

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of Complaint by Andreas Duus, III File No. 2013-176
Riverside (Greenwich)

FINDINGS AND CONCLUSIONS

Complainant Andreas Duus, III filed this complaint with the Commission pursuant to General Statutes §9-7b, alleging that President and CEO of Northeast Utilities Thomas J. May (hereinafter "Respondent") solicited contributions from employees to benefit Governor Dannel Malloy in violation of campaign finance laws, which prohibit contributions from business entities, labor unions and state contractors to gubernatorial campaigns. After an investigation, the Commission makes the following findings and conclusions:

1. Complainant alleged that Respondent solicited contributions from Northeast Utilities (hereinafter "NU") officers, agents or employees in support of the re-election of Governor Dannel Malloy, that resulted in prohibited contributions from a state contractor, a business entity and a labor union and therefore violated campaign finance laws. The complaint was filed with the Commission on December 11, 2013 which provides the relevant time period for review. Accordingly, the relevant timeframe for investigation of the conduct in this matter is between the date of the September 27, 2013 solicitation and the date of filing this complaint on December 11, 2013.
2. Specifically, Complainant, citing a December 4, 2013 report in the *Hartford Courant*, alleged that:

[Respondent], 'has asked about 50 of his managers throughout New England to give money to help re-elect (Gov. Daniel [sic]) Malloy next year.' The request has raised \$46,500 thus far. The Courant further states that the NU [spokeswoman] stated that [Respondent] 'had carefully checked that his fundraising request was legal before sending it to 48 managers' because [Respondent] asked his employees to donate to the CT Democratic Party's federal account and not to Malloy's campaign directly.

Because May's request of his employees focused solely re-electing Malloy, I believe that the substance of his actions violates Connecticut's campaign funding laws, which prohibit contributions from a business entity, labor union or other organizations doing business with the State.

3. The Commission docketed this complaint pursuant to General Statutes § 9-7b (a) to determine whether Complainant's allegations pertaining alleged violations of campaign finance laws by Respondent, were supported by the facts after investigation. State contractors are prohibited from soliciting contributions for or making contributions to either a gubernatorial candidate or a state party committee pursuant to General Statutes § 9-612 (f).
4. The email that is subject of this complaint was sent on September 27, 2013 using Respondent's "Gmail" email account and read as follows:

[Subject] Contribution Request – CT Governor Malloy

The next gubernatorial election is upon us, and I am asking each of you to join me in financially supporting Connecticut's Governor Dannel P. Malloy.

During Governor Malloy's first term, he battled through issues of historic proportions- from nature's wrath to one man's horrific actions – from record economic security to growing jobs and opportunity. Through it all, the Governor as shown decisive leadership, skillful collaboration and a keen ability to keep Connecticut moving forward.

Additionally, Governor Malloy has clear energy goals that align with our corporate mission and initiatives. He wants clean, reliable and affordable energy – so do we. He brought all appropriate stakeholders together to develop the state's first comprehensive energy policy. He understands the value of and is supportive of expanding access to natural gas. He is supportive of bringing clean, affordable carbon neutral large scale hydro power into New England. And, he has been a supportive partner in our system hardening efforts and storm preparation initiatives.

While he has accomplished much, there is more to do. Please join me in providing support to continue the work begun, providing new opportunities, and securing the leadership to make it happen.

*Thank you for your consideration I have asked Peg Morton to personally follow up with each of you. Please make contributions payable to: **Democratic State Central Committee – Federal.***

Tom

[Original Emphasis]

5. General Statutes § 9-612, provides in pertinent part:

...

(f) (2) (A) ***No state contractor***, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder, of a valid prequalification certificate, ***shall make a contribution to***, or, on and after January 1, 2011, ***knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee; ...***
[Emphasis added.]

6. General Statutes § 9-613, provides in pertinent part:

(a) ***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 or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party, except as provided in subsection (b) of this section.***
[Emphasis added.]

7. General Statutes § 9-614, provides in pertinent part:

(a) ***An organization may make contributions or expenditures, other than those made to promote the success or defeat of a referendum question, only by first forming its own political committee.*** The political committee shall then be authorized to receive funds exclusively from the organization's treasury or from voluntary contributions made by its members, but not both, from another political committee or, from a candidate committee distributing a surplus and (1) to make contributions or expenditures to, or for the benefit of, a candidate's campaign or a political party,

or (2) to make contributions to another political committee. No organization shall form more than one political committee.
[Emphasis added.]

