timing of the project, which will ultimately result in significant additional cost to taxpayers.
  - (h) The Respondent maintains that he did not understand that attendance equaled solicitation, and this is the first application of the new law.
25. The Commission concludes that mitigating circumstances existed pertaining to the solicitation and contribution by Respondent to the political committee Connecticut First and the award of contracts to Luchs by DOT.
26. The Commission concludes that the policy behind the ban to avoid "pay-to-play" was not circumvented under the facts and circumstances of this case. Furthermore, that the harm to the State by barring Luchs from Project 34-288 is a greater harm than allowing that process to move forward, despite the prohibited contribution and solicitation made by Respondent as a principal of Luchs.

27. Accordingly, the Commission concludes that these mitigating circumstances concerning the violation by Respondent do not bar Luchs pursuant to Conn. Gen. Stats. §9-612 from negotiating a supplemental agreement with DOT pertaining to Project No. 34-288.
28. The Commission concludes that the DOT, and/or other state agencies, are not barred from negotiating or continuing other design projects where Respondent is principal based on the circumstances arising from the incidents related to this investigation, specifically, projects, contracts and agreements between the State of Connecticut and Luchs and the engineering firm DeCarlo & Doll, Inc.
29. Finally, the Commission determines that it, rather than the contracting agency, has the sole authority to determine whether a prohibited contribution or solicitation for purposes of the state contractor and solicitation ban contained in Conn. Gen. Stats. § 9-612(g) has been made, and whether the mandatory penalties apply.
30. Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
31. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
32. Respondent waives:
  - (a) any further procedural steps;
  - (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
  - (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
33. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of Conn. Gen. Stats. § 9-612(g).

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty of seven hundred and fifty dollars (\$750.00) to the Commission on or before December 12, 2007.

For the State of Connecticut

DATED: Dec. 11, 2007

BY:

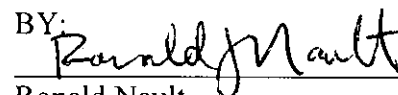


Joan M. Andrews, Esq.  
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Enforcement and  
Authorized Representative of  
the Commission  
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The Respondent

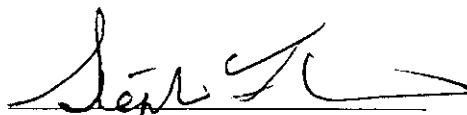
DATED: 11 Dec 2007

BY:



Ronald Nault  
21 Bayberry Lane  
Guilford, Connecticut

Adopted this 19th day of December, 2007 at Hartford, Connecticut by a vote of the Commission.



Stephen F. Cashman, Chairperson  
By Order of the Commission