

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by  
Scott A. Adamsons, Portland

File No. 2008-129

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, and alleged that State Senator Paul Doyle made a qualifying contribution to *Citizens for Jim O'Rourke*, a state representative candidate committee, even though he was a principal of a state contractor, in violation of campaign finance laws.

1. Paul Doyle is a State Senator representing the 9<sup>th</sup> Senatorial District, and an attorney and partner in the law firm Heneghan, Kennedy & Doyle, LLC (hereinafter "HKD"). HKD has one or more agreements to provide legal services to the Connecticut Resources Recovery Authority (hereinafter "CRRRA"), which is a quasi-public agency.
2. James O'Rourke was the incumbent candidate for State Representative for the 32<sup>nd</sup> Assembly District and was re-elected at the November 4, 2008 election. The complainant was his opponent. On February 23, 2008, Representative O'Rourke registered *Citizens for Jim O'Rourke* as his candidate committee and designated Victor Harpley as his treasurer.
3. On or about September 15, 2008, Paul Doyle made a twenty dollar cash contribution to *Citizens for Jim O'Rourke*, which was received and deposited by Mr. Harpley. Senator Doyle signed a contributor certification card on September 12, 2008 and his contribution was disclosed as received on September 15, 2008, on the *Itemized Campaign Finance Disclosure Statement* (SEEC Form 30) filed by Mr. Harpley on behalf of *Citizens for Jim O'Rourke* on September 23, 2008. The card indicates that the contribution was made in cash. The data field indicating whether the contributor is a principal of a state contractor was left blank as were the occupation and employer fields.
4. *Citizens for Jim O'Rourke* applied for a grant application from the Citizens' Election Program, which was approved by the Commission on September 24, 2008. The Commission staff reviewed the application and determined that a total amount of qualifying contributions received was \$5,026. If the \$20 contribution by Paul Doyle to *Citizens for Jim O'Rourke* was excluded, the committee would still have qualified for a grant. Accordingly, even if the allegations are substantiated, *Citizens for Jim O'Rourke*'s grant eligibility is not in dispute.
5. Additionally, Mr. Harpley terminated *Citizens for Jim O'Rourke* on January 12, 2009 and returned a surplus to the Citizens' Election Program in the amount of five thousand six hundred and two dollars and seven cents (\$5,602.07).

6. General Statutes § 9-612, as amended by P.A. 07-1 and P.A. 08-2, provides in pertinent part:

(g) (1) As used in this subsection and subsections (h) and (i) of this section: ...

(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.*** "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

(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, ... (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, ...***

(H) "Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities. ...

7. By way of background, the Complainant provided a legal services agreement between CRRA and HKD, covering the period between July 1, 2005 and June 30, 2008. Paul Doyle is the signatory to that agreement on behalf of HKD. The agreement does not set out a specific dollar amount for the contract, but rather the CRRA board authorizes amounts based on projected need for each fiscal year at a board meeting set for this purpose by May or June of each year to cover the following fiscal year.
8. For fiscal year 2006-2007, covering July 1, 2006 to June 30, 2007, CRRA authorized payment of up to \$115,000 to HKD pursuant to the agreement identified in paragraph 7, above. This payment authorization is referenced by complainant, but does not apply to calendar year 2008, when the challenged contribution was made.
9. For fiscal year 2007-2008, covering July 1, 2007 to June 30, 2008, CRRA authorized payment of up to \$65,000 to HKD pursuant to the agreement identified in paragraph 7, above.
10. On or about May 12, 2008 CRRA and HKD entered into a Legal Services Agreement covering the period between July 1, 2008 and June 30, 2011. Paul Doyle is also the signatory to that agreement on behalf of HKD. As was the case for the prior contract, this agreement does not set out specific dollar amounts for the contract, but rather the CRRA board authorizes amounts based on projected need for each fiscal year at a board meeting set for this purpose by May or June of each preceding fiscal year.
11. For fiscal year 2008-2009, covering July 1, 2008 to June 30, 2009, CRRA authorized payment of up to \$75,000 to HKD pursuant to the agreement identified in paragraph 10, above.
12. It is concluded that on or about September 15, 2008, HKD had two separate legal agreements covering calendar year 2008, identified in paragraphs 7 and 10, above. It is further concluded that pursuant to said legal agreements, HKD had contracts having a value of \$140,000 for calendar year 2008.
13. Accordingly, the Commission concludes that HKD had two separate contracts that were each valued at over \$50,000 during calendar year 2008, and were valued in the aggregate at over \$100,000 during calendar year 2008. The determination of whether an entity is a state contractor pursuant to Conn. Gen. Stat. § 9-612(g)(1)(C) is made on a calendar year, not fiscal year basis.
14. The Commission therefore concludes that HKD was a state contractor during calendar year 2008. Additionally, once an entity is a state contractor during a calendar year, the entity remains a state contractor until December 31 of the year in which the contract terminates.

