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STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Steve Elworthy, Fairfield — File No. 2007-354

AGREEMENT CONTAINING CONSENT ORDER FOR
A VIOLATION OF GENERAL STATUTES § 9-622 (10).

This agreement, by and between Jean Sturges (hereinafter, the "Respondent") and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Connecticut General Statutes § 4-177 (c) and section 9-7b-54 of the Regulations of Connecticut State Agencies. In accordance herewith, the parties agree that:

1. The Complainant, Steve Elworthy, a resident of Fairfield, Connecticut, alleges that "Friends of Flatto and Dougiello" political slate committee violated state election law in the following ways: 1) accepted an impermissible business entity contributions in violation of General Statutes § 9-613; 2) failed to provide the proper attribution on fundraising communications and on the committee's website in violation of General Statutes § 9-621; 3) used municipal funds for campaign purposes in violation of General Statutes § 9-610 (d)(1) & (2); and 4) accepted excessive contributions from individuals in violation of General Statutes § 9-612.

2. "Friends of Flatto and Dougiello" (hereinafter the "Committee") was registered on December 28, 2006 as a political slate committee formed to support two candidates for the November 6, 2007 municipal election; specifically, Kenneth Flatto, Democratic candidate for First Selectman of the Town of Fairfield and Denise Dougiello, Democratic candidate for Selectman. The Respondent was legally designated as the treasurer of that Committee.

3. The Complainant first alleges that on September 28, 2007 the Committee held a fundraiser on premises utilized by the Fairfield Theatre Company (hereinafter "FTC") but did not pay the FTC fair market value for the use of the premises, employees and facilities in violation of General Statutes § 9-613.

4. Connecticut election law prohibits business entities from making contributions to benefit any candidate's campaign for election to any public office. See General Statutes § 9-613 (a)(Rev. to 2007)("No *business entity* shall make any contributions . . . to, or for the benefit of, any candidate's campaign for election to any public office . . . (emphasis added.))

5. "Business entity" is defined in General Statutes § 9-601 (8) (Rev. to 2007) as follows:

   [W]hether organized in or outside of this state: Stock corporations, banks, insurance companies, business associations, bankers associations, insurance associations, trade or professional associations which receive funds from

membership dues and other sources, partnerships, joint ventures, private foundations, as defined in Section 509 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; trusts or estates; corporations organized under sections 38a-175 to 38a-192, inclusive, 38a-199 to 38a-209, inclusive, and 38a-214 to 38a-225, inclusive, and chapters 594 to 597, inclusive; cooperatives, and any other association, organization or entity which is engaged in the operation of a business or profit-making activity; but **does not include** professional service corporations organized under chapter 594a and owned by a single individual, **nonstock corporations which are not engaged in business or profit-making activity**, organizations, as defined in subdivision (6) of this section, candidate committees, party committees and political committees as defined in this section. . . . [Emphasis added.]

6. The FTC is a non-stock corporation organized in the State of Connecticut. The evidence establishes that the FTC is a not-for-profit corporation designated under section 501(c)(3) of the Internal Revenue Code.

7. The Commission therefore concludes that the FTC does not fall within the scope of the "business entity" contribution prohibition set forth in General Statutes § 9-613.

8. The Commission notes that, even if the FTC fell within the purview of that provision, the evidence establishes that FTC did not provide the Committee with a discounted rental price and, as such, did not make a contribution to that Committee. In addition, the FTC did not engage in activity that would have required it to register as a political committee pursuant to General Statutes § 9-602.

9. As such, the Commission further concludes that the Respondent did not commit the illegal practice of receiving a prohibited contribution pursuant to General Statutes § 9-622 (10).

10. The Complainant further alleges that two bands, The Mill River Band and The Christopher Robin Band, violated General Statutes § 9-613 by performing at the fundraiser in question for less than fair market value.

11. The evidence establishes that the Respondent paid $200 in Committee funds for the Mill River Band's performance and $200 for The Christopher Robin Band's performance.

12. The evidence further establishes that the Mill River Band is not an organized entity or business but rather a group of friends that get together and play music for enjoyment.

13. General Statutes § 9-601b (a)(1) (Rev. to 2007) defines "expenditure", in pertinent part, as "[a]ny gift . . . of . . . anything of value, made for the purpose of influencing the . . . election, of any person . . . ."

14. General Statutes § 9-601(a)(4) (Rev. 2007) defines "contribution" as "[a]n expenditure when made by a person, with the cooperation of, or in consultation with, any candidate, . . . or candidate's agent or which is made in concert with, or at the request or suggestion of, any candidate . . . or candidate's agent, including a coordinated expenditure."

