

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Nancy J. DiNardo, Hartford

File No. 2012-152

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that “Americans for Prosperity,” an entity, made an impermissible in-kind business contribution by promoting the candidacy of incumbent state senator Len Suzio.

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

1. At all relevant times Respondent Len Suzio was the incumbent state senator in the November 6, 2012 General Election for the 13th Senatorial District in the General Assembly and was a “participating candidate” in the Citizens Elections Program, as that term is defined in General Statutes § 9-703.
2. At all relevant times David White was the treasurer of “Suzio 2012,” the candidate committee associated with Senator Suzio’s campaign. Prior to the events of the instant Complaint, the Commission approved the “Suzio 2012” application for a public financing grant from the Citizens Election Fund.
3. At all relevant times, “Americans for Prosperity” (“AFP”) was a registered Connecticut non-stock corporation with a business address in the City of Hartford and a tax-exempt organization under Section 501(c) (4) of the Internal Revenue Code.
4. On or about October 18, 2012, AFP held a “gas rollback event” at a gas station in Senator Suzio’s district in which AFP agreed to partially subsidize up to 15 gallons of gasoline per customer for two hours during the afternoon rush hour. The subsidy brought the cost of a gallon of gasoline at this event down to \$1.83, which AFP claims in its promotional materials was the price of gas before President Barack Obama took office. The event was open to the general public.
5. AFP issued a press release ahead of the event to various media outlets throughout the state stating that “[t]he rise in the price of gasoline is just one example of how President Obama and Congressman Chris Murphy’s out-of-control tax and spend policies are hurting CT families.” As a result of the press release, the event was publicized by NBC Connecticut, a statewide news media outlet.

6. No other communications promoting the event were reported by the Complainant or uncovered in the course of the instant investigation.
7. In the press release, Senator Suzio was listed as the only “confirmed participant.”
8. The Complainant alleges that this event was made for the purpose of influencing the election of Senator Suzio’s and as such all costs associated with the event constituted an expenditure by AFP and an impermissible in-kind contribution to a participating candidate.
9. The term “expenditure” is defined in General Statutes § 9-601b and reads, in pertinent part:

(a) As used in this chapter and chapter 157, 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 a primary or 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. . . (Emphasis added.)

10. If an expenditure is made by a person other than a candidate or that candidate’s designated committee, but such expenditure was made for the purpose of influencing the nomination for election, or election, of such candidate, such expenditure constitutes a contribution to such candidate. The term “contribution” is defined in General Statutes § 9-601a, in pertinent part:

(a) As used in this chapter and chapter 157, “contribution” means:

(1) Any gift, subscription, loan, advance, payment or deposit of money or anything of value, 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; (Emphasis added.)

11. As a non-stock corporation, AFP constituted an “entity” under General Statutes § 9-601 (19), which reads:

“Entity” means the following, whether organized in this or any other state: An organization, *corporation*, cooperative association, limited partnership, professional association, limited liability company, and limited liability partnership. (Emphasis added.).

12. General Statutes § 9-702 (b) provides::

Any such candidate committee is eligible to receive such grants for a primary campaign, if applicable, and a general election campaign if (1) the candidate certifies as a participating candidate under section 9-703, (2) the candidate’s candidate committee receives the required amount of qualifying contributions under section 9-704, (3) the candidate’s candidate committee returns all contributions that do not meet the criteria for qualifying contributions under section 9-704, (4) the candidate agrees to limit the campaign expenditures of the candidate’s candidate committee in accordance with the provisions of subsection (c) of this section, and (5) the candidate submits an application and the commission approves the application in accordance with the provisions of section 9-706.

13. Here, a “qualifying contribution” could only come from an *individual* residing in a municipality within the 13th senatorial district. General Statutes § 9-704 reads, in pertinent part:

- (a) The amount of qualifying contributions that the candidate committee of a candidate shall be required to receive in order to be eligible for grants from the Citizens’ Election Fund shall be:

. . .

- (3) In the case of a candidate for nomination or election to the office of state senator for a district, contributions *from individuals* in the aggregate amount of fifteen thousand dollars, including contributions from at least three hundred individuals residing in municipalities included, in whole or in part, in said district. . . .

14. As such, AFP could not make, and Senator Suzio could not accept, a contribution to the candidate committee without violating General Statutes §§ 9-702 & 9-704.

15. In support of her allegation that AFP made an impermissible contribution on behalf of Senator Suzio's candidacy, the Complainant asserts, in pertinent part:

Clearly, this is a political event. The election will be held in less than three weeks. Incredulously, the release goes further to list as the only "CONFIRMED PARTICIPANT: State Senator Len Suzio." Respondent Suzio is running for state senate in the 13th senatorial district which includes Meriden. Suzio is a participating candidate in the Citizens Election Program, C.G.S. Chapter 157. It is not a coincidence that the event is in Meriden and Suzio is the only individual identified as being present.

16. Additionally, the Complainant submitted two photographs in support of her allegation: one of Senator Suzio at the event and a separate photograph of a Suzio 2012 lawn sign at the event.
17. Senator Suzio does not generally deny agreeing to be involved in the event hosted and paid for by AFP. He was aware that the event would be promoted in the news, including the fact that he would be a participant.
18. However, Senator Suzio denies that the event was in any way promotional of his candidacy. He asserts that he attended the event, which occurred within his district, as a sitting state senator and policymaker with a particular interest in gas tax policy:

[F]or the past year and a half I have been a leading advocate for change in Connecticut policy with respect to gas taxes and have attended many events to promote public awareness of Connecticut's "hidden" gas tax. I believe educating the public is an important role for me as a [s]tate [s]enator and I have always seen these many gas station events as opportunities to inform and motivate the public to precipitate change in Connecticut gas taxation policy.

...

I did not attend this event as a candidate. Since my election as State Senator I have participated in numerous events at gas stations to protest the current rate of Connecticut gas taxes, to obtain support for a petition to reduce the rate, and to inform the public of the unfair nature of the gas tax. As such, it was a natural for a group concerned about high gas costs to expect me, in my role as Senator and outspoken opponent of the gas tax, to attend yet again a public event informing the public of the punitive nature of the tax and how it affects the price

of gas in Connecticut. In fact, I understand that AFP has held many similar events around the country to educate the public about rising gas prices.

19. Additionally, Senator Suzio asserts that he was sensitive to his dual role as a sitting senator and a candidate for re-election and took care to seek the advice of counsel before attending the event.

[A]t the time as an abundance of caution, I sought the advice of Senate Republican staff attorneys in order to help clarify and distinguish legitimate activities in my role as State Senator and to assure that I acted within my role as State Senator

20. After investigation, the Commission finds that the evidence in this matter is sufficient to show that the event occurred approximately three weeks prior to the November 6, 2012 General Election and consisted of a giveaway of gasoline for a period of approximately two hours for the reduced rate of \$1.83/gallon.
21. Additionally, the evidence is sufficient to show that Senator Suzio did attend the event.
22. However, the Commission finds that the evidence in this matter is insufficient to show whether the “event” went beyond the press release and the gas giveaway—such as by way of public remarks by either members and/or supporters of AFP or by Senator Suzio himself.
23. Moreover, the evidence is insufficient to establish the provenance of the lawn sign’s presence at the event and/or connect the lawn sign to AFP and/or Senator Suzio’s campaign.
24. The first question in this matter is whether the press release was an “expenditure” in support of Senator Suzio’s candidacy. The Commission concludes that it was not. The communication did not constitute an expenditure under General Statutes § 9-601b (a) (1) as there was no express or implied advocacy on behalf of Senator Suzio’s candidacy contained within the short communication distributed to the press. The communication consisted largely of criticism of the taxing policies of two federal candidates and made no more than a mere mention of Senator Suzio’s attendance at the event at the end.
25. Moreover, the communication would not constitute an expenditure under General Statutes § 9-601b (a) (2) as such communication, while making mention of Senator Suzio less than 90 days prior to the General Election, was not an advertisement. It was a communication in the form of a press release distributed to various media outlets throughout the state in hopes that they would cover the event as a news story.

26. The second question before the Commission is whether the limited evidence in this matter establishes that the gas giveaway event sponsored by AFP and Senator Suzio's involvement in the event constituted an expenditure by AFP on behalf of Senator Suzio's campaign, insofar as the costs associated with the event were borne in whole or in part by AFP "for the purpose of influencing the nomination for election, or election, of" Senator Suzio.

27. In determining the question at issue here, the Commission looks to its Advisory Opinion 2010-08. AO 2010-08 concerned the question of when a campaign event for one candidate at which another candidate is present will be considered a joint campaign event for which both candidates must pay a share of the costs. While the Commission here makes no determination as to whether AFP's gas giveaway was a "campaign event," the question before the Commission concerning the effect of Senator Suzio's involvement in the event here is the same.

28. In Advisory Opinion 2010-08, pp 2 & 3, the Commission held that:

Not every campaign event for one candidate at which another candidate is present will be considered a campaign event for both candidates such that both candidate committees must pay for a pro rata share of the costs of the event to avoid running afoul of General Statutes § 9-616 (a). The Commission will consider several indicia in determining whether an event is a campaign event for a candidate, including [but not limited to]:¹

- 1) Whether the invitations for the event tout the candidate's presence and/or the chance to hear her message;
- 2) Whether the media was alerted as to the candidate's presence at the event;
- 3) Whether the candidate notified his supporters that he would be present at the event;
- 4) Whether the candidate is distributing her campaign literature at the event or in connection with the event;
- 5) Whether the candidate is fundraising at the event;
- 6) The extent to which the event targets the voters or in-district donors of the candidate; and
- 7) The extent to which the candidate is speaking at the event regarding his campaign.

¹ The enumerated indicia are not the exclusive criteria with which the Commission will make such determinations, but will be heavily weighted here and in the future.

29. Applying these indicia to the limited evidence available in this matter the Commission finds the following:

- a. AFP's press release noted Senator Suzio's presence as an attendee of the event, but made no reference to him as a candidate or announced any other association or role concerning the event, such as featuring him as a speaker;
- b. AFP distributed a press release to statewide media outlets and the event and Senator Suzio's participation in the news of the event was covered by at least one statewide television broadcast news program;
- c. The evidence is insufficient to show that Senator Suzio notified his supporters that he would be present at the event;
- d. The evidence is insufficient to show that Senator Suzio, or agents of his campaign, distributed Suzio 2012 campaign literature at the event;
- e. The evidence is insufficient to show that Senator Suzio conducted fundraising for his campaign at the event—the Senator was a participating candidate in the Citizens Elections Program and had already received his General Election grant at the time the event occurred;
- f. While the event occurred within the senate district for which Senator Suzio sought re-election, the evidence is insufficient to establish that the event was specifically and/or exclusively targeted towards in-district voters and/or in-district contributors—the event was promoted to statewide media outlets; in addition, members of the general public, whether in-district or out-of-district, were invited to take advantage of the promotional gas price; and
- g. By his own admission, Senator Suzio did discuss gas policy with attendees at the event, but the evidence is insufficient to establish that he formally made an address and/or whether he spoke in a manner in which he or anyone expressly or impliedly advocated for his re-election or mentioned his campaign at all.

30. Considering the aforesaid, of particular concern to the Commission is the fact that this event was a publicized joint effort held within Senator Suzio's district less than a month prior to an election in which the Senator was the incumbent candidate. Moreover, the event entailed giving away upwards of \$30-35 of gasoline per vehicle to patrons of the gas station, many of whom were invariably potential voters within Senator Suzio's district.

31. The Commission is sensitive to the difficult path that incumbent elected officials who are also candidates must weave during an election season. The line between issue advocacy and electioneering is one with which campaigns, regulators and the courts continually struggle. Connecticut's campaign finance laws cannot and do not require incumbent elected

officials to set aside their offices during campaign cycles and shed their roles as the elected representatives of their constituents and advocates for the policies in which they and/or their constituents believe.

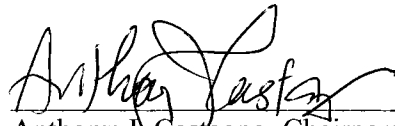
32. However, in this instance Senator Suzio and AFP acted carelessly in choosing to sponsor and participate in such an event at the time and in the place in which it occurred. It should have come as no surprise in this instance to either AFP or Senator Suzio that these actions would invite scrutiny by Senator Suzio's political opposition and were highly likely to provoke a complaint before this Commission. Both parties displayed a profound lack of good judgment, if not something more, in the choices they made here. Such events will invite additional scrutiny in the future should a complaint be filed with the Commission.
33. In the end, however, the Commission must consider the totality of the facts available here in determining whether the "gas rollback event" held by AFP was held "for the purpose of influencing the nomination for election, or election, of" Senator Suzio, not simply those facts which look the worst for these Respondents.
34. To that end, and considering the totality of the facts and limited evidence available in this matter, the Commission concludes that the evidence in this matter is insufficient to establish that the "gas rollback event" held by AFP was held "for the purpose of influencing the nomination for election, or election, of" Senator Suzio. As such, the costs of the event did not constitute an impermissible in-kind contribution to his campaign for re-election in the 13th Senatorial District in the General Assembly. This matter should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 17th day of April, 2013 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission