STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
John D. Norris, Southbury

File No. 2011-108

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b, alleging that H. William Davis Jr., the First Selectman of Southbury, Connecticut, violated General Statutes § 9-622 (12) by soliciting contributions for his campaign by sending an e-mail to two subordinate municipal employees. The Complainant further alleges that Mr. Davis violated General Statutes § 9-621 (a) by failing to include an attribution stating who paid for and approved such e-mail communication.

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

1. At all times relevant hereto, H. William Davis Jr., was the incumbent First Selectman of Southbury, Connecticut, an elected municipal public office, and was a candidate for reelection to that office (the "Respondent").

2. At all times relevant hereto, Southbury Town Ordinances, Chapter 2, Article II, Div. 2, § 2-56 empowered the Board of Selectmen to prepare and issue personnel rules.

3. At all times relevant hereto, Southbury had such personnel rules in effect, titled *The Personnel Rules and Compensation Plan for the Town of Southbury Employees* (the "Personnel Rules"). The Personnel Rules define both full-time employees and temporary employees and the definition of "classified service" and "non-classified service" clarifies that the Personnel Rules do not consider elected officials as "full-time employees." Similarly, the definition of "temporary employee" in the Personnel Rules is limited to employees appointed to seasonal or temporary position not to exceed six months. The office of First Selectman is a two-year term. Accordingly, the definition of "temporary employee" in the Personnel Rules also does not apply to the Respondent.

4. At all times relevant hereto, Jennifer Naylor, assistant to the First Selectman, was an employee of the municipality and a direct subordinate of the Respondent.

5. At all times relevant hereto, Bill Sarosky, Town Treasurer, was an employee of the municipality and a direct subordinate of the Respondent.

6. At all times relevant hereto, the Respondent, Ms. Naylor and Mr. Sarosky were all treated as employees for tax purposes, receiving W-2s from the municipality.

7. On Sunday, August 14, 2011, the Respondent sent an e-mail from his personal e-mail account (selectmandavis@gmail.com) using his personal computer (the "e-mail"). The e-mail listed "Davis 2011 Fund raising event" as the subject line. The recipients included the two above named subordinates. The content of the e-mail was clearly intended for the purpose of soliciting funds for the Respondent's campaign by increasing participation in the fundraiser.

8. The Commission finds that the e-mail was clearly identified as being sent from the Respondent.

9. General Statutes § 9-622 (12), identifying those persons guilty of certain illegal campaign financing practices, provides:

> Any municipal employee who solicits a contribution on behalf of, or for the benefit of, any candidate for state, district or municipal office, any political committee or any political party, from (A) an individual under the supervision of such employee, or (B) the spouse or a dependent child of such individual.

10. The Commission, as a body, has not yet had reason to speak to the issue of whether an elected official is a "municipal employee" for purposes of § 9-622 (12). However, while the issue has not yet arisen to a formal examination by the Commission, multiple public educational forums provided by staff have offered information to the regulated community suggesting that the Commission would not generally treat elected officials as "municipal employees" for purposes of § 9-622 (12).

11. An analogous issue has recently come before the courts. The Courts have addressed whether a municipal elected official is also municipal employee for the purpose of resolving a disputed claim of entitlement to certain payments. *Stewart v. Town of Watertown*, NO. CV0640011963S, 2007 WL 4635132 (Conn. Super. Dec 07, 2007), rev'd on other grounds, 303 Conn. 699, (2012).

12. As the Superior Court in *Stewart* articulated:

> Statutory authority as well as the language of the Watertown Ordinances and Watertown Personnel Rules and Regulations indicate that a public official, specifically an elected off*icial*

> *such as a town clerk, is n*ot an employee. As to collective bargaining, General Statutes § 7-467 defines employee to mean "any employee of a municipal employer . . . except elected officials." Further, § 5-196 *defines "employee" for the* purposes of the State Personnel Act as "any person holding a position in state service subject to appointment by an appointing authority." Contrasting a public employee with a public official, § 2-302 of the code of ethics section of the Watertown Ordinances, defines "public *employee* " as a "person employed . . . by the municipality of a political subdivision thereof" and "public *official* " as "elected or appointed official, whether paid or unpaid or full or part-time." Moreover, the Watertown Personnel Rules and Regulations 1.c. define "employee" generally to mean "a person legally holding a position in the service of the Town." They also state, however, that "[e]xcept as otherwise specifically noted, employees covered by these rules and regulations shall be full time, *appointed* employees." (Emphasis added.) Neither this definition nor the remainder of the Watertown Personnel Rules and Regulations specifically include elected official.

Id. at *44

13. There are significant factual and legal similarities between the instant matter and *Stewart*. As relevant to the above decision, we note that both individuals held elected municipal offices and their similar treatment in their respective town ordinances and personnel rules. Accordingly, the Commission finds that H. William Davis Jr. was not a municipal employee at the time of the alleged conduct by virtue of his holding the elected municipal office of First Selectman and therefore, there is no violation of General Statutes § 9-622 (12).

14. Regarding the alleged attribution violation, the Commission finds that, as is readily apparent on the face of the allegations in the instant Complaint, the reasonable observer would conclude that the Respondent issued the e-mail solicitation.

15. General Statutes § 9-621 (a), provides, in relevant part:

> [N]o candidate or committee shall make or incur any expenditure ... 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 promotes or opposes any political party 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, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate ....

16. Connecticut has no *de minimis* threshold for "expenditures" as defined in § 9-601b. See *Seymour v. Elections Enforcement Commission*, 255 Conn Sup. 78, at 102, footnote 15.

17. 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).

18. Based on the above, the Commission concludes that the e-mail invitation should have contained an attribution pursuant to § 9-621 (a).

19. Based on the Commission's finding that the person issuing the e-mail communication was clear to the reasonable observer, and the absence of a history of similar violations, and noting the absence of any evidence of any intent to deceive or mislead the public, the Commission declines to further investigate the attribution matter. See *In the Matter of a Compliant by Michael Gongler and Victor L. Hapley, Cromwell*, File No. 2009-126; *In the Matter of Complaint of Robert W. Prentice, Wallingford*, File No 2011-134; *In the Matter of a Complaint of Arthur Scialabba*, Norwalk, File No. 2011-125.

ORDER

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

That no further action be taken.

Adopted this 23rd day of May of 2012 at Hartford, Connecticut

Stephen F. Cashman, Chairman
By Order of the Commission