8. General Statutes § 9-612 (f) does not prevent a Connecticut state contractor from contributing to the federal account of a state central party committee. However, the Commission notes there could be scenarios where the Commission might consider such contributions by a state contractor to a state central committee's federal account in connection with subsequent expenditures as problematic under Connecticut's campaign finance laws. See General Statutes §§ 9-601c, 9-612 (f) and 9-622 (5). See also Advisory Opinion 2014-001, *The Use of Federal and State Accounts of Party Committees* advising that Connecticut state party committees with state and federal accounts must pay for their expenses for state candidates with money raised within the Connecticut financing system, i.e. from permissible contributions properly reported under Connecticut law. Federal law does not create a loophole in Connecticut campaign finance laws that would allow federal committees to make expenditures that are also contributions regarding Connecticut candidates. State Committees should structure their plans to comply with both state and federal law. In some instances this may mean, for example, that they cannot support state or federal candidates within the same communication, that they have to compartmentalize staffing arrangements, or that they must purchase assets from the federal committees if they wish to utilize them.
9. By way of example, if state contractor contributions were solicited for the benefit of Connecticut statewide candidates and were later to be used to make expenditures for such purposes and coordinated with the state party's state account, the Commission would conclude that they were disguised contributions from the state contractor to the state central committee's state account and therefore be prohibited by Connecticut campaign finance laws. See General Statutes §§ 9-601c, 9-612 (f) and 9-622 (5).
10. After investigation, the Commission finds that there were 28 individual contributions from NU employees to the Democratic State Central Committee (hereinafter "DSCC") federal account made *after* Respondent's September 27, 2013 email solicitation. Further, the Commission finds that the subject email was sent to 36 individuals using their NU email accounts. Finally, the Commission finds that the contribution amounts ranged from \$250.00 through \$10,000 and totaled \$50,750 in contributions from NU officers and employees to the DSCC. Based upon the evidence, there is no violation of General Statutes § 9-613 as there are no prohibited business entity contributions. The solicitation was for contributions from employees of Northeast Utilities not the business entity itself so there was no violation of General Statutes § 9-613.

11. References to a labor union in the complaint notwithstanding, the investigation did not reveal that contributions were made by a labor union in violation of General Statutes § 9-614 and therefore this allegation is dismissed.
12. Respondent denies that he drafted the email solicitation that is subject of this complaint or that he solicited NU employees at the behest of either the DSCC or its agent or Governor Malloy or his agents. Further, Respondent asserted that his September 27, 2013 email solicitation was drafted by NU Government Affairs staff for his approval and was based on and consistent with NU's business strategy and past charitable and political giving. After investigation, the Commission finds that Respondent utilized the NU Government Affairs staff to develop and implement the email solicitation that resulted in this complaint.
13. Upon investigation, Margaret Morton, Vice-President, Government Affairs at NU, explained that she conceived of and drafted the email solicitation disseminated under the name of Respondent and ultimately received Respondent's approval for its use. Further, Ms. Morton claims that the solicitation was an effort to further NU's business strategy and concedes it was in support of Governor Malloy and his policies. She readily admits that she greatly admires Governor Malloy. However, Ms. Morton insisted that she was aware of various Connecticut campaign finance laws and the intent of the solicitation was to support the DSCC *federal account* and not the campaign of Governor Malloy.
14. Additionally, Ms. Morton denied that the DSCC and its agents assisted her with the drafting of the email or solicited funds, other than for its *federal account*, in relation to NU or its officers, agents and employees. Ms. Morton identified Mr. Ben Josephson as her contact at the DSCC and stressed that political giving is a standard business outreach strategy of NU that is handled by NU Government Affairs.
15. According to Ms. Morton, Mr. Josephson and she had a telephone conversation regarding fundraising from NU for the DSCC federal account. That conversation, according to Ms. Morton, resulted in her designing the email solicitation that is subject of this complaint. Ms. Morton denied that she was ever solicited for funds for the DSCC from the state party for its state or federal account for the purpose of supporting a statewide candidate. There is no evidence to support her coordinating or consulting with either the DSCC or its agents or with Governor Dannel Malloy and his agents regarding the message on behalf of Governor Malloy in the email solicitation itself.
16. Upon investigation, Mr. Ben Josephson, explained that he is an employee of O'Neil and Associates, a public relations firm. Further, Mr. Josephson was assigned to the DSCC by his firm who has a contract with them and he reports to the DSCC Executive Director Jonathan Harris. Mr. Josephson explained that he was aware of Connecticut campaign finance laws and denied that he solicited any contributions on the behest of the DSCC from Respondent,

NU employees or agents or Ms. Morton, other than for its *federal account*. Further, Mr. Josephson denied that he requested any contributions from Respondent, Ms. Norton, NU employees or agents on behalf of or for the benefit of Governor Dannel Malloy or his agents.