15. Senator Doyle is an owner of more than five percent in HKD. He is also the signatory to both legal agreements identified in paragraphs 7 and 10, above, and exercised managerial or discretionary responsibility with respect to HKD's state contract with CRRA, pursuant to Conn. Gen. Stat. § 9-612(g)(1)(H). Accordingly, the Commission concludes that Senator Doyle was a principal of a state contractor for calendar year 2008, and was so at the time that he made a \$20 contribution to *Citizens for Jim O'Rourke*.
16. Senator Doyle maintains that he is not a principal of a state contractor, because HKD was not actually paid in excess of \$50,000 in calendar year 2008. The Commission rejects that contention, as Conn. Gen. Stat. § 9-612(g) specifically delineates the value of the contract as the appropriate measure.
17. Additionally, if the Commission accepted this contention, a contributor or a treasurer might not know until the conclusion of the calendar year whether a potential contributor was covered by the ban. This would frustrate the intent of the law, and make it difficult, if not impossible, to comply with or apply the law during the election cycle.
18. On or about October 23, 2008, CRRA and HKD amended their legal services agreement to limit the total possible payments for the 2008 calendar year to \$49,999.00. The amendment does not alter the status of the HKD as a state contractor, or Senator Doyle as its principal, for purposes of §9-612, as much as the contribution was made on September 15, 2008.
19. Turning to the application of the state contractor contribution ban, Conn. Gen. Stat. § 9-612(g) provides, in relevant 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*** or 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;***

(B) *No state contractor*, prospective state contractor, ***principal of a state contractor*** or principal of a prospective state contractor, ***with regard to a state contract*** or a state contract solicitation ***with or from the General Assembly*** 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 state senator or state representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee...*

*(4) The provisions of this subsection shall not apply to the campaign of a principal of a state contractor or prospective state contractor or to a principal of a state contractor or prospective state contractor who is an elected public official.* [Emphasis added.]

20. HKD is a state contractor with CRRA, a quasi-public agency. Consequently, the ban in Conn. Gen. Stat. § 9-612(g)(2)(A) applies to HKD, and principals of HKD, for calendar year 2008. Notably, the state contractor contribution bans embodied in Conn. Gen. Stat. § 9-612(g)(2) are branch specific and do not bar a principal of an executive branch contractor or quasi-public agency contractor from contributing to candidates for state representative or state senator. That ban, embodied in Conn. Gen. Stat. § 9-612(g)(2)(B) would only apply if HKD had a contract with the General Assembly, which was not alleged in this matter.
21. Furthermore, as noted above, there is an exception to the state contractor contribution ban in Conn. Gen. Stat. § 9-612(g)(4), which provides that *“[t]he provisions of . . . [the ban] shall not apply to ... a principal of a state contractor ... who is an elected official.”* [Emphasis added.]
22. The Commission finds that Paul Doyle, as a State Senator, was an elected official at the time of his contribution to *Citizens for Jim O'Rourke*, and is therefore exempt from the state contractor contribution ban pursuant to General Statutes § 9-612(g), even though he is a principal of a state contractor contribution under that same statute.
23. Accordingly, the Commission concludes that Senator Doyle did not violate the state contractor ban in General Statutes § 9-612(g), for two reasons. First, the ban is branch specific, and places quasi-public agencies in the executive branch ban. The challenged contribution is to a legislative candidate, and not covered by the ban in General Statutes § 9-612(g)(2)(B). In addition, the exception for elected officials added by Public Act 08-2 to the state contractor ban described in paragraphs 19 and 21, above, exempts Senator Doyle from the contribution ban.
24. While Senator Doyle is specifically exempted from the application of the state contractor ban in General Statutes § 9-612(g), the exception does not negate his contributor status as a principal of a state contractor. In fact, the very exception discussed above *qualifies those individuals* who are exempted as *“principal[s] of a state contractor”* who are “elected officials.” *See* § 9-612(g)(4).

25. The Commission finds that the exception pursuant to General Statutes § 9-612(g)(4) limits the *application of the ban* to elected officials, but does *not* alter the status or identity of such officials as a principal of a state contractor. Under the present facts, the treasurer of *Citizens for Jim O'Rourke* received a contribution from a principal of a state contractor on or about September 15, 2008, when he received a \$20 cash contribution to *Citizens for Jim O'Rourke* from Senator Doyle.

26. We now consider the issue of whether the *Citizens for Jim O'Rourke* committee could receive such a contribution. Connecticut General Statutes § 9-704, provides in pertinent part:

(a) The amount of qualifying contributions that the candidate committee of a candidate shall be required to receive in order to be eligible for grants from the Citizens' Election Fund shall be: ...

(4) In the case of a candidate for nomination or election to the office of state representative for a district, contributions from individuals in the aggregate amount of five thousand dollars, including contributions from at least one hundred fifty individuals residing in municipalities included, in whole or in part, in said district. ...

(b) *Each individual who makes a contribution of more than fifty dollars to a candidate committee established to aid or promote the success of a participating candidate for nomination or election shall include with the contribution a certification that the individual is not a communicator lobbyist, a member of the immediate family of a communicator lobbyist or a principal of a state contractor or prospective state contractor.*

(c) The following shall not be deemed to be qualifying contributions under subsection (a) of this section and shall be returned by the campaign treasurer of the candidate committee to the contributor or transmitted to the State Elections Enforcement Commission for deposit in the Citizens' Election Fund. ...

(2) A contribution from a principal of a state contractor or prospective state contractor; ...

(d) After a candidate committee receives the applicable aggregate amount of qualifying contributions under subsection (a) of this section, the candidate committee shall transmit any additional contributions that it receives to the State Treasurer for deposit in the Citizens' Election Fund.

(e) *As used in this section*, (1) "communicator lobbyist" has the same meaning as provided in section 1-91, (2) "immediate family" means the spouse or a dependent child of an individual, and (3) **"principal of a state contractor or prospective state contractor" has the same meaning as provided in subsection (g) of section 9-612.** [Emphasis added.]

27. The Commission concludes that pursuant to Connecticut General Statutes § 9-704(c)(2), the contribution made by Senator Doyle to *Citizens for Jim O'Rourke* was not a "qualifying contribution" within the meaning of § 9-704(c)(2), because Senator Doyle was a principal of a state contractor for calendar year 2008.
28. Accordingly, such contribution should not have been accepted and deposited by the treasurer of *Citizens for Jim O'Rourke*. In fact, § 9-704(c) instructs that the contribution "shall be returned by the campaign treasurer of the candidate committee to the contributor or transmitted to the State Elections Enforcement Commission for deposit in the Citizens' Election Fund."
29. The Commission notes, however, that the law does not provide any practical way for the treasurer of *Citizens for Jim O'Rourke* to ascertain whether he had received a contribution from a principal of a state contractor, given that the contribution in question was less than fifty dollars.
30. The certification forms required by Conn. Gen. Stat. §§ 9-608(c)(3) and 9-704(b) are only required if a contribution exceeds fifty dollars. Accordingly, Senator Doyle was not legally required to complete the certification indicating his status as a principal of a state contractor along with his \$20 contribution, and the form utilized bears notice to that effect.
31. Additionally, the law requiring disclosure of occupation and employer of a contributor is not mandated unless the donor contributes in excess of one hundred dollars. See Conn. Gen. Stat. § 9-608(c)(1)(G). Although the Commission produces a list of entities that are state contractors on a monthly basis, Senator Doyle was not legally required to provide Mr. Harpley any occupation and employer information that he could check against the Commission's state contractor list to determine whether further inquiry was required.
32. Furthermore, Mr. Harpley would not have found HKD on the 2008 contractor list had he checked. The Commission relies on state agencies and quasi-public agencies reporting monthly on their contracts, and does not independently review the agency contracts entered into by thousands of state contractors in order to compile the list, as was done in this matter for purposes of a full investigation. CRRR reported HKD as a contractor to the Commission, but only what they had been paid, which was less than \$50,000, as opposed to the value of the contract or what they could have been paid, which exceeded \$100,000. Accordingly, HKD did not appear on the state contractor list in September 2008.

33. Under the facts and circumstances of this matter, where the treasurer could not reasonably have been expected to know, or could not rely on any system to ascertain, whether the contributor in question was a principal of a state contractor, the Commission declines to take further action against the treasurer of *Citizens for Jim O'Rourke* for failing to return a non qualifying contribution from a principal of a state contractor, as proscribed by General Statutes § 9-704(c)(2).
34. The Commission recommends that the General Assembly enact remedial legislation to provide better contributor information to committee treasurers; specifically, lowering the threshold for the certifications required by Conn. Gen. Stat. §§ 9-608(c) and 9-704(b) from fifty to zero dollars. As evidenced by the facts of this case, such legislation is necessary to provide campaign treasurers with a mechanism to comply with the law, particularly the Citizens' Election Program where many small qualifying contributions fall below the dollar threshold for the certification requirement.
35. Further, Conn. Gen. Stat. § 9-704(c) does not contain a prohibition against a principal of a state contractor making a qualifying contribution, only a prohibition on the recipient committee treasurer from receiving and depositing it. Accordingly, the complaint as against the contributor, Senator Doyle, is dismissed.

### ORDER

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

That the matter be dismissed as to Senator Doyle and that the Commission take no further action against Mr. Harpley for the reasons stated.

Adopted this 8<sup>th</sup> day of April, 2009 at Hartford, Connecticut



Stephen F. Cashman, Chairman  
By Order of the Commission