

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Deborah Deschamps-Baker, Sprague

File No. 2011-121

**AGREEMENT CONTAINING CONSENT ORDER
AND PAYMENT OF A CIVIL PENALTY
FOR A VIOLATION OF GENERAL STATUTES**

This agreement, by and between Catherine A. Osten of the Town of Sprague, County of New London, State of Connecticut, hereinafter referred to as the Respondent, and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with General Statutes § 4-177(c) and Section 9-7b-54 of the Regulations of Connecticut State Agencies. In accordance herewith, the parties agree that:

1. Complainant alleged that Respondent, the incumbent Town of Sprague First Selectman, violated General Statutes § 9-610 (d) (2). Specifically, Complainant alleged that Respondent, within 6 weeks of an election in which she was a candidate, used the Town of Sprague newsletter "Our Town," to advertise her "accomplishments" and "credentials" in a column under the heading "From the Desk of the First Selectman."
2. The subject of this complaint is the November 2010 edition of Our Town (hereinafter the "Newsletter"), which was issued in October 2010, a week prior to the aforementioned election.
3. At all times relevant to this complaint, Respondent was the incumbent First Selectman of Sprague. Furthermore, Respondent, at the time of the dissemination of the subject newsletter, was a candidate for the General Assembly from the 47th District and a participant in the Citizens' Election Program, in the November 2, 2010 state election. Respondent lost that election to Representative Christopher Coutu.
4. The November 2010 Newsletter, that is subject of this complaint, under the heading "From the Desk of the First Selectman," is excerpted below:

*These last few years as First Selectman have been busy, wonderful, and challenging. As previously discussed, Sprague has faced serious issues with more in front of us ... but we have done just that faced them. **I attend many of the town boards and commissions meetings, as well as continue to meet with our local businesses to see where we as a town can help them grow and prosper.** It is only by each and every one of us working together with a clear eye and active participation that Sprague will continue to move forward.*

I have, since you first elected me, also served the State of Connecticut, Department of Correction in a full time position as a Lieutenant at Bergin Correctional Institution, after 21 years of service I retired on September 1st, 2010. I also served as the Union President for the Correction Supervisors' Council since its inception in 2001 from this I retired on June 1st, 2010. And lastly on September 24th, 2010 I retired from serving proudly and respectfully as the President of CSEA SELU Local 2001 where I represented workers and their families from state, municipal and private sectors for a total of 22,000 active and retired folks.

It is an honor and a privilege for me to work for the people of Sprague, of Connecticut and of this country as I did when I was in the service from 1974-1978 in the US Army, as a Chinese Mandarin Linguist, attaining the rank of sergeant.

I would like to take a moment to reflect on our accomplishments and project some future plans: ...

In the area of open space, one where I take great pride we preserved 280 acres of the former Mukluk property with the help of a land acquisition grant...just yesterday we received another land acquisition grant to help preserve 230 acres of the Watson farm. Over the next year we will research other funding sources to complete this purchase ... and the Last Green Valley will remain green for our children and grandchildren to enjoy. ... This was done with your support ... thank you.

Our Town buildings are being made as energy efficient as possible this is not only being environmentally responsible but it has the additional benefit of saving town monies. We have put in energy efficient windows, doors, lights and a new boiler (utilizing grant monies and town resources). We will be placing solar panels on the town hall roof which will cut our costs for electricity for the town hall in half (utilizing grant monies and town resources). And we have joined and accepted the Connecticut Clean Energy Fund's challenge to cities and towns, to obtain at least 20 percent of the electricity for all municipal facilities from clean renewable energy sources.

We have also upgraded Fire equipment, Public Works vehicles, and become more responsible towards citizens with disabilities in our Senior Center, Town Hall, and Grist Mill.

We have updated policies, handbooks, and ordinances. We have regulations in place encouraging business development. In that line I sponsored a twelve million dollar federal grant application which will upgrade the freight rail line from Lisbon through Windham. This is also intended to encourage manufacturing development along this line.

We accomplished this and much more without raising taxes through hard work by you and I. This action took foresight and planning I am pleased to work with such enthusiastic partners to see our town move forward is heartening. I cannot say it enough that this is done only with your support, I thank the volunteers ..., the elected officials who continue to work toward improving service for you and the town employees ... – Cathy – First Selectman

[Emphasis added.]

5. General Statutes § 9-610, provides in pertinent part:

...

(d) (1) No incumbent holding office shall, during the three months preceding an election in which he is a candidate for reelection or election to another office, use public funds to mail or print flyers or other promotional materials intended to bring about his election or reelection.

(2) No official or employee of the state or a political subdivision of the state shall authorize the use of public funds for a television, radio, movie theater, billboard, bus poster, newspaper or magazine promotional campaign or advertisement, which (A) features the name, face or voice of a candidate for public office, or (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.

6. The printed materials which are subject of this complaint is a newsletter from the Town of Sprague and is not a “newspaper or magazine” within the meaning of General Statutes § 9-610 (d) (2), and therefore that section would not apply. Therefore, an analysis of any violations for the expenditure of public funds to promote a candidate would occur under General Statutes § 9-610 (d) (1). *See Complaint of Linda Goff*, New Hartford, File No. 2009-105 (brochure from the New Hartford Recreation Department of department offerings, not a “newspaper or magazine” within the meaning of § 9-610 (d) (2), and therefore § 9-610 (d) (1) applied to determine whether violations of the prohibition of the expenditure of public funds to promote a candidate occurred).
7. The Commission finds that Sprague town records indicate that the costs for the production and dissemination of the October 2010 and November 2010 Newsletters (each released in October 2010) totaled \$1,149.22. Therefore the cost for each of the aforementioned newsletters therefore would average approximately \$574.61.
8. The Commission further finds that The Newsletter was 16 pages in length, of which, two pages was the Respondent’s column. Furthermore, upon investigation, it was determined that advertisements could be purchased in the Newsletter, with full pages ads costing \$100.00. Finally, the Commission finds that Respondent used public funds for the production and dissemination of the Newsletter as it acting editor, and while First Selectman.

9. The Commission has consistently applied a two-pronged test for determining whether a communication violates General Statutes § 9-610 (d) (1). A communication is deemed to violate § 9-610 (d) (1), if it (i) expressly advocates the candidate's reelection *or* (ii) is so laudatory as to implicitly advocate such reelection. *See Complaint of Roger J. Roche, Old Lyme, File No. 2007-390* (the sole issue was whether or not the use of public funds to create and mail a newsletter was intended to bring about the incumbent's re-election).
10. The communication in this instance does *not* expressly advocate Respondent's reelection. Therefore, the Commission must determine if the Newsletter is so self-laudatory as to implicitly advocate Respondent's election to the 47th General Assembly District. In its determination the Commission considers the consistency of the language of the communication in relationship to its governmental purpose. *See Roche*. According to the Commission, such a communication, notwithstanding a principal governmental purpose, will be deemed to violate General Statutes § 9-610 (d) (1) if it references any of the following:
 - (1) the candidacy or party affiliation of any elected official;
 - (2) the record of any elected official; or
 - (3) a solicitation for contributions or other support for any official's campaign for reelection, or promoting the support of any other candidate, political committee or political party.
11. The Commission has previously allowed relevant record references if the communication does not reference the incumbent's candidacy, party affiliation, or solicit contributions or votes. *See Complaint of Thomas Christiano, Trumbull, File No. 01-196; Complaint of Ann Piscattano, New Haven, File No. 97-221*. A relevant record reference is one announcing or explaining a recent government action of legitimate public importance. An irrelevant record reference is one that touts past accomplishments more remote in time and relevance, and therefore offends the prohibition. *See Christiano, Piscattano and Roche*.
12. In applying the Commission's three part standard, as detailed in paragraph 10 above, to determine the Respondent's column in the Newsletter is deemed to violate § 9-610 (d) (1) the Commission finds that the Newsletter does not satisfy the *first* or *third* prongs, in that the communication does not mention Respondent's candidacy or party affiliation, and does not solicit contributions. Therefore, the Commission must determine whether the remaining *second* prong, is satisfied. The Commission concludes that it is.
13. Specifically, the Commission concludes that the Newsletter's references of Respondent's record and accomplishments as First Selectman are not limited to "relevant" references. In that they include references to Respondent's professional and civic accomplishments through a biography, and qualify Respondent's accomplishments in office as economically and environmentally beneficial to the community, thus referencing her tenure in public office with favorable characteristics.

14. The Commission concludes, for reasons detailed in paragraph 13 above, that the Newsletter's references, as distinct from those which merely explain and announce government actions of legitimate public concern, such as a street closing or a schedule of town meetings, are so laudatory as to be prohibited by General Statutes § 9-610 (d) (1), as historically applied by the Commission.
15. The Commission concludes that Respondent violated General Statutes § 9-610 (d) by using public public funds to promote her election as Representative to the 47th General Assembly District, in the production and dissemination of the Newsletter as detailed herein.
16. In prior cases, the Commission has ordered both restitution of funds in the amount of the cost of production and dissemination of prohibited informational materials to the public entity and civil penalties for such violations by Respondents. *See Complaint of Peter K. Torrano*, Norwalk, File No. 99-214 (Commission ordered restitution in the amount of \$1,180.64 to taxing district where taxing district newsletter contained personal references to the Respondent's record as taxing district commissioner, as voting for a rate cut, and as supporting reform); *Complaint of Lennie Grimaldi*, Bridgeport, File No. 2000-257 (Respondent agreed to reimburse the State of Connecticut in the amount of \$176.18 for the cost of state tourism maps which were distributed with her campaign literature and stamped with her name and the words "Compliments of" and her title as Senator); *Complaint of George Franek*, et al, East Hartford, File No. 2003-251 (Respondent's candidate committee agreed to reimburse the municipality in the amount of \$1,812.95, for paying for the insertion of a flyer regarding changes in a dial-a-ride program which included the incumbent mayor's name and picture during his campaign for reelection); *Complaint of Charles A. Pillsbury*, New Haven, File No. 2003-254 (Commission ordered restitution to the municipality in the amount of \$41.70 for an official correspondence on aldermanic letter head that referenced the Respondent's accomplishments as an incumbent, her hard work at city hall, and a desire to serve the electors and community so they receive necessary resources from the city): and, *Complaint of Lisa Carver*, New Britain, File No. 2003-261 (Respondent's candidate committee reimbursed the municipality in the amount of \$615.47 for the insertion of promotional materials for its public schools in two newspapers flyer which included the incumbent mayor's name and picture during his campaign for reelection).
17. The Commission notes that it has historically sought restitution for violations of General Statutes § 9-610 (d), under similar circumstances as those detailed herein. Further, while Respondent's column did not expressly advocate for Respondent's election to the General Assembly from the 47th district, it did nevertheless contain certain laudatory references to her professional biography and her civic achievements, which constituted 2 of 16 pages of the Newsletter. Had Respondent purchased two full page advertisements for equivalent purposes the cost, as detailed in paragraph 8 above, would have been \$100.00 *per* page, or a total of \$200.00. For the reasons so stated Respondent agrees to pay a civil penalty of \$200.00, or the equivalent of the purchase of space for her promotional column from the Newsletter, for a violation of § 9-610 (d) (1).

18. The Commission stresses that Respondent cooperated fully in this investigation and provided thorough documentation and responses to the Investigator's requests.
19. Respondent asserts that she did not believe her references were, either expressly *or implicitly* promotional, but rather were consistent with informational materials that had historically appeared in the Town of Sprague's *Our Town* newsletter. For these reasons, Respondent disagrees with the Commission's application of its standard, and its determination that the Newsletter was a promotional communication.
20. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
21. It is understood and agreed that this Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
22. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the agreement or Order entered into pursuant to this agreement.
23. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her pertaining to this matter.


ORDER

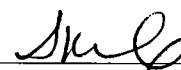
IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with General Statutes § 9-610 (d).

IT IS FURTHER ORDERED that on or before March 21, 2012, the Respondent shall pay a civil penalty in the amount of two hundred dollars (\$200.00) to the Commission.

The Respondent:

For the State Elections Enforcement Commission:

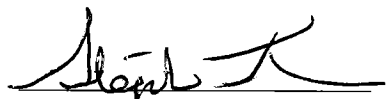
By: 
Catherine A. Osten
187 Scotland Road
Sprague, CT 06330

By: 
Shannon Clark Kief, Esq.
Legal Affairs Program Director
and Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, CT 06106

Dated: 3/12/2012

Dated: 3/13/12

Adopted this 21st day of March, 2012 at Hartford, Connecticut


Stephen F. Cashman, Chair
By Order of the Commission