15. The provision of a good or service to a political slate committee for less than the market value of that good or service will constitute a contribution if that discount was made for the purpose of influencing the nomination or election of a candidate on that slate. Cf. *Complaint of Ed Jekot*, Somers, SEEC File No. 99-226 (concluding that the provision of facility space at less than the usual and normal price qualifies as a gift of something of value to the committee utilizing the space.)

16. Here, there is evidence that the Mill River Band members are a group of friends that get together and play music because they enjoy it. In addition, those band members do not perform with the Mill River Band (or any band) as their primary occupation. Finally, the evidence establishes that the Mill River Band regularly performs for free because the band members enjoy playing music together and when they do get paid, $200 is not a discounted rate but rather is squarely within their normal range of compensation.

17. The Commission therefore concludes that the Mill River Band did not make a contribution to the Committee in violation of any election law and, thus, that the Respondent did not commit an illegal practice pursuant to General Statutes §9-622 (10) for receiving a prohibited contribution.

18. With respect to The Christopher Robin Band, the evidence is insufficient to establish that the Committee was charged a discounted rate for the Christopher Robin's performance.

19. Christopher Robin (a.k.a. Christopher Robin Sylvestro) is a professional musician in the Christopher Robin Band. Christopher Robin is a native of Fairfield, Connecticut. The Christopher Robin Band generally consists of 4 to 5 members.

20. Mr. Robin performed at the FTC for the fundraiser in question but only with his brother (Trevor T. Sylvestro) rather than the entire band. The evidence establishes that those two individuals received a total of $200 from the Committee for their performance.

21. Mr. Robin stated that he would normally charge that amount for a charitable event of that size in Fairfield regardless of the political affiliation of the host of the event and the Commission has not uncovered any evidence to the contrary.

22. The evidence is therefore insufficient to conclude that Christopher Robin and Trevor Sylvestro provided the Committee with a discounted rate for their performance. As such, the Commission cannot conclude that Christopher Robin or Trevor Sylvestro made a contribution to the Committee in violation of any election law, or that the Respondent committed an illegal practice pursuant to General Statutes §9-622 (10) for receiving a prohibited contribution.

23. The Complainant also alleges that the Respondent violated General Statutes § 9-621 when she failed to provide the proper attribution on Committee communications concerning the concert at issue and on its website.

24. General Statutes § 9-621 (a) (Rev. to 2007) provided in relevant part as follows:

    No . . . committee shall make or incur any expenditure for any written, typed or other printed communication, or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for . . . election or solicits funds to benefit any political party or committee unless such communication bears upon its face (1) the words "paid for by" and the following: . . . **(B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer;** . . . [Emphasis added.]

25. The evidence establishes that the Respondent did in fact pay for the communications at issue on behalf of the Committee. Upon review, however, it is clear that those communications bear the attribution required by § 9-621 (a)(1)(B). As such, the Respondent did not violate General Statutes § 9-621.

26. The Complainant also appears to allege that the Committee's fundraiser at the FTC constituted the improper use of public funds in violation of General Statues § 9-610 (d) for the following reasons:

    (i) The FTC leases the theatre from the Town of Fairfield;
    (ii) Mr. Flatto and Ms. Dougiello were the incumbent First Selectman and Selectman, respectively, of that town;
    (iii) The Committee's rental of the theatre for their fundraiser was allegedly for less than fair market value; and
    (iv) The Committee's fundraiser supported the incumbents bid for reelection.

27. Even if we assume, however, that all of the Complainant's assertions concerning this allegation are true, those facts to do not amount to a violation of General Statutes § 9-610 (d).

28. Section 9-610 (d)(1) and (2) provides as follows:

(1) No incumbent holding office shall, during the three months preceding an election in which he is a candidate for reelection or election to another office, use public funds to mail or print flyers or other promotional materials intended to bring about his election or reelection.

(2) No official or employee of the state or a political subdivision of the state shall authorize the use of public funds for a television, radio, movie theater, billboard, bus poster, newspaper or magazine promotional campaign or advertisement, which (A) features the name, face or voice of a candidate for public office, or (B) promotes the nomination or election of a candidate for public office, during the twelve-month period preceding the election being held for the office which the candidate described in this subdivision is seeking.

29. Neither subdivision of § 9-610 (d) is implicated by the facts asserted by the Complainant. With respect to subdivision (1) of subsection (d), the Complainant does not allege, nor does the evidence establish, that public funds were used to mail or print flyers or other promotional materials intended to bring about his election or reelection.

30. Instead, the Complainant appears to focus on the contractual relationship between the FTC and the Town of Fairfield.

31. The evidence establishes, however, that the Committee paid the FTC fair market value for the use of its theatre, and was provided access to that facility on the same terms as any other user. Accordingly, no public funds were used or implicated, and the Committee's use of the FTC's facility was conducted as an arm's length transaction.

32. With respect to subdivision (2) of subsection (d), the Complainant does not allege, nor does the evidence establish, that either incumbent or a municipal employee authorized the use of public funds for a television, radio, movie theater, billboard, bus poster, newspaper or magazine promotional campaign or advertisement. As such, this allegation is without merit.

33. Finally, the Complainant alleges that the Respondent received contributions to the Committee in excess of the contribution limits for individuals set forth in General Statutes § 9-612 and thus, committed an illegal practice pursuant to General Statutes § 9-622 (10).

34. General Statutes § 9-612 (a)(Rev. to 2007) provides, in pertinent part, as follows:

No individual shall make a contribution or contributions in any one calendar year in excess of . . . seven hundred fifty dollars to any other political committee other than (1) a political committee formed solely to aid or promote the success or defeat of a referendum question, (2) an exploratory committee, (3) a political committee established by an organization, or for the benefit of such

committee pursuant to its authorization or request, or (4) a political committee formed by a slate of candidates in a primary for the office of justice of the peace of the same town. . . . [Emphasis added.]

35. The evidence establishes that 15 excessive contributions were received and deposited by the Respondent on behalf of the Committee. Those contributions were in the amount of $1000 rather than $750, which is the applicable contribution limit pursuant to General Statutes § 9-612 (a).

36. Public Acts, Spec. Sess., Oct. 2005, No. 2005-5 § 31 amended section (a) of then General Statutes § 9-333n (now 9-612) by, inter alia, reducing the limit on contributions to political committees, including political slate committees, from $1000 to $750. That change became effective on December 31, 2006. The evidence establishes that the Respondent was not aware of that change in the law and received the excess contributions at issue in the month following that change.

37. The Commission finds that the Respondent's error was unintentional and caused by her misunderstanding of the change in the law. The Commission notes that upon learning of her mistake, the Respondent contacted the Commission to report her error. This was after a news media inquiry but prior to the filing of this Complaint.

38. The Commission also finds that after reporting her error to the Commission, the Respondent returned all but one of those excessive contributions. That contribution consisted of a $1000 check signed by Joseph Macy. The evidence establishes that that check was an attempted joint contribution from a husband and wife. The Respondent maintains that she inadvertently failed to notice that contribution when returning the others. The Commission has not uncovered any evidence to the contrary.

39. Nevertheless, General Statutes § 9-606 (b) (Rev. to 2007) provides in relevant part as follows:

    A contribution in the form of a check drawn on a joint bank account shall, for the purpose of allocation, be deemed to be a contribution made by the individual who signed the check. If a check is signed by more than one individual, the total amount of the check shall be divided equally among the cosigners for the purpose of allocation. . . .

40. In light of that provision, had Joseph Macy's check been signed by his wife as well, the Respondent would have been permitted to accept it as Mr. and Mrs. Macy would have been deemed to have each made a $500 contribution to the Committee. A contribution in that amount is well within the applicable contribution limit set forth in General Statutes § 9-612 (a).

41. Because Mrs. Macy did not, however, sign the check, the Mr. Macy is deemed to have made a contribution to the Committee in excess of the $750 contribution limit set forth in § 9-612 (a).

42. In addition, the evidence establishes that the Respondent received and deposited two additional checks each in the amount of $500. One check was signed by Donald Sherman and the other was signed by Carole Sherman. Each check was, however, written from Donald Sherman's bank account. The Respondent should not have deposited the check signed by Carole Sherman as the account from which funds were drawn was not a joint account. See General Statutes § 9-606 (b)(permitting only those check drawn on a joint bank account to be divided equally among cosigners.)

43. The Respondent did, therefore, commit an illegal practice pursuant to General Statutes § 9-622 (10) by receiving prohibited contributions in the form of the Macy and Sherman checks identified above.

44. The 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. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

45. 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.

46. The 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.

47. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondent pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth the Respondent shall not receive a prohibited contribution in accordance with Connecticut General Statutes § 9-622 (10) and shall comply with General Statutes § 9-606 (b).

For the State of Connecticut,

DATED: 3-18-10

BY: Joan Andrews

Joan M. Andrews, Esq.
Director of Legal Affairs &
Enforcement and
Authorized Representative of the
Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

The Respondent,

DATED: 3-15-10

Jean Ames Sturges

Jean Sturges
12 Ermine Street
Fairfield, CT 06824

Adopted this 24th day of March, 2010 at Hartford, Connecticut by a vote of the Commission.

Stephen F. Cashman, Chairperson
By Order of the Commission