

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Lisa Carver, New Britain

File No. 2010-016

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Respondent failed to report expenditures in violation of General Statutes § 9-608.

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

1. Phil Sherwood was a candidate for the New Britain Common Council during the 2009 municipal election.
2. Respondent Peter Tercyak was the treasurer of "Sherwood '09," a municipal candidate committee formed on or about August 5, 2009 as the funding vehicle for Mr. Sherwood's candidacy.
3. "Sherwood '09" filed three Itemized Campaign Finance Statements of "Sherwood '09" during its existence, a October 10 filing, a "7th Day Preceding" filing on October 27th and a termination filing on January 10, 2010.
4. Complainant's first allegation is that the candidate committee paid for a half-page advertisement in the New Britain Advocate, a local free newspaper, and failed to report the expenditure in any Statement.
5. General Statutes § 9-608 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, except that (i) in the case of a candidate or exploratory committee established for an office to be elected at a municipal election, the statement shall be filed on the seventh day preceding a regular municipal election in lieu of such date, and (ii) in the case of a

town committee, the statement shall be filed on the seventh day preceding each municipal election in addition to such date, and (C) if the committee has made or received a contribution or expenditure in connection with any other election, a primary or a referendum, on the seventh day preceding the election, primary or referendum. The statement shall be complete as of the last day of the month preceding the month in which the statement is required to be filed, except that for the statement required to be filed on the seventh day preceding the election, primary or referendum, the statement shall be complete as of seven days immediately preceding the required filing day. The statement shall cover a period to begin with the first day not included in the last filed statement. In the case of a candidate committee, the statement required to be filed in January shall be in lieu of the statement formerly required to be filed within forty-five days following an election.

...

(c) (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: . . . (C) an itemized accounting of each expenditure, if any, including the full name and complete address of each payee, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be; (D) an itemized accounting of each expense incurred but not paid, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee; (E) the name and address of any person who is the guarantor of a loan to, or the cosigner of a note with, the candidate on whose behalf the committee was formed, or the campaign treasurer in the case of a party committee or a political committee or who has advanced a security deposit to a telephone company, as defined in section 16-1, for telecommunications service for a committee; . . . (Emphasis added.)

6. In support of her allegation, the Complainant included a copy of the advertisement, which includes a picture of the candidate and an attribution that reads: "Paid for by 'Sherwood '09', Peter Tercyak, Treasurer. Approved by Phil Sherwood."

7. The Respondent here asserts that the advertisement was paid for by the candidate and cost \$25 and therefore the campaign was not required to report the expenditure.

8. General Statutes § 9-607 (k) reads:

A candidate shall report to his campaign treasurer each campaign expenditure of more than fifty dollars which he has made directly from his own personal funds, except those expenditures for his own telephone calls, travel and meals for which the candidate does not seek reimbursement from his committee, by the close of the reporting period in which the expenditures were made. The candidate shall indicate whether or not he expects reimbursement by the committee. The campaign treasurer shall report all such reimbursed and nonreimbursed expenditures as "campaign expenses paid by the candidate" on the sworn financial statements he is required to file in accordance with section 9-608 and in the same manner as committee expenditures. (Emphasis added.)

9. As such, if the Respondent's assertion is accurate, he was not required, and by association, the campaign was not required to report the expenditure of the candidate's own personal funds for an advertisement that cost less than \$50.

10. The question remains as to whether \$25 was fair market value for the advertisement at issue here. If the fair market value was over \$50, then the expenditure should have been reported to the treasurer of the committee.

11. After examination of the available evidence, the Commission finds that while \$25 may be unusually low for a half-page advertisement in other established periodicals, the New Britain Advocate appears to be a special case insofar it was a short-lived, small-circulation print publication created and produced by former New Britain Herald journalist Richard Guinness. At the time the advertisement was published, the print circular was new, published for approximately \$1,000 and the low price for the advertisements was geared to roughly cover the introductory costs of the publication. Moreover, Mr. Guinness directly responded to allegations of favoritism to Democratic candidates by asserting on the online version of the publication that he offered the same prices to both parties.¹ The publication ultimately lasted for very few print editions before it ceased operations.

12. Considering the aforesaid, the Commission finds as an initial matter that the available evidence here does not establish that it is more likely than not that the candidate received a value special to him and/or the committee under the specific circumstances of this case.

¹Source: <http://web.archive.org/web/20110208024533/http://newbritainadvocate.com/>

13. Consequently, the Commission concludes that because the candidate made an expenditure for an advertisement costing less than \$50 without seeking reimbursement, neither he nor the committee was required to report it per General Statutes § 9-607 (k). This allegation is dismissed.
14. The Complainant's second allegation is that based on the Itemized Campaign Finance Statements of the candidate committee, there appeared to be approximately \$1050 in expenditures that went unreported. Specifically, the Complainant alleges that the termination Statement indicated a balance of approximately \$753 at the start of the period, \$1050 in contributions during the period and only \$753 in expenditures during the period, leaving what appears to be a \$1050 balance during the period. However, the termination Statement indicates a final balance of \$0.
15. After examination of the Statements of the committee, the bank records of the committee and the receipts of the committee, the Commission finds as an initial matter that all but approximately \$80 in expenditures were in fact reported.
16. As an initial matter, the approximately \$80 in expenditures which the committee failed to report were a \$19.45 fee to open up the bank account of the committee and a \$60 fee for a returned check. Both events were automatic withdrawals by the bank directly from the account. The Respondent admits that he missed the withdrawals in his review of the receipts and documents of the committee and did not intentionally fail to report these costs to the committee.
17. The remaining expenditures of the committee were reported either as direct expenditures from the committee account to payees or were reported as secondary payees of expenditures made by the candidate.
18. The approximately \$1050 in committee funds that the Complainant asserts are unreported were actually reimbursements back to the candidate for his expenditures on behalf of the committee. However, instead of explicitly reporting both the expenditure of the candidate *and* the reimbursement back to the candidate, the committee merely reported the candidate's initial expenditure at the time that it was made and reported that funds were owed. Once the candidate was reimbursed by the committee, the Respondent simply zeroed out the section of the form in which it reported funds owed by the committee.
19. What the Respondent should have done in addition was to report the specific checks drawn from the account to reimburse him for the expenditures for which reimbursement was sought. This would have shown the disposition of the funds more clearly and would likely have obviated the Complainant here.

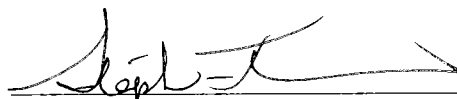
20. In consideration of the aforesaid, the Commission concludes that the evidence is sufficient to establish that the Respondent failed to report the \$80 in bank fees, which were required to be reported under General Statutes § 9-608 (c). The Respondent should also have reported the reimbursements back to the candidate more clearly than was done under the circumstances here. The Respondent and the candidate should endeavor in the future to explicitly report the reimbursements back to the candidate rather than merely report a reduction of the balance owed as was done here. However, considering the totality of the circumstances of this matter, the Commission does not believe that a finding of a violation or a civil penalty is warranted. As such, we will take no further action concerning these allegations.

ORDER

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

That no further action be taken.

Adopted this 19th day of September, 2012 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen P. Cashman", written over a horizontal line.

Stephen P. Cashman, Chairperson
By Order of the Commission