17. Additionally, Mr. Josephson admitted that he requested contributions from Ms. Norton as an agent of NU Government Affairs on behalf of the DSCC because she was in Government Affairs. Mr. Josephson asserts that he specifically solicited her with clear instructions regarding the need that any resulting contributions be directed to the DSCC *federal account*.
18. Upon investigation, the Commission finds that the responses and assertions made by Respondent, Ms. Morton and Mr. Josephson, as detailed in paragraphs 11 through 17 above, are consistent with extensive witness interviews conducted and detailed records reviewed by Commission staff pertaining to this complaint. While the Commission does not have jurisdiction over the DSCC pertaining to its federal filings, a search of Federal Election Commission records confirmed the deposits and reporting of various contributions by NU officers and employees as detailed herein.
19. On September 27, 2013 the solicitation did not violate the state contractor ban prohibiting contributions to exploratory committees and candidate committees in General Statutes § 9-612 (f). Specifically, upon investigation and for the narrow purpose of this complaint, the Commission finds as a factual matter that Governor Malloy did not have either an exploratory committee or a candidate committee in existence at the time of Respondent's solicitation in this matter. Therefore, based upon the timing of such solicitation, the prohibitions in General Statutes § 9-612 (f) pertaining to these committees do not apply.
20. Because the contributions related to Respondent's solicitation in this matter were deposited into the DSCC's federal account which is generally outside the Commission's jurisdiction, and not to a state or local part committee as proscribed by General Statutes § 9-612 (f) (2) (A) (iii), the Commission lacks the authority pursuant to General Statutes § 9-7b to sanction the conduct. The Commission strongly condemns the use or attempted use of federal accounts to influence state elections.
21. While the Commission finds the evidence in this case does not support a legal finding of a violation of the General Statutes §§ 9-612, 9-613, or 9-614 as it relates to the Respondent Thomas May, the Commission does conclude that the content of the solicitation by Mr. May is both offensive and disturbing and violates the spirit and intent of the Connecticut State Contractor ban.

22. Although the Commission has no jurisdiction over contributions made to the federal account of the DSCC, the Respondent and the NU staff and its agents, which includes legal and governmental affairs personnel familiar with campaign finance law, should have been aware that the content of the solicitation to NU employees could be problematic in light of Connecticut's strong campaign finance laws.
23. The Commission would caution the Respondent to avoid possible violations of state campaign finance laws, or even the mere appearance of such possible violations in the future, and, in the strongest terms cautions and urges against the use of, or reference to, Connecticut candidates or campaigns in fundraising solicitations for federal accounts.¹
24. As to the DSCC, which is not a Respondent in this case, although the Commission finds a lack of evidence to support the conclusion that the Respondent and/or its agents, coordinated with the state party to make disguised contributions violative of the law, the Commission, consistent with its advice in Advisory Opinion 2014-001 and as stated in paragraph 8 of this Findings and Conclusions, will continue to monitor the activities of the DSCC and any prohibited transactions pursuant to State Law will be investigated and prosecuted by the Commission.
25. The Commission stresses that if a case is brought in which contributions from state contractors were raised into the federal account of a state party and used to support a statewide candidate the Commission would prosecute the matter and find violations pursuant to the state contractor ban pursuant to General Statutes § 9-612 (f). Under these circumstances, the Commission would consider the fundraising for that account and possibly draw conclusions based on how such money was solicited and received. Specifically, there might be a case where a solicitation referencing Governor Malloy would be included in the mix of facts to determine whether the DSCC coordinated its activities with a prohibited contributor source to raise funds under the guise of contributions to a federal account to spend in coordination with the DSCC on a statewide candidate, which would be prohibited.
26. Therefore, to be very clear, the Commission stresses that if a case is brought in which contributions from state contractors were raised into the federal account of a state party and subsequent expenditures made to support a statewide candidate, the Commission would prosecute the matter and find violations pursuant to the state contractor ban pursuant to General Statutes § 9-612 (f).

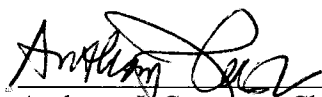
¹ The Commission strongly urges the Legislature to review and strengthen the law to prohibit the use of the federal account as a bypass to the State Contractor Ban which improperly benefits party and candidate committees.

ORDER

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

That the Complaint be dismissed.

Adopted this 16th day of September 2014 at Hartford, Connecticut



Anthony J. Castagno, Chairman
By Order of the Commission