

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Mary Oliver, Hampton

File No. 2008-176

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Mike Alberts, Republican candidate for State Representative for the General Assembly, aired radio commercials, purchased newspaper ads, and sent a political mailing, which were paid for by his candidate committee and supported another candidate in violation of state campaign finance law.

1. By way of background, Representative Mike Alberts was a participating candidate in the CEP and was awarded a grant for his campaign for State Representative for General Assembly District 50 for the November 4, 2008 election. Senator Anthony "Tony" Guglielmo was also a participating candidate in the CEP and was awarded a grant for his campaign for State Senate for the 35th District for the November 4, 2008 election.
2. Mr. Alberts registered his candidate committee *Mike Alberts for State Rep* on March 12, 2007, and designated William L. Jenkins his Treasurer. Mr. Guglielmo registered his candidate committee *Guglielmo for State Senate* on March 27, 2008, and designated his daughter, Kristen Guglielmo, as his Treasurer.
3. Complainant alleged that beginning the week of October 26, 2008, *Mike Alberts for State Rep*, aired radio commercials on WINY radio station, purchased newspaper ads, and sent a political mailing, all of which were paid for with his CEP grant, but included "positive statements" about Republican Senator Tony Guglielmo, who was seeking re-election.
4. General Statutes § 9-601a defines a contribution as "[a]ny 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.**" [Emphasis added.] Further, a contribution, as defined by this section, includes "[a]n **expenditure when made by a person with the cooperation of, or in consultation with, any candidate, candidate committee** or candidate's agent or which is made in concert with, or at the request or suggestion of, any candidate, candidate committee or candidate's agent, including a coordinated expenditure." See § 9-601a(a)(4), emphasis added.
5. General Statutes § 9-610, provides that a candidate committee "...**may pay its pro rata share of the expenses of operating a campaign headquarters and of preparing, printing and disseminating any political communication on behalf of that candidate and any other candidate or candidates.**" See § 9-610(b), emphasis added.

6. General Statutes §9-616, provides in pertinent part:
 - (a) ***A candidate committee shall not make contributions to, or for the benefit of, (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) another candidate committee except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted, ...***
[Emphasis added.]

7. General Statutes § 9-607, provides in pertinent part:
 - (g)(1) As used in this subsection, (A) ***"the lawful purposes of his committee" means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee,*** except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate; ...
[Emphasis added.]

8. Section 9-706-1 of the Regulations of Connecticut State Agencies, provides in pertinent part:
 - (a) ***All funds in the depository account of the participating candidate's qualified candidate committee,*** including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, ***shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election*** to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.
[Emphasis added.]

9. Section 9-706-2 of the Regulations of Connecticut State Agencies, provides in pertinent part:
 - (b) In addition to the requirements set out in Section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following Citizens' Election Program requirements. ***Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:***
.....

8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee;

...
10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure;

...
13. Independent expenditures to benefit another candidate;
[Emphasis added.]

10. The WINY radio advertisement that is subject to this complaint is transcribed below:

“When Woodstock academy needed help State Senator Tony Guglielmo and I were there. Hello I'm Representative Mike Alberts of Woodstock. Last year when Joe Breen and Sherri Vogt teamed up to draft legislation that would have changed Woodstock academy's governance Tony and I stopped them. We know [that a] strong, independent Woodstock Academy is good for our districts and only strengthens our communities. That's why we blocked the back door initiative of Joe Breen and Sherri Vogt and I offered to mediate the crisis. If you believe that changes in our academy's governance should be driven by the sending communities and not by state slight of hand please vote for me. If you believe in open, transparent government please vote for me. In short vote for the candidate that the education association has endorsed as a consistent supporter of public education, its students and teachers. Vote for Mike Alberts. Paid for by Mike Alberts for State Representative, William Jenkins Treasurer. I'm Mike Alberts and I approve this message”. [Emphasis added.]

11. The print pieces complained of appeared in the *Shoppers Guide*, the *Turnpike Press*, and the *Villager* and contained substantially the same message as the radio piece transcribed in paragraph 10, above. The only photos included in the printed pieces are those of Mike Alberts, while the large font in the printed materials names Mike Alberts, and any mention of Senator Guglielmo appears in the smaller text, which provides narrative.

12. Pursuant to General Statutes § 9-610, a candidate committee *may* pay its pro rata share for advertising expenses with other candidates or candidate committees. A candidate committee cannot make a *contribution* to another candidate committee, pursuant to General Statutes § 9-616. It follows that, absent each candidate committee paying its pro rata share for an expenditure for advertising that promotes the election of more than one candidate, the provision of such advertising by one candidate committee to another, would constitute a violation of General Statutes § 9-616 and Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2.

13. Mr. Jenkins admits that *Mike Alberts for State Rep* paid for the advertisements in question exclusively. There is no indication that these advertisements were coordinated between the candidates or their committees.
14. The Commission finds that General Statutes § 9-610 does not apply under these circumstances. Rather, the Commission considers the application of General Statutes §§ 9-607, 9-616 and Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2, to these facts.
15. The Commission further finds that the advertising subject to this complaint does not expressly promote the election of Senator Guglielmo on its face.
16. The threshold question the Commission must determine is whether the reference to Senator Guglielmo in the radio, mailer, and newspaper advertisements was a contribution by Mike Alberts' candidate committee and therefore prohibited by General Statutes § 9-616 and Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2.
17. The Commission, in determining whether campaign materials are promotional, applies a case-by-case review of materials, which is specific and fact based. Further, where direct advocacy is absent a balancing of factors relating to the materials becomes necessary. See *In the Matter of a Complaint by Carl J. Strand*, File No. 2008-150, and Opinion of Counsel 2008-19, *Reference to Other Candidate in Campaign Communications*.
18. The Commission *In the Matter of a Complaint by Carl J. Strand*, File No. 2008-150, dismissed a matter where the mere appearance of a candidate in a mailing that primarily promoted another candidate did not lead to the "...*per se* conclusion that the mailing was made for the purpose of influencing the nomination of the first candidate."
19. Unlike *Strand*, where the candidate was not named, appeared only in a photo, and was not otherwise identifiable, the advertisements in question specifically name Senator Guglielmo and discuss his position regarding an issue of local concern. Therefore, the Commission considers further its standard for promotional materials in the context of its Opinion of Counsel 2008-19.
20. Opinion of Counsel 2008-19, responded to an inquiry "on behalf of State Representative Tony Guerrero," a candidate for General Assembly regarding whether his distribution of mailers referencing State Senator Donald DeFronzo, also a 2008 candidate for re-election, was permissible. The mailers considered by the Commission staff for its opinion were disseminated exclusively in the 29th House District of Mr. Guerrero, and therefore did not reach any of Senator DeFronzo's constituents in the 6th Senatorial District.

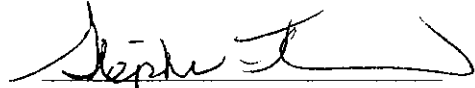
21. Opinion of Counsel 2008-19 concluded that while candidate committees cannot make contributions to other candidate committees or pay the full expenses for a political communication promoting other candidates, "...*the mere reference to or appearance by another candidate in a candidate's campaign communication is not, without more, enough to constitute an in-kind contribution to the other candidate;*" quoting Commission Advisory Opinion 1986-3; *Propriety of Appearance of Federal Candidate in Advertisement Endorsing Re-Election of Statewide candidate.*
22. Further, Opinion of Counsel 2008-19 set out the Commission's reasoning for determining whether the content of the proposed mailer promotes another candidate based on a "fact-based inquiry." Based on a review of the mailer that was subject of the inquiry, the Commission determined that a picture of Senator DeFronzo included on another candidate's mailer, on its own, was not enough to find an impermissible contribution. However, the Commission opined that the inclusion of each candidate's *joint legislative accomplishments* and the statement, "Support the Entire Democratic Team," could be considered a means of "urging support" for Senator DeFronzo's campaign.
23. Commission staff issued Opinion of Counsel 2008-19 "balancing" the factors set out above, in addition to the fact that "the mailer will be distributed strictly to individuals outside of Senator DeFronzo's district and thus, none of its recipients could possibly support Senator DeFronzo on election day." The Commission therefore concluded that, "in light of the facts" presented, the "...*mailer would not have been done 'for the purpose of influencing [his] nomination' and thus did not constitute a contribution to Senator DeFronzo's campaign.*"
24. The Commission adopts the logic and reasoning of Opinion of Counsel 2008-19.
25. Applying Opinion of Counsel 2008-19 to the present facts of this complaint, while there *is* a mention of Senator Guglielmo in the advertisement, there are *no references* to his record or legislative accomplishments, or that he is a candidate for reelection. His position on the local issue pertaining to "Woodstock Academy," does not in itself advocate for or against Senator Guglielmo.
26. While the radio ad, mailer, and advertising in question *did reach some* electors in the 50th Senate District, and therefore could be weighed *towards* a conclusion of advocacy according to Opinion of Counsel 2008-19, the Commission concludes that this single fact is outweighed by the facts that in all of the advertisements, there is no indication that Senator Guglielmo is a candidate, there is no reference to his re-election or legislative record, and the advertisements do not contain an exhortation to vote for him or a specific party on election day.
27. The Commission concludes therefore, after a review of the communications in question, the expenditures made by *Mike Alberts for State Rep* including an incidental reference to Senator Guglielmo without the knowledge of Senator Guglielmo or his committee, were not prohibited by General Statutes §§ 9-607, 9-616 or Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2 and therefore no violation of the above provisions occurred under the facts and circumstances of this matter.

ORDER

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

That the complaint be dismissed.

Adopted this 25th day of March of 2009 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission