

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Lesa C. Peters, Woodbury

File No. 2012-004

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Nancy A. Mackey, of the Town of Woodbury, County of Litchfield, State of Connecticut (hereinafter "Respondent"), and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Complainant alleged that *Stomski/Perkinson '11*, a political slate committee for the November 8, 2011 election, and the Woodbury Republican Town Committee (WRTC), violated General Statutes § 9-621 during October and November 2011, by having incorrect or inadequate attributions on campaign mailers and advertisements.
2. Complainant also alleged that the aforementioned committees, pursuant to § 9-616, failed to share the *pro rata* costs of various campaign literature supporting Republican candidates at the November 8, 2011 municipal election in Woodbury, and resulted in impermissible in-kind contributions between the committees.
3. Specifically, Complainant alleged that:
 1. A tri-fold mailer from *Stomski/Perkinson '11* did not contain a complete attribution;
 2. A *Stomski/Perkinson '11* campaign mailer that promoted the entire Republican slate of candidates failed to include a complete attribution ;
 3. Three candidates on a campaign mailer attributed to *Stomski/Perkinson '11* were sponsored by the WRTC and therefore the town committee should have paid for its share of the aforementioned mailing and been named in the attribution;
 4. Three candidates sponsored by the WRTC should have been included on the attribution for a newspaper insert attributed to *Stomski/Perkinson '11* and the WRTC should have paid for its share of the insert;

5. The WRTC needed to pay for a portion of two advertisements with the heading "*WOODBURY VOTE – Stomski/Perkinson – Tuesday, November 8th*" that appeared in the October 26, 2011 *Voice* newspaper;
 6. Three candidates promoted in an advertisement sponsored by *Stomski/Perkinson '11* were actually sponsored by the WRTC and therefore the town committee should have paid for the advertisement; and,
 7. A "thank you" advertisement in the November 9, 2011 *Voice* newspaper paid for by *Stomski/Perkinson '11* was incorrectly attributed to *Stomski/Perkinson '09*.
4. The Complainant simultaneously filed companion complaints in File Nos. 2012-001, 2012-002 and 2012-003, which are treated as separate matters. At all times relevant to this complaint Respondent was the duly designated treasurer of both *Stomski/Perkinson '11* and the WRTC.
 5. *Stomski/Perkinson '11* was registered as a political slate committee, to support Gerald Stomski, for Woodbury First Selectman, and Barbara K. Perkinson, for Woodbury Selectman, at the November 8, 2011 election. The Committee also sponsored Linda Carlson as candidate for Woodbury Town Clerk.
 6. The WRTC sponsored the following candidates at the November 8, 2011 election: William Butterly, Mary Connolly, Charles Cosgriff, Jr., Mike Cunningham, Louis DeLuca, Joseph Donato, Mike Gransky, Deborah Judson, Charles Lewis, Linda Lewis, Larry McDonald, Sean Murphy, Marty Newell, John Putnam, Joel Serota, Ted Tietz, Steve Tranguch and Earnest Werner.
 7. Respondent has no prior history with the Commission prior to the companion cases filed by Complainant and discussed herein. More specifically, in File No. 2012-003 Respondent paid a civil penalty in the amount of \$200.00 regarding a consent agreement and violations of General Statutes § 9-608 that was adopted by the Commission at its April 17, 2013 meeting.

8. General Statutes § 9-607, provides in pertinent part:

...

(g) (1) As used in this subsection, (A) ***“the lawful purposes of his committee” means: ... (ii) for a political committee, the promoting of the success or defeat of candidates for nomination and election*** to public office or position subject to the requirements of this chapter, or the success or defeat of referendum questions, ...; and ***(iii) for a party committee, the promoting of the party, the candidates of the party*** and continuing operating costs of the party,
[Emphasis added.]

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

...

(b) A candidate committee may pay its ***pro rata*** share of the ***expenses*** of operating a campaign headquarters and of ***preparing, printing and disseminating any political communication on behalf of that candidate and any other candidate or candidates***, notwithstanding the provisions of subdivision (1) of subsection (a) of section 9-616, a candidate committee may reimburse a party committee for any expenditure such party committee has incurred for the benefit of such candidate committee.
[Emphasis added.]

10. General Statutes § 9-616, provides in pertinent part:

(a) A candidate committee shall not make contributions to or for the benefit of (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) another candidate committee except that (A) a pro rata sharing of certain expenses in accordance with subsection (b) of section 9-610 shall be permitted, ...
[Emphasis added.]

11. General Statutes § 9-621, provides in pertinent part:

(a) No individual shall make or incur any expenditure with the consent of, in coordination with 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 sub paragraph (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 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;** (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate **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, the name of the candidate.

[Emphasis added.]

12. General Statutes § 9-622, provides in pertinent part:

The following persons shall be guilty of illegal practices...

...

(10) Any person who solicits, **makes or receives a contribution that is otherwise prohibited** by any provision of this chapter; ...

[Emphasis added.]

13. Complainant alleged in Allegation 1 that **Stomski/Perkinson '11** disseminated a tri-fold campaign piece that lacked an accurate attribution as required by General Statutes § 9-621.

14. Upon review, the name of the committee on the campaign piece that is subject of Allegation 1 is misstated as "**Stomski/Perkinson '11 Campaign.**" Additionally, the attribution fails to indicate approval by either Ms. Carlson or by candidates sponsored by the WRTC and referred to as the "Republican Slate" on the tri-fold mailer.

15. Upon investigation, the Commission finds that *Stomski/Perkinson '11* reported the expenditure for the aforementioned double-sided tri-fold mailer as of October 28, 2011. The Commission further finds that the mailer had six panels: three devoted to *Stomski/Perkinson '11*; one devoted to candidate for Town Clerk Linda Carlson; one devoted to the entire "Republican Slate;" and, one panel with mailing addresses and bulk rate permit information. The entire attribution reads: "*Approved by Jerry Stomski & Barbra Perkinson. Paid for by Stomski/Perkinson '11 -- Nancy Mackey Treasurer.*"
16. The Commission concludes that *each* candidate promoted by the tri-fold mailer should have been named and approved the mailer, and that that the WRTC should have been named in the disclaimer pursuant to General Statutes § 9-621.
17. The Commission concludes, for the reasons detailed in paragraphs 13 through 15 above that Respondent violated General Statutes § 9-621 by using an inaccurate and incomplete attribution in the tri-fold mailer which supported candidates sponsored by *both Stomski/Perkinson '11* and the WRTC, as alleged by Complainant in Allegation 1.
18. Complainant alleged in Allegation 2 that Respondent failed to include the WRTC and the names of candidates sponsored by a promotional oversized postcard within its attribution that was disseminated by *Stomski/Perkinson '11* in October 2011.
19. After investigation, the Commission finds that during October 2011, *Stomski/Perkinson '11* mailed an oversized postcard to Woodbury residents. Further, the Commission finds that each Republican candidate sponsored by the WRTC at the November 8, 2011 election, as well as those candidates sponsored by *Stomski/Perkinson '11*, were promoted by the oversized postcard that is subject of Allegation 2. Finally, the Commission finds that the attribution on the aforementioned postcard read as follows: "*Paid for by Stomski/Perkinson '11 Nancy Mackey Treasurer*" and "*Approved by Jerry Stomski & Barbra Perkinson.*"
20. The Commission concludes that pursuant to General Statutes § 9-621 each candidate promoted by the oversized post card, as detailed above, should have been incorporated in the attribution indicating that it was "approved by" each and that it was also "paid for by" the WRTC. The Commission concludes therefore, as alleged by Complainant in Allegation 2, that Respondent violated § 9-621, by not incorporating each committee and candidate within the attribution.
21. Complainant alleged in Allegation 3 that the a postcard highlighting Linda Carlson, Mike Cunningham and Bill Butterly that was paid for by *Stomski/Perkinson '11* were sponsored by the WRTC at the November 8, 2011 election, and therefore, that each candidate should have approved the postcard and that the WRTC should have paid for this postcard.

22. General Statutes § 9-621 requires that where a committee makes an expenditure with the consent of a candidate that the attribution include “approved by” and the name of the candidate.
23. Regarding Allegation 3, the Commission finds that the campaign postcard disseminated by *Stomski/Perkinson '11*, as detailed in paragraph 21 above, promoted the following three candidates: Ms. Carlson for Town Clerk, Mike Cunningham for Board of Finance and Bill Butterly also for Board of Finance. Further, the Commission finds that the attribution read as follows: “*Paid for by Stomski/Perkinson '11 Nancy Mackey Treasurer*” and “*Approved by Jerry Stomski/Barbra Perkinson.*”
24. Upon investigation, it was determined that *Stomski/Perkinson '11* mailed the campaign postcard of Allegation 3 to Woodbury residents, and reported its expenditure for the piece as of November 2, 2011. As previously detailed herein, *Stomski/Perkinson '11* sponsored Ms. Carlson, and therefore the Commission concludes that while the committee could pay for this campaign postcard pursuant to General Statutes § 9-607, nevertheless, § 9-621 required that Ms. Carlson be included within the attribution as having approved the postcard.
25. The Commission concludes that Respondent violated General Statutes § 9-621 as alleged by Complainant in Allegation 3 and pertaining to Ms. Carlson, in that the attribution should have named Ms. Carlson as having approved the campaign postcard. However, the Commission further concludes that because *Stomski/Perkinson '11* sponsored Ms. Carlson at the November 8, 2011 municipal election in Woodbury and therefore Respondent did not violate § 9-607 by using this committee to promote Ms. Carlson as alleged.
26. Additionally, the Commission concludes pertaining to Allegation 3 that pursuant to General Statutes § 9-621 the postcard disclaimer should have included “approved by” Mr. Cunningham and Mr. Butterly and “paid for by” the WRTC as their sponsoring committee. The Commission further concludes that Respondent, for the reasons detailed above, failed to properly incorporate a complete attribution on the campaign postcard that is the subject of Allegation 3, as alleged by Complainant.
27. Finally, with regards to Allegation 3, the Commission concludes that pursuant to § 9-616 the WRTC should have paid its pro rata share to the extent the campaign postcard promoting its sponsored candidates Mr. Cunningham and Mr. Butterly. Moreover, by allocating the shared costs pro rata between the WRTC and *Stomski/Perkinson '11* the Commission concludes that Respondent could have avoided a prohibited in-kind contribution from a political slate committee to a town committee pursuant to General Statutes §§ 9-607 and 9-622, as occurred under the circumstances pertaining to Allegation 3.

28. The Commission concludes, for the reasons detailed in paragraph 26 above, that Respondent violated General Statutes §§ 9-607 and 9-622 by making a prohibited contribution from the political slate committee *Stomski/Perkinson '11* to the WRTC as a party committee in the form of political advertising benefiting WRTC candidates Mr. Cunningham and Mr. Butterly as alleged in Allegation 3.
29. Complainant alleged in Allegation 4 that: three candidates appearing on a *Stomski/Perkinson '11* newspaper insert were funded by the WRTC; that each candidate should have approved the aforementioned promotional piece; and, that the WRTC should have paid for the insert.
30. Upon investigation, the Commission finds that the insert that is subject of Allegation 4 promotes the candidacies of Ms. Carlson, Mr. Cunningham and Mr. Butterly (as in Allegation 3 above). Further, the newspaper insert's attribution reads as follows: "*Paid for by Stomski/Perkinson '11 Nancy Mackey Treasurer*" and "*Approved by Jerry Stomski/Barbra Perkinson.*"
31. As previously detailed herein, *Stomski/Perkinson '11* sponsored Ms. Carlson as candidate for Woodbury Town Clerk at the November 8, 2011 election, and therefore the committee pursuant to General Statutes § 9-607, *could* pay for the promotional newspaper insert. However, the Commission concludes that Respondent violated § 9-621 by failing to incorporate in the attribution Ms. Carlson's approval.
32. Furthermore, the Commission concludes that, Mr. Cunningham and Mr. Butterly were required to approve the newspaper insert that is subject of Allegation 4 as required by General Statutes § 9-621. Furthermore, the Commission concludes that, as previously detailed herein, the WRTC as the sponsoring committee of Mr. Cunningham and Mr. Butterly should have paid its *pro rata* share, to the extent that the newspaper insert promoted its candidates as is permissible pursuant to § 9-616.
33. The Commission concludes, for the reasons detailed in paragraph 31 above, that Respondent violated General Statutes §§ 9-607 and 9-622 by failing to pro rate the expenditures between the two committees benefited as treasurer of both the WRTC and *Stomski/Perkinson '11* for the newspaper insert that promoted the candidates of both committees. Finally, regarding Allegation 4, the Commission concludes that Respondent made an in-kind contribution from the political slate committee *Stomski/Perkinson '11* to the WRTC as a town committee as prohibited by §§ 9-607 and 9-622 based on expenditures by the former committee for the benefit of the latter for a newspaper insert promoting WRTC candidates Mr. Cunningham and Mr. Butterly, thereby violating the aforementioned statutes.

34. Complainant alleged in Allegation 5 that that the WRTC slate needed to approve and pay for a portion of two advertisements headed “WOODBURY VOTE,” that appeared twice in the *Voices* newspaper and listed Mr. Stomski and Ms. Perkinson *as well as* all the candidates sponsored by the WRTC at the November 8, 2011 election. The aforementioned insert had the following attribution: “*paid for by Stomski/Perkinson ‘11 Nancy Mackey Treasurer*” and “*Approved by Jerry Stomski & Barbra Perkinson.*”
35. Upon review, the Commission finds that approximately $\frac{1}{4}$ of each advertisement pertaining to Allegation 5 is devoted Republican candidates on the November 8, 2011 Woodbury ballot *other than* Ms. Perkinson and Mr. Stomski. Further, the Commission finds that the remainder of each campaign insert is dedicated to Ms. Perkinson and Mr. Stomski.
36. The Commission concludes that because the advertisement is promotional of *both* the candidates sponsored by *Stomski/Perkinson ‘11* and those sponsored by the WRTC that the attributions should have incorporated the name of *each* committee pursuant to General Statutes § 9-621. Furthermore, the Commission concludes that each candidate promoted by the *newspaper* campaign inserts should *have been incorporated* in the disclaimers as having been approved by *each* candidate promoted as required by § 9-621 .
37. Finally, regarding Allegation 5, the Commission concludes that the costs associated with the production and dissemination of the newspaper inserts should have been allocated by Respondent on a *pro rata* basis to avoid a prohibited contribution from the *Stomski/Perkinson ‘11* as a slate committee to the WRTC as a town committee pursuant to General Statutes §§ 9-607 and 9-622, as occurred under these circumstances. The Commission concludes therefore that Respondent violated §§ 9-607 and 9-622 By failing to allocate a proportion of the costs for the newspaper inserts in the *Voice* to the WRTC as alleged in Allegation 5.
38. Complainant alleged in Allegation 6 that Respondent failed to include three candidates (Ms. Carlson, Mr. Cunningham, and Mr. Butterly) as having approved an advertisement used as an insert in the November 5, 2011 *Voices Weekender* newspaper.
39. Further, as pertains Allegation 6, Complainant alleged that the WRTC should have paid for the reuse of the aforementioned advertisement (also the subject of Allegation 3) that was used as newspaper insert in the *Voices Weekender* and supported candidates sponsored by the town committee. The relevant attribution read: “*Paid for by Stomski/Perkinson ‘11 Nancy Mackey Treasurer*” and “*Approved by Jerry Stomski & Barbra Perkinson.*”

40. The Commission concludes that because *Stomski/Perkinson '11* sponsored Ms. Carlson at the November 6, 2011, the committee could pay for the advertisement pursuant to General Statutes § 9-607. The Commission further concludes that pursuant to § 9-621 Ms. Carlson should have also approved the piece within its disclaimer. The Commission concludes therefore that Respondent violated § 9-621 by failing to indicate that Ms. Carlson approved the newspaper insert as alleged in Allegation 6.
41. Additionally, regarding Allegation 6, the Commission concludes that Mr. Cunningham and Mr. Butterly should have been incorporated within the disclaimer as having approved the piece pursuant to General Statutes § 9-621. Further, because the WRTC sponsored Mr. Cunningham and Mr. Butterly at the November 6, 2011 election in Woodbury the town committee should have paid its *pro rata* share of the advertisement benefiting its candidates to avoid a prohibited contribution from *Stomski/Perkinson '11* to the WRTC pursuant to §§ 9-607 and 9-622, as occurred under these circumstances.
42. The Commission concludes, for reasons detailed in paragraphs 39 through 41 above, that Respondent as treasurer of *Stomski/Perkinson '11* and the WRTC violated General Statutes §§ 9-607, 9-621 and 9-622 as alleged in Allegation 6 herein.
43. Complainant alleged in Allegation 7 that Respondent attributed a “thank you” advertisement in the November 9, 2011 *Voices* to “*Stomski/Perkinson '09*,” and that because the committee did not exist she violated General Statutes § 9-621.
44. Upon investigation it was determined that the *Stomski/Perkinson '09* was the slate committee that funded the 2009 campaign of Mr. Stomski and Ms. Perkinson. Further, the Commission finds that Respondent admits to an error in drafting regarding the attribution pertaining to Allegation 7 and claims that she inadvertently included the previous political slate committee that sponsored Mr. Stomski and Ms. Perkinson at the 2009 election in the “thank you” advertisement that is the subject of Allegation 7.
45. The Commission concludes that while the disclaimer on the “thank you” advertisement failed to meet the requirement of General Statutes § 9-621, the disclaimer nevertheless plainly identifies the candidates whom are responsible for the advertisement and there was little or no risk that the public would be confused as to the source of this advertisement. Further, the Commission finds a lack of evidence to conclude that this error was intentional. The Commission therefore declines to take further action regarding Allegation 7 under these limited circumstances.

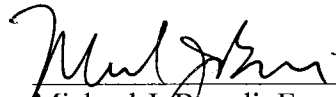
46. The Commission notes that the difficulties that Respondent encountered in exercising her duties and responsibilities as treasurer, as detailed herein, lead to the WRTC sponsored candidates receiving benefits under these circumstances from the *Stomski/Perkinson '11* advertising purchases. However, there is a lack of evidence that Respondent as treasurer of both *Stomski/Perkinson '11* and the WRTC did not intentionally reduce the burden, or increase the benefit, of one committee *vis a vis* the other, or otherwise leverage individual contribution limits to either committee by pooling contributors or resources between the committees. The Commission therefore declines to exercise its authority to seek remittance of funds or forfeitures pursuant to General Statutes § 9-7b, under these limited and narrow circumstances.
47. 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.
48. 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.
49. 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 Order entered into pursuant to this agreement.
50. 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 is *reprimanded* and shall henceforth strictly comply with the requirements of General Statutes §§ 9-607, 9-612 and 9-622.

Dated: 6/14/13

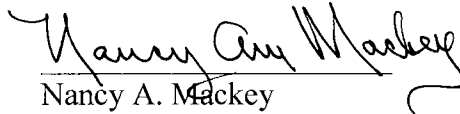
BY: For the State of Connecticut,



Michael J. Brandi, Esq.
Executive Director and General Counsel,
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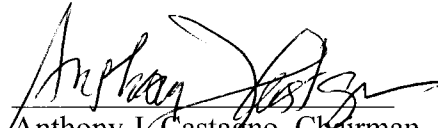
Dated: 6/13/13

BY: The Respondent,



Nancy A. Mackey
55 Woodbury Hill
Woodbury, Connecticut

Adopted this 19th day of June, 2013, at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman
By Order of the Commission