

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Carl J. Strand, Chesire

File No. 2008-150
December 8, 2008

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Mohegan Sun Political Action Committee ("Mohegan Sun PAC") violated General Statutes § 9-601b (a) (1), § 9-608 (c) (5) and/or § 9-612 (e) by failing to report an expenditure made with the intent to promote the success of candidates for the office of State Senate, Larry Miller and Dan Debicella.

1. Mohegan Sun PAC is an ongoing political committee established by a business entity.
2. Dan Debicella and Lawrence G. Miller were each candidates for re-election in the November 4, 2008 Connecticut General Assembly elections. Debicella was a candidate for the office of State Senator in the 21st Senatorial District. Miller was a candidate for re-election for the office of State Representative in the 122nd House District. The complaint does not allege any violations by Debicella or Miller.
3. In October 2008, Mohegan Sun PAC made an expenditure for a two-sided mailing that was distributed to voters. The mailer's front side included the following language in large font: "John Harkins; A Leader With the Experience We Need; Re-Elect State Representative John Harkins." The front side included a photograph of John Harkins, which comprised over one-third of the space on the front side. The back side of the mailer contained the following language in large font: "John Harkins. A Proven Leader. On November 4th, Re-elect State Representative John Harkins." The back-side of the mailer included several sentences setting forth Harkins' legislative experience and accomplishments. The back-side also contained five pictures, each comprising approximately one-twenty-fifth of the page's space. Four of the pictures were generic photographs of a gas pump, a pile of dollars, the State Capitol, and a stethoscope and blood pressure pump. The fifth picture was a picture of Harkins speaking at a podium, with three onlookers in the background. The mailer does not contain the names of or any information concerning the onlookers.
4. Complainant's allegation that Mohegan Sun PAC violated the law by not reporting the mailing as an organization expenditure does not allege a violation of state campaign finance laws. Mohegan Sun PAC is not a party committee, legislative caucus committee, or legislative leadership committee, and therefore is not one of the limited committees authorized to make an organization expenditure.
5. General Statutes § 9-608 (c) (5) provides that "[e]ach [campaign finance disclosure] statement filed by the campaign treasurer of a party committee, a legislative caucus committee or a legislative leadership committee shall include an itemized accounting of each organization expenditure made by the committee."

6. General Statutes § 9-601 (25) provides that “[o]rganization expenditure’ means an expenditure by a party committee, legislative caucus committee or legislative leadership committee for the benefit of a candidate or candidate committee for [one of five stated purposes.]”
7. Mohegan Sun PAC is not a party committee, legislative caucus committee, or legislative leadership committee, and therefore is not authorized to make organization expenditures. The allegation that Mohegan Sun PAC violated the law by not reporting an organization expenditure fails to allege a violation of state election law.
8. Mohegan Sun PAC reported an independent expenditure in support of Harkins on its October 21, 2008 Itemized Campaign Finance Disclosure Statement (SEEC Form 20). Complainant appears to be alleging that Mohegan Sun PAC violated the law by not reporting this expenditure also to be in support of Debicella and Miller, whose pictures appear in a small portion of the mailing.
9. General Statutes 9-601 (18) provides that “[i]ndependent expenditure’ means an expenditure that is made without the consent, knowing participation, or consultation of, a candidate or agent of the candidate committee and is not a coordinated expenditure.”
10. General Statutes § 9-612(c) provides in relevant part that:
 - (2) Any person who makes or obligates to make an independent expenditure or expenditures, as defined in section 9-601, intended to promote the success or defeat of a candidate for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, state senator or state representative, which exceeds one thousand dollars, in the aggregate, during a primary campaign or a general election campaign, as defined in section 9-700, on or after January 1, 2008, shall file a report of such independent expenditure to the State Elections Enforcement Commission. . . .
 - (3) The independent expenditure report in subdivision (2) of this subsection shall include a statement (A) identifying the candidate for whom the independent expenditure or expenditures is intended to promote the success or defeat, and (B) affirming that the expenditure is not a coordinated expenditure.
11. On October 21, 2008, Mohegan Sun PAC filed an Itemized Campaign Finance Disclosure Statement (SEEC Form 20), and reported the mailing as an independent expenditure made in support of State Representative candidate John Harkins.
12. Complainant alleges that this mailing “provides Dan Debicella with free mail to thousands of voters. The Mohegan Sun PAC did not file this as an . . . expenditure for Dan Debicella or Larry Miller.” The three unidentified onlookers in the background of the fifth picture on the mailer’s backside are Debicella, Miller, and Governor M. Jodi Rell.
13. General Statutes § 9-601b(a)(1) defines “expenditure” to mean “[a]ny purchase, payment . . . or anything of value, when made for the purpose of influencing the

nomination for election, or election, of any person”

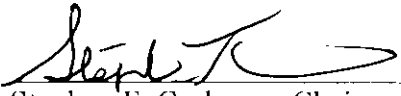
14. A candidate’s mere appearance in a mailing that promotes the election of *another* candidate running for office does not lead to the *per se* conclusion that the mailing was made for the purpose of influencing the nomination of the first candidate. See e.g. State Elections Enforcement Commission Advisory Opinion 1986-3; Propriety of Appearance of Federal Candidate in Advertisement Endorsing Re-Election of Statewide Candidate (advising that a commercial depicting both a statewide official and federal officeholders paid for by the statewide official’s campaign committee would not constitute an in-kind contribution to the federal officials because the mere appearance of the federal officials in the commercial is not enough to constitute an in-kind contribution).
15. Here, Mohegan Sun PAC’s mailer explicitly promotes the candidacy of John Harkins. It features several pictures of Harkins, contains Harkins’ name in large bold typeface, highlights Harkins’ legislative experience and accomplishments, and urges the voters to re-elect Harkins on November 4th. Debicella and Miller only appear in the background of a photograph featuring Harkins speaking at a podium. The photograph does not contain a caption identifying Debicella and Miller, and neither of their names appears anywhere in the mailer. The mailer does not discuss the records or experience of Debicella or Miller, nor does it solicit contributions on their behalf, mention their candidacies, or request voters to elect them.
16. Based on these facts, the mere appearance of Debicella and Miller’s photograph, in a mailing that expressly promotes the election of another candidate (Harkins), does not transform the mailer into an expenditure made for the purpose of influencing the election of Debicella or Miller.
17. After a review of the entire complaint and communication in question, no violation of Connecticut General Statutes § 9-601b (a) (1), § 9-608 (c) (5) and/or § 9-612 (e) is found.

ORDER

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

That the complaint be dismissed.

Adopted this 17th day of December of 2008 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission