

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Patrick DeAngelis,
Middlebury

File No. 2009-055

FINDINGS AND CONCLUSIONS

Complainant Patrick DeAngelis brought this complaint pursuant to § 9-7b, General Statutes of Connecticut, to the Commission alleging that Thomas Gormely, a candidate for First Selectman in the Town of Middlebury at the November 3, 2009 election and Mr. John Cookson of Middlebury, violated campaign finance laws in connection with a flyer that was disseminated to individuals at the Middlebury Landfill on June 13, 2009. The flyer pertained to a Town of Middlebury Town Budget Referendum vote held on June 16, 2009.

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

1. Mr. Thomas Gormely registered "Gormely '09," a candidate committee for First Selectman in the Town of Middlebury, with the Middlebury Town Clerk on June 1, 2009. Mr. John Kothchian at that time was designated the treasurer of the aforementioned candidate committee. Mr. John Cookson was a volunteer worker for Gormely '09.
2. The Middlebury Town Clerk issued a legal notice of a Town Budget Referendum on June 4, 2009, to be held on Tuesday on June 16, 2009, from 6:00 a.m. to 8:00 p.m.
3. Complainant alleged that Mr. Gormely and Mr. John Cookson were "present" when a flyer was disseminated at the Middlebury Landfill, on June 13, 2009. The aforementioned individuals do not deny that they were present at the Middlebury Landfill on June 13, 2009.
4. The flyer that is subject of this complaint, and referenced in paragraph above, contained the letterhead reading: *Continuing Gormely – A New Look From the Hill – Middlebury's New Government Team.* Furthermore, the flyer had a graphic logo of a tree and steeple-topped building that also appeared on campaign literature of Gormely '09. The flyer in question advocates for approval of the Town Budget Referendum that was to be held on June 16, 2009, some three days after the dissemination of the flyer.
5. Mr. Gormely was seeking election to Middlebury First Selectman at the time the flyer was disseminated at the Middlebury Landfill as detailed I paragraph 3 above. The flyer did not include an attribution identifying its source or who paid for it.

6. Mr. Cookson admits that he produced, distributed and disseminated the flyer discussed herein on his home computer, using his own paper, at a minimal cost to him in the approximate range of between twenty-five (\$25.00) to fifty dollars (\$50.00).

7. General Statutes § 9-621 provides in pertinent part:

(a) No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, 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 nomination at a primary or election or promotes or opposes any political party 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: (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer; (C) in the case of a party committee, the name of the committee; ... and (2) the words "approved by" and the following: (A) In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate.

[Emphasis added.]

8. The Commission finds that the flyer, as detailed in paragraph 4 above, contains Mr. Gormely's name, the exhortation "continuing Gormely," and a graphic logo shared with the campaign committee Gormely '09, and was publicly disseminated at a time Mr. Gormely was running for First Selectman the Commission finds that it was promotional of Mr. Gormely's election. Additionally, for the aforementioned reasons, the Commission finds that flyer was subject to the attribution requirements of General Statutes § 9-621.
9. The Commission, for the reasons detailed in paragraphs 6 through 8 concludes, that the flyer produced and disseminated by Mr. Cookson, that promoted the candidacy of Mr. Gormely, failed to contain the necessary attribution as required by General Statutes, and that Mr. Cookson should have included the words "paid for by," and his name and address.
10. The Commission notes that coordinated expenditures are considered contributions under the law, and that there is a "rebuttable presumption" that expenditures made in a certain way or by certain persons or groups are coordinated with the candidate. Specifically, where an expenditure is made by an individual, where that individual and the candidate share the same leadership or consultants, it will be presumed to be a non-independent expenditure. *A Guide for Municipal Candidates (Rev. 02/11)* at page 24. Moreover, coordinated expenditures are expenditures made with the *prior knowledge of a candidate or an agent of the candidate* but financed by another source. Such coordinated expenditures qualify as contributions under Connecticut law. General Statutes § 601c (b) (1).
11. Upon investigation, the Commission finds that there is conflicting evidence as to the role that Mr. Cookson played for Mr. Gormely's campaign and the degree of coordination between Mr. Cookson and Mr. Gormely and his treasurer Mr. Kothchian, in the production and dissemination of the flyer as detailed herein.
12. Nevertheless, the Commission finds, based on the reasoning detailed in paragraph 10 above, that because of the fact that Mr. Cookson volunteered for Mr. Gormely's campaign, that the flyer in question shared a similar graphic as campaign literature of Gormely '09, and that Mr. Gormely and Mr. Cookson were both present while the flyer was disseminated at the Middlebury Landfill there is a *strong* inference and presumption that the production and dissemination of the flyer which is subject of this complaint was a coordinated expenditure and therefore should have been reported to Mr. Kothchian, treasurer of Gormely '09, and reported and disclosed by Mr. Kothchian as such pursuant to General Statues § 9-608.
13. The Commission, however, due to the conflicting evidence available upon investigation and the minimal amount of money that was spent to produce the flyer on a home computer, declines to commit further resources to this matter.

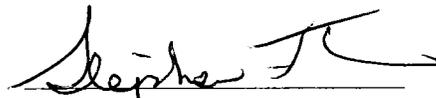
14. The Commission with the adoption of this disposition strongly urges Mr. Gormely, Mr. Kothchian, and Mr. Cookson, to exercise more care and diligence to comport their campaign activities with General Statutes, Chapter 155, when a campaign volunteer for the candidate produces campaign literature in support of that candidate.
15. Finally, upon the distribution of this disposition to those individuals named in paragraph 14 above, the Commission will presume that they are fully aware of the requirement of General Statutes §§ 9-608, 9-621, 9-601c, and be held strictly to such knowledge should any future complaints be received by the Commission pertaining to those statutes.

ORDER

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

No further action be taken.

Adopted this 19th day of October, 2011 at Hartford, Connecticut.



Stephen F. Cashman

By Order of the Commission