

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Jon Norris, Southbury

File No. 2011-092

FINDINGS AND CONCLUSIONS

Complainant Jon Norris of Southbury brings this complaint pursuant to General Statutes § 9-7b alleging that H. William Davis, Jr., first selectman in the town of Southbury and a candidate for that office in the 2011 municipal elections, had placed an advertisement in the weekly circular *Shopping News* that lacked attribution and was made to appear to be an official publication of the Town of Southbury. If true, the allegations raised by the complainant, that a candidate had failed to place the proper attribution and candidate approval statements on an advertisement would have violated General Statutes § 9-621.

1. Respondent H. William Davis, Jr., the incumbent first selectman of the Town of Southbury, wrote a newspaper article for the *Shopping News*, a weekly circular published by Valley Publishing Company, which appeared in the newspaper on August 2, 2011.
2. Respondent had formed a candidate committee, "Davis 2011," on March 28, 2011 to run for the office of first selectman in the Town of Southbury.
3. Connecticut General Statutes § 9-613 (Rev. to June 8, 2010), provides in pertinent part:

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.

4. As a preliminary matter, because the instant matter appears to concern a business entity that may also be a press entity, the Commission must first determine whether or not the Respondent is exempted by the "press exemption" to the definition of "expenditure" in General Statutes § 9-601 b.
5. Connecticut General Statutes § 9-601b, provides in pertinent part:

(a) As used in this chapter and sections 9-700 to 9-716, inclusive, the term "expenditure" means:

(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made for the purpose of influencing the nomination for

election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or on behalf of any political party;

(2) Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard, and (C) is broadcast or appears during the ninety-day period preceding the date of an election, other than a commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate;

...

(b) The term "expenditure" does not mean: . . .

(5) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate;

6. Following the guidance of the Federal Election Commission, this Commission adopted a three-prong test to determine if an entity is a "press entity." *See Complaint of Christopher Healy*, SEEC File No. 2009-075 (adopting FEC test in analyzing "press entity exception" to campaign finance laws.)
7. The test follows three steps in which the Commission must find:
 1. That the entity engaging in the activity is a press or media entity;
 2. That the entity is not owned or controlled by a political party, political committee, or candidate; and
 3. That the entity is acting as a press entity in conducting the activity at issue.

See Complaint of Christopher Healy, SEEC File No. 2009-075, at ¶ 16.

8. Should the Commission find that all three criteria are satisfied, the press entity exemption applies to the alleged expenditure.
9. In this case, the press entity exemption would apply to the article published in the *Shopping News*.
10. The *Shopping News* is a weekly circular published in Woodbury that serves surrounding communities.

11. The *Shopping News* is not owned by a political party, political committee, or candidate but rather by Valley Publishing Co., located in Derby.
12. The final prong of the analysis requires the Commission to determine whether the *Shopping News* was acting within its “legitimate press function.” To reach this determination, the Commission must ask several questions, namely: Was the content produced by the facilities regularly used to produce content for this entity? Was the content distributed to the news entity’s regular audience? Was the particular edition comparable in form to that ordinarily issued by the entity?
13. The column that Respondent wrote for the August 2, 2011 edition of the *Shopping News* was solicited by the newspaper and a similar offer to such an “address column” was extended to other first selectmen in other municipalities that the newspaper serves.
14. The column appeared in a regular edition of the newspaper and was distributed via its normal process.
15. The Commission concludes that the *Shopping News* was acting as a press entity when it published Respondent’s column “If it Ain’t Broke, Don’t Fix It!” on August 2, 2011.
16. After investigation, the Commission finds that the press exemption applies to the facts of the case. Accordingly, it is precluded from making any further inquiry into the substance of the allegations of the case.

ORDER

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

That the Complaint be dismissed.

Adopted this 16th day of November of 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairman
By Order of the Commission