

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Georgia M. Michalec,
Stafford Springs

File No. 2008-138

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that Penny Bacciochi, a candidate in the 52nd House District and a participating candidate in Connecticut's Citizens Election Program, violated Connecticut's campaign finance laws by accepting an in kind contribution in the form of free advertising space in *ReminderNews* newspaper.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. Penny Bacciochi ran as an incumbent candidate for state representative for the 52nd Assembly District in the November 4, 2008 state election. On December 4, 2007, she filed a Registration by Candidate and Candidate Committee Registration (SEEC Forms 1 and 1A) to finance her candidacy, and designated Bree M. Berner as Treasurer of her candidate committee, *Penny '08*.
2. *ReminderNews* is a family owned weekly newspaper that was established in 1949 and is currently owned and controlled by Ken Hovland, Jr. and Keith Hovland, who are brothers and received control and ownership of the paper from their parents, who established it. A search of financial statements filed by *Penny '08* indicate that neither Hovland is reported as having made any financial contributions to the committee.
3. Complainant attached six articles from *Reminder News* under the name and picture of Representative Penny Bacciochi to "District 52" and dated 01/29/08, 03/04/08, 04/08/08, 07/29/08, 09/02/08, and 09/30/08.
4. The gravamen of this complaint is that Complainant alleged that *ReminderNews* made a coordinated expenditure for state representative Penny Bacciochi, and that she as a participating candidate received an in-kind contribution by virtue of her column in *ReminderNews*, specifically those columns appearing on July 29, September 2, and September 30, 2008. The *ReminderNews* began printing these monthly columns on January 29, 2008.

5. General Statutes § 9-601a, provides in pertinent part:
 - (a) As used in this chapter and sections 9-700 to 9-716, inclusive, "contribution" means:
 - (1) Any gift, subscription, loan, advance, payment or deposit of money or *anything of value, made for the purpose of influencing the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or on behalf of any political party; ...*
[Emphasis added.]
6. General Statutes § 9-601b, provides in pertinent part:
 - (a) As used in this chapter and sections 9-700 to 9-716, inclusive, the term "expenditure" means:
 - (1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or *anything of value, when made for the purpose of influencing the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or on behalf of any political party;*
...
 - (b) The term "expenditure" does not mean:
 - (5) *Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate;*
[Emphasis added.]
7. A review of the *ReminderNews* columns which are the subject of this complaint reveals that the columns do not contain any mention of Ms. Bacciochi's candidacy nor do they mention her opponent. They contain her picture and provide general legislative updates detailing certain bills passed during the session pertaining to different constituent issues, and whether she supports or opposes such bills.
8. Further, the columns provide general information about programs for which Ms. Bacciochi's constituents might be eligible. In addition, they provide general updates about her activities during the month including her attendance at difference conferences and functions.

9. The Commission has previously considered the question of whether an article appearing in a newspaper that is written by a state legislator can be considered a contribution to that legislator's reelection campaign in the past (*In the Matter of a Complaint by Joseph Ribeiro*, Commission File No. 98-232 and Commission Advisory Opinion 84-1). In that instance a legislator's column that expressly advocated her reelection was found *not* to be commentary, and the Commission ordered that her candidate committee pay the newspaper costs for its publication.
10. In Advisory Opinion 84-1, borrowing its standard from the Federal Elections Commission (FEC), the Commission developed a test for evaluating whether an article appearing in a newspaper qualifies as a press exception to the definition of "expenditure," and summarized its reasoning as follows:

Since there can be no contribution without the making of expenditure and a news story comment, commentary or editorial is excluded by law from the meaning of the term expenditure, it may be concluded that a news story, editorial or commentary may not be considered a contribution provided the facilities are not owned or controlled by any class of person or entity referred to in the statute.
11. In Advisory Opinion 84-1, the Commission considered four qualifying factors in determining whether a column met the press exception from the definition of expenditure:
 - 1) the regularity on which the publications written by the legislator appears;
 - 2) the general nature of the information provided in the publication;
 - 3) whether the information imparted is designed to influence the legislator's candidacy; and
 - 4) consideration of whether the legislator provides this service free of charge or the services provided are contracted for.
12. Since the Commission adopted this standard, the FEC has altered *its* test to determine whether the press exception applies to a two-step analysis: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and (2) whether the press entity is acting as a press entity in conducting the activity at issue. See FEC Advisory Opinion 2005-16.
13. Ms. Bacciochi's column has appeared since January 2008, has provided general legislative updates, has not mentioned her candidacy, has not solicited contributions, and has been provided free of charge to the *ReminderNews*, which is a family-owned newspaper, and not controlled or owned by the candidate or a political party or committee.

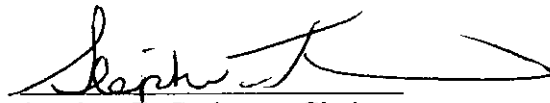
14. The Commission finds that the *ReminderNews* was acting as a press entity by providing a column for a State Representative to communicate to her constituency regarding public issues.
15. The Commission concludes therefore, applying *either or both* press exception standards as defined in paragraphs 9 and 10 above, that the columns subject to this complaint are exempted from the meaning of expenditure pursuant to General Statutes § 9-601b, and are therefore not a contribution pursuant to § 9-601a.
16. Accordingly, no laws were violated by Representative Bacciochi's column in the *ReminderNews*.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the case be dismissed.

Adopted this 19th day of November, 2008 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", with a long horizontal flourish extending to the right.

Stephen F. Cashman, Chairperson
By Order of the Commission