STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Robert Partyka, Old Saybrook

File No. 2009-115

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and raised allegations that the Old Saybrook Democratic Town Committee utilized commercial space in the Old Saybrook Shopping Center for its headquarters from approximately November 2007 through the 2009 municipal election cycle without paying rent, in violation of General Statutes §§ 9-613 & 9-622 and/or failed to report expenditures and/or contributions associated with its use of the space, in violation of General Statutes § 9-608.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. The Respondents here are "Old Saybrook Associates," ("OSA") a Connecticut General Partnership, as well as Donald S. Brodeur, Jr., the treasurer of the Old Saybrook Democratic Town Committee ("OSDTC") during all times relevant to the instant Complaint.

2. During the 2007 municipal elections, the OSDTC reported expenditures of $450 to lease a commercial space from OSA — a "business entity" per General Statutes § 9-601 (8)—to house the OSDTC headquarters in a commercial retail space located in the Old Saybrook Shopping Center.

3. According to the Complainant, the Old Saybrook Shopping Center space is a "prime space with a central and high visibility location" and that after the 2007 elections, the OSDTC continued to utilize the space, from November 2007 to at least October 2009, for free, as no expenditures for rent had been reported up to the Campaign Finance Disclosure Statement filed October 10, 2009 and including expenditures through September 30, 2009.

4. As an initial matter, the Commission finds that the Complainant submitted no evidence in support of his allegation that the OSDTC occupied the space during the period intervening between the 2007 and 2009 municipal elections. Moreover, Respondent Brodeur submitted evidence that the space was used for a limited period of time, from September 22, 2009 through November 3, 2009, including but not limited to copies of communications and contracts with OSA Trustee Matthew Rubin and copies of minutes of the meetings of the OSDTC during the intervening period. Considering the aforesaid, the Commission finds that the evidence is insufficient to support the Complainant's allegation that the space was occupied by the OSDTC from November 2007 through October 2009.

5. Turning to the substance of the Complaint, if the OSDTC did not pay rent to OSA during the rental period, the provision of the space would constitute an in-kind contribution of the fair market value of the space from OSA to the OSDTC, which the OSDTC must report. If OSDTC did pay rent, but the rents were below market value, the difference between the fair market value and the amount of the expenditure would also constitute a contribution to the OSDTC, which the OSDTC must also report.

6. Any contribution from OSA, a business entity, would be a violation by OSA of General Statutes § 9-613, which reads, in pertinent part:

> (a) No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. *No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party*. . . . (Emphasis added.)

7. Moreover, the OSDTC acceptance of such an impermissible contribution from a business entity would constitute a violation of General Statutes § 9-622 (Rev. to June 8, 2010), which reads, 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; . . . .

8. In either instance, the OSDTC was required to timely and accurately report any expenditure or contribution in its Campaign Finance Disclosure Statements. Failure to timely and/or accurately report an expenditure or contribution is a violation of General Statutes § 9-608 (c), which reads, in pertinent part:

> (a) (1) Each campaign treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603, (A) on the tenth calendar day in the months of January, April, July and October, provided, if such tenth calendar day is a Saturday, Sunday or legal holiday, the statement shall be filed on

> the next business day, (B) on the seventh day preceding each regular state election. . . .
>
> (c) (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: *(A) An itemized accounting of each contribution,* if any, including the full name and complete address of each contributor and the amount of the contribution; (B) in the case of anonymous contributions, the total amount received and the denomination of the bills; (C) *an itemized accounting of each expenditure, if any,* . . . (D) an itemized accounting of each expense incurred but not paid, ... (Emphasis added.)

9. After investigation, the Commission finds that subsequent to the filing of the instant Complaint, the OSDTC, through Respondent Brodeur, reported a payment in the form of a check to OSA for $478 on November 9, 2009 in the Statement filed January 10, 2010 and including the period from October 21, 2009 through December 31, 2009. However, this was the first reporting of the rental arrangement, even though the evidence submitted by the Respondent indicates that the arrangement was entered into and began on September 22, 2009 and extended for 43 days through November 3, 2009.

10. Considering the aforesaid, the Commission finds that on September 22, 2009, the OSDTC incurred an expenditure of $478 that should have been reported in its next Campaign Finance Disclosure Statement—which in this case was October 10, 2009—whether or not such expenditure was immediately paid. However, Respondent Brodeur did not report the expenditure until after it had actually been paid, which resulted in the expenditure not being reported until after the election was over.

11. As such, the Commission concludes that Respondent Donald S. Brodeur, Jr., the treasurer of the OSDTC, violated General Statutes § 9-608 (c) by failing to timely report a $478 expenditure incurred but not paid.

12. Respondent Brodeur does not generally deny that he failed to meet his filing requirement under General Statutes § 9-608 (c), but he asserts that he did not realize that the signing of the lease triggered a requirement to report the transaction as an expenditure incurred, but not paid. Once the lease was signed, OSA did not send the OSDTC an invoice until November 2, 2009, a day before the space was vacated. Once Respondent Brodeur received the invoice, he promptly paid and reported the expenditure at the next reporting period. He asserts that he did not intend to avoid meeting his obligations to timely report the expenditures of the OSDTC, but that he erred in his understanding of his obligations under the law. He asserts that he will make sure to timely report such similar expenditures incurred but not paid in the future.

13. While the Commission considers the Respondents' failure to timely make a disclosure required under General Statutes § 9-608 (c) serious, it also recognizes the circumstances of the Respondent's failure to report and our past treatment of similar matters. See, e.g., *Complaint of Michael Pohl, Manchester*, File No. 2008-160 (failure to timely report rental expense of $300 incurred but not paid; warning to henceforth comply, but no civil penalty). The Respondent is warned that he must henceforth endeavor to strictly comply with the requirements of § 9-608 and to accurately and timely report *all* expenditures incurred, whether paid or not, in the future. However, considering the aforesaid, the Commission concludes that it will take no further action as to this issue.

14. However, the question remains as to whether the $478 payment was a fair market value for the space under the facts and circumstances of this case.

15. Both Respondents submitted supporting statements asserting that the value for the property was fair under the facts and circumstances of the arrangement between them.

16. The Respondents assert, and submitted evidence in support, that OSA entered into an agreement with the OSDTC, the candidate committee "Elect Stuart 2009," and the candidate committee "Manning for Selectman 2009" to rent the space from September 22, 2009 through November 3, 2009. The written agreement memorializing the arrangement read as follows:

    1. The vacant space in the Old Saybrook Shopping Center on the Elm Street side is currently used and will continue to be used both by the community as well as tenants in the Shopping Center.
    2. Manning for Selectman – 2009 agrees to share the vacant space (±2,500 sq. ft.) with the Adult Education Program, Bath & Body Works, Stop & Shop, and all future community and tenant uses.
    3. Because Manning for Selectman – 2009 will not have sole use of the premises, the rent will be $1,665.90 per month, $55.53 per day.
    4. If any other Democratic Committee is desirous of using the vacant space together with Manning for Selectman – 2009, the $1,665.90 per month can be divided among Manning for Selectman – 2009 and the other Democratic Committees.

17. "Manning for Selectman – 2009," "Elect Stuart 2009" and the OSDTC entered into a sub-agreement to each utilize the space and divide the total cost of 43 days in the space, $2,388, on the pro rata basis reflecting the intensity of their intended use of the space. The sub-agreement reflected a share of 20% for the OSDTC and 40% each for "Manning for

Selectman – 2009" and "Elect Stuart 2009." The evidence in the matter is insufficient to establish that this allocation was clearly erroneous.

18. OSA Trustee Matthew Rubin submitted evidence that at the time that the space was leased to the campaigns, the lowest monthly per square foot rate was $6.67. Utilizing this number as the benchmark, the total monthly retail rate for the 2,500 sq. ft. would be $16,675. The rate charged to the committees was almost exactly 10% of this retail rate. However, Mr. Rubin asserts that the rate was fair under the circumstances. He presented evidence that from 2006 until the present, the space had been and continues to be unoccupied by any long term tenant, despite continuing attempts to lease the space for a long term single use. Mr. Rubin also presented evidence that he has been forced in recent years to drastically cut the going retail rate for the existing spaces in the Old Saybrook Shopping Center in order to keep tenants; in some instances, rates were cut up to 43% of the rate previously charged. Finally, he asserts that the use of the space was non-retail and non-exclusive, as evidenced by the agreement between OSA and the committees. The other tenants in the building retained a right to utilize the space at any time.

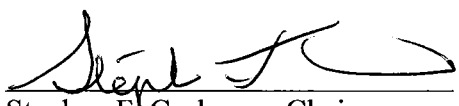
19. Considering the aforesaid, the Commission finds that there is insufficient evidence to establish that the retail space rented by the OSDTC during the 2009 municipal campaign was rented at anything other than reasonable and fair market value under the facts and circumstances here, including but not limited to the terms under which the premises was utilized. Accordingly, the issue should be dismissed.

ORDER

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

1) As to the allegation that Respondent Brodeur failed to timely report an expenditure incurred but not paid: No further action.
2) As to the allegation that the Respondents made and/or received impermissible business entity contributions: Dismissed.

Adopted this 14th day of December, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission