

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by David Baxter *et al.*, File No. 2009-080
Wallingford

FINDINGS AND CONCLUSIONS

Complainants David and Marci Baxter bring this complaint pursuant to §9-7b, General Statutes of Connecticut, self-reporting that they may have violated the state contractor ban by making contributions to an exploratory committee for statewide office. Findings with respect to the Baxters are addressed in a separate document. These Findings and Conclusions address whether or not an inappropriate solicitation occurred with respect to such contributions.

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

1. On September 4, 2009, the Commission received a letter from David and Marci Baxter, who are spouses, detailing a February 19, 2009 \$100 contribution to *Friends of Susan 2010*, from David Baxter, and a February 23, 2009 \$150 contribution to *Friends of Susan 2010*, from Marci Baxter. These contributions were made from personal checking accounts.
2. *Friends of Susan 2010* is an exploratory committee established by the Secretary of the State Susan Bysiewicz to determine whether to seek the office of governor. At the time of the relevant contributions Mr. Jason E. Doucette was treasurer of *Friends of Susan 2010*.
3. By letter of February 12, 2009 to Respondent Marci Baxter, Susan Bysiewicz, confirmed the commitment by Ms. Baxter previously made orally to contribute to *Friends of Susan 2010*. The letter provided campaign contact information, an explanation of contribution limits to an exploratory committee, and a request that the contribution be returned with the "contribution form" enclosed. The letter was personally signed by Susan Bysiewicz.
4. On February 19, 2009 the Baxters completed a joint "*Qualifying Contribution Certification Form for Candidates Participating in the Citizens' Election Program*" and submitted it with their contributions to *Friends of Susan 2010*. Each signed the contributor card certifying that they were not a principal of a state contractor or the immediate family of a state contractor.
5. The copy of the certification card provided to the Commission does not include "Definition of Terms" that defines "*A principal of a state contractor.*" Neither the Baxters nor the Bysiewicz campaign recall, and the Commission has been

unable conclusively to determine, where the Baxters obtained the above described contributor card, for example whether by e-mail, from a website or accompanying correspondence.

6. David Baxter is the Chief Financial and Operating Officer of the Hopkins School (hereinafter "Hopkins") in New Haven, Connecticut. Hopkins is a not-for-profit independent co-educational day school that has been working with the Connecticut Health and Educational Facilities Authority (hereinafter "CHEFA") on a bond refunding transaction. This transaction is intended to refinance debt issued by CHEFA on behalf of Hopkins in 1998.
7. CHEFA is a quasi-public agency that provides access to the bond markets in the areas of bond financing and financial advisory services to nonprofit and public stakeholders; serves as public advocate on behalf of the CHEFA's constituents; and awards grants from CHEFA reserves to nonprofit institutions that provide health, education and human services.
8. In July 2009, while preparing the Series C agreement, CHEFA provided David Baxter with a campaign contribution affidavit required by Governor's Executive Order No. 7c, par. 10, July 13, 2006 prior to entering into a loan agreement. Also included in the contracting package was a *Notice to Executive Branch Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Ban* (SEEC Form 11), required by General Statutes § 9-612(g)(2)(E).
9. Upon careful review of the SEEC Form 11 Notice and its definitions, David Baxter sought clarification from Hopkins' attorneys regarding executing the campaign contribution affidavit in light of the campaign contributions he and his wife made to *Friends of Susan* in February 2009. After reviewing the SEEC Form 11 Notice, David Baxter realized that he might be a principal of a state contractor and subject to the state contractor contribution ban in General Statutes § 9-612(g). After Baxter informed Hopkins, Hopkins brought this issue to the attention of CHEFA.
10. David Baxter also thereafter contacted *Friends of Susan 2010* to alert the committee to this matter and to request a return of the contributions made by Respondents in February 2009. On August 15, 2009, David and Marci Baxter were reimbursed in the amount of their contributions by *Friends of Susan 2010* from its committee checking account. Notably, this reimbursement did not occur within the 30 day or reporting period time frame in § 9-612(g)(2)(C), which allows a reimbursement to cure a violation.
11. General Statutes § 9-608, provides in pertinent part:
 - ... (3) In addition to the requirements of subdivision (2) of this subsection, ***each contributor who makes a contribution to a candidate or exploratory***

*committee for Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State, State Treasurer, state senator or state representative, any political committee authorized to make contributions to such candidates or committees, and any party committee that separately, or in the aggregate, exceeds fifty dollars shall provide with the contribution a certification that the contributor is not a principal of a state contractor or prospective state contractor, as defined in subsection (g) of section 9-612, nor a communicator lobbyist or a member of the immediate family of a communicator lobbyist and shall provide the name of the employer of the contributor. The State Elections Enforcement Commission shall prepare a sample form for such certification by the contributor and shall make it available to campaign treasurers and contributors. Such sample form shall include an explanation of the terms "communicator lobbyist" and "principal of a state contractor or principal of a prospective state contractor". The information on such sample form shall be included in any written solicitation conducted by any such committee. If a campaign treasurer receives such a contribution and the contributor has not provided such certification, the campaign treasurer shall: (A) Not later than three business days after receiving the contribution, send a request for the certification to the contributor by certified mail, return receipt requested; (B) not deposit the contribution until the campaign treasurer obtains the certification from the contributor, notwithstanding the provisions of section 9-606; and (C) return the contribution to the contributor if the contributor does not provide the certification not later than fourteen days after the treasurer's written request or at the end of the reporting period in which the contribution was received, whichever is later. ***If a campaign treasurer deposits a contribution based on a certification that is later determined to be false, the treasurer shall not be in violation of this subdivision.*** [Emphasis added.]*

Notably, this defense does not extend to the state contractor ban itself, codified in General Statutes § 9-612(g).

12. General Statutes § 9-612 provides, in pertinent part:

... (g)(1)(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, except for an individual who is a member of the board of directors of a nonprofit organization, (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**, (v) **the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph**, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

...(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. ...

(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 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;

13. David Baxter exercised managerial and discretionary responsibilities with respect to the June 2008 Series B agreement between Hopkins and CHIEFA by negotiating and signing the agreement, which is still in effect. Consequently, he is a principal of a state contractor. His wife, Marci Baxter, is also a principal of a state contractor within the meaning of General Statutes § 9-612(g), as the spouse of a principal of a state contractor.
14. Both Marci and David Baxter were principals of a state contractor at the time of their February 2009 contributions to *Friends of Susan 2010*, and consequently were prohibited from making such contributions by General Statutes § 9-612(g)(2)(A). However, neither one of the Baxters believed themselves to be principals at the time of the contribution, and executed a contributor certification card to that effect, which was provided to the Friends of Susan 2010 committee.
15. While the complete defense provision in § 9-608(c)(3) is limited only to that section, and does not extend to a defense of the contractor ban in § 9-612(g), the Commission has exercised its discretion by not proceeding against campaigns when they could not have been expected to know that the contributor was a principal of state contractor. See *In Re JCJ Architecture*, Hartford, File 2008-120 (No action taken except forfeiture where town committee treasurer relied on contributor certification that he was not a principal of a state contractor) and *Complaint of Scott Adamsons*, Portland, File 2008-129 (no action taken against treasurer who received qualifying contribution from principal of a state contractor where law did not provide any practical way for treasurer to ascertain whether contributor was a state contractor, as contributor certification card not completed, but not required because contribution under \$50).
16. Pursuant to General Statutes § 9-612(g)(2) the Commission maintains and posts on its website "*List Two - State Contractors prohibited from Contributing to Statewide Office Candidates.*" A review of this list as it appeared at the time of Respondents' February 2009 contributions indicates that Hopkins was *not* listed as a state contractor at the time of the Baxters' contributions. The treasurer of Friends of Susan 2010 at the time, Jason Doucette, consulted such list and compared it against the contributors' employers.
17. CHIEFA submitted its state contractors to the Commission, using SEEC Form 14, entitled "*Agency Certification of Names of State Contractors and Prospective*

State Contractors,” (SEEC Form 14) which is an online form available to quasi-public agencies under the Commission’s State Contractor Contribution Ban Electronic Filing System. This CHEFA submission included the Hopkins School in its list of state contractors. However, the Commission did not process this submission because CHEFA failed to disclose Hopkins’ nine digit Federal Employee Identification Number (FEIN), which is a mandatory field included on the Commission’s SEEC Form 14. A state contractor or prospective state contractor’s FEIN number is necessary in order for the Commission to be able to aggregate expenditure or contract amounts of other state agencies, quasi-public agencies and Higher Education with respect to the same contractor. In this instance, the Commission should have posted it to its “List Two-State Contractors prohibited from Contributing to Statewide Office Candidates” anyway because the loan amount to Hopkins School was over the \$50,000 threshold, making it a state contractor without the need to aggregate the loan with other amounts, if any, paid to Hopkins by other agencies.

18. With respect to the solicitation issue, General Statutes § 9-612(g) provides:

(3) (A) On and after December 31, 2006, neither the Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, ***any candidate for any such office nor any agent of any such official or candidate shall knowingly, wilfully or intentionally solicit contributions on behalf of an exploratory committee*** or candidate committee established by a candidate for nomination or election to any public office, a political committee or a party committee, ***from a person who he or she knows is prohibited from making contributions, including a principal of a state contractor*** or prospective state contractor with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder of a valid prequalification certificate. [Emphasis added.]

19. General Statutes § 9-622 also provides in pertinent part:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

... (10) ***Any person who solicits, makes or receives***

a contribution that is otherwise prohibited by any provision of this chapter;

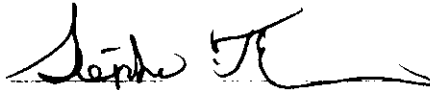
20. The Commission finds that while both General Statutes § 9-622(10) and General Statutes § 9-612(g)(3) address the solicitation of prohibited contributions, General Statutes § 9-612(g)(3) as the more specific provision governs and applies to the facts in this matter. *See State v. Cote*, 286 Conn. 603 (2008).
21. The Commission concludes that there is no evidence to establish that Susan Bysiewicz, Friends of Susan 2010, or any of her agents knowingly, willfully or intentionally solicited a person known to be prohibited from contributing to Friends of Susan 2010. Hopkins was not on the published state contractor list, which was consulted, and Marci and David Baxter completed a joint contributor certification card stating that they were not principals of a state contractor, which they believed to be true at the time.
22. Secretary Bysiewicz, her treasurer and campaign contribution coordinator have all stated that they had no knowledge of the Baxters' status as principals of a state contractor, and the investigation has not uncovered any evidence to the contrary.

ORDER

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

That the matter be dismissed with respect to Friends of Susan 2010.

Adopted this 16th day of NOVEMBER 2009 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission