

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Sara Waterfall, et al,  
Danbury

File No. 2009-123

FINDINGS AND CONCLUSIONS

The Complainants Sara Waterfall of 9 Wedgewood Drive, Danbury, Connecticut and Bernard Kokinchak of Southbury, Connecticut filed this complaint with the Commission pursuant to General Statutes § 9-7b. Insofar as the allegations relate to the Commission's jurisdiction, the Complainants allege: (1) that flyers promoting the candidacy of Derek B. Roy, candidate for the Common Council of Danbury, Connecticut ("the Respondent"), which lacked the attribution required by General Statutes § 9-621 (a), were posted at locations on the Western Connecticut State University ("WCSU") campus by unknown or unspecified persons; (2) the Respondent sent a mass email inviting individuals to a fundraiser without the attribution required by § 9-621 (a). Additionally, the Complainants raise concerns regarding WCSU's student newspaper publishing a letter to the editor by the Respondent promoting his candidacy.

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

1. At all times relevant hereto, the Respondent was a candidate for Common Council of Danbury, Connecticut.
2. In coordination with the candidate or his committee, the Danbury Republican Town Committee (the DRTC") produced several flyers bearing the attribution paid for by the DRTC, Rob Melilo Treasurer ("the DRTC flyers").
3. In addition to the DRTC flyers, an unidentified person or persons produced and distributed an unknown number of flyers supporting the Respondent's candidacy and placed these flyers on the WCSU campus ("the disputed flyers"). While nearly identical to the DRTC flyers, the disputed flyers did not have an attribution pursuant to § 9-621 (a) stating who paid for the disputed flyers.
4. The Respondent states that to the best of his knowledge and understanding each and every flyer created or distributed by his campaign and volunteer staff contained the attribution "paid for by the DRTC, Rob Melilo Treasurer."
5. The Complainants do not allege that the expenditure for the production or distribution of the disputed flyers was made with the cooperation of, or at

the request or suggestion of the Respondent or his campaign committee, and have offered no evidence to support such a claim.

6. The investigation has not identified the person or persons responsible for making the expense of producing or distributing the disputed flyers.
7. The investigation has uncovered no evidence that the expenditure made to produce or distribute the disputed flyers was made with the cooperation or at the request or suggestion of the candidate or committee.
8. On or about October 5, 2009, the Respondent sent a mass email, to members of the public including WCSU students, inviting the recipients to a fundraiser for the "benefit of Derek B. Roy, Candidate for Danbury's Common Council" containing a suggested donation amount and instructions regarding properly addressing the check to the "Danbury RTC" with "Derek B. Roy" in the memo line ("the email communication").
9. The email communication contained no attribution as prescribed by § 9-621(a), identifying who paid for the communication.
10. The Respondent acknowledges sending the email communication and states that he did not understand that the sending of an email was an expenditure requiring an attribution.
11. At the time of the alleged violation, § 9-621 (a), provided in relevant part:

No individual shall make or incur any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, 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 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; .... and (2)

the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual; or (B) in the case of a candidate committee, the name of the candidate ....

12. General Statutes § 9-601b provides, in relevant part, "[T]he term 'expenditure' means: .... anything of value, when made for the purpose of influencing the .... election, of any person ...."
13. Unlike the disputed flyer, whose issuer remains unknown, the Respondent acknowledges that he sent the email communication.
14. Connecticut has no *de minimis* threshold for its definition of expenditure. See, *Seymour v. Elections Enforcement Commission*, 255 Conn Sup. 78, at 102, footnote 15.
15. State Elections Enforcement Commission Advisory Opinion No. 2010-05: *Propriety of Hyperlinks on Candidate Committee Website to Other Committee Websites, Certain Media Pieces and Commercial Websites* (May 26, 2010), in explaining candidate committee reporting requirements, identified various expenditures associated with candidate websites:

.... [C]ommittees must report any costs associated with a candidate committee website and hyperlinks - e.g., domain name registry, hosting costs, website maintenance and creation, bandwidth - as it would any other campaign committee expenditures in support of your candidacy. See, e.g., *In the Matter of a Complaint by Frank DeJesus*, Hartford, File No. 2006-193 (civil penalty imposed for failure to report expenditure related to purchase and payment of web hosting services for website that, at various times, contained messages made for the purpose of influencing an election); *In the Matter of a Complaint by Joseph Klett*, Newington, File No. 2004-167 (finding website design services, Internet hosting and support services for candidate committee website were campaign expenditures necessitating reporting); .... Furthermore, as with any web-based communication promoting the success of your campaign, your candidate committee website must bear upon its face the appropriate attributions pursuant to General Statutes § 9-621 (a).

16. Accordingly, for the reasons stated above, because the evidence does not support a conclusion that the expenditure for the disputed flyer was made at the request or suggestion of, or in consultation with, any candidate, candidate committee or candidate's agent the Commission concludes that, in the absence of additional evidence, the disputed flyer is not a communication requiring an attribution pursuant to § 9-621 (a).
17. The Commission concludes that the email communication solicited funds.
18. Accordingly, the email communication should have contained an attribution pursuant to § 9-621 (a).
19. Nevertheless, the fair market value of any such expense for the sending of email communication, under these specific facts, is nominal.
20. The Respondent has no record of being found in violation of the state's election laws.
21. The Respondent has been fully cooperative in the course of the investigation.
22. Under these specific facts and circumstances, the Commission has determined to take no further action in this matter. See, e.g.: File No. 2009-039, *Complaint of Arthur Scialabba, Norwalk*, (§ 9-621 matter closed without further action because of the nominal value of the expenditure involved in sending an email communication); and File No. 2009-084, *Complaint of Elizabeth-Ann Edgerton, Monroe* (§ 9-621 matter closed without further action because of nominal value of the expenditure, a hyperlink and the volunteer labor to develop a webpage referred to as a "blogspot").
23. In addition to the above, the Complainants raise concerns regarding the WCSU's publication by the student newspaper's letter to the editor by the Respondent.
24. Such letter identified the Respondent as a candidate and promoted his candidacy.
25. The student newspaper was produced solely by university students, with no censorship from university faculty or administration.
26. University student staff of the student newspaper maintained editorial control over the contents of the student newspaper.

27. The investigation has not uncovered information supporting that any state employee authorized the use of the student newspaper's opinion and editorial page for use by the Respondent.
28. The student newspaper did not require payment or other compensation for the publication of letters to the editor.
29. Pursuant to § 9-621 (d), the attribution requirements of § 9-621 (a) do not apply to, "... commentary published in any newspaper, magazine or journal on its own behalf and upon its own responsibility and for which it does not charge or receive any compensation whatsoever..."
30. General Statutes § 9-610 (d) (2) provides, in relevant part:

No official or employee of the state or a political subdivision of the *state shall authorize the use of public funds* for a .... newspaper .... advertisement, which .... (B) *promotes the nomination or election of a candidate for public office*, during the twelve-month period preceding the election being held for the office which the candidate described in this subdivision is seeking. [Emphasis added.]

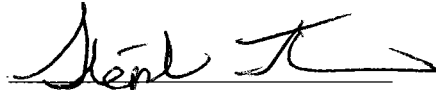
31. The Commission concludes, for the reasons stated above, that, under § 9-621 (d), the attribution requirements of § 9-621 (a) did not apply to the letter to the editor.
32. The Commission concludes that, because no official or employee of the state authorized the use of public funds for the student newspaper for such purpose, the student newspaper's publication of the Respondent's letter to the editor did not violate § 9-610 (d) (2).

**ORDER**

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

That no further action be taken.

Adopted this 16<sup>th</sup> day of February 2011 at Hartford, Connecticut



Stephen P. Cashman, Chairman  
By Order of the Commission