

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Catherine A. Thomas,
Grosvenordale (Thompson)

File No. 2014-137

AGREEMENT CONTAINING CONSENT ORDER

This Agreement by and between John E. French and Charles L. Pennewill, of the Town of Windham, County of Windham, State of Connecticut (hereinafter "Respondents"), and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Respondent French was a candidate for state senate from the 29th Senatorial District at the November 4, 2014 election. Further, Respondent Zydanowicz registered the candidate committee "French for Senate 2014" (hereinafter "the Committee") and designated Respondent Pennewill his treasurer. The Committee applied for and received a grant from the Citizens' Election Program (CEP).
2. The Commission's Campaign Disclosure & Audit Unit examined the financial disclosure reports and supporting documentation provided by the Committee following the committee's selection for review as part of the post-election random audit process for the 2014 election cycle. The Summary of Examination for the Committee's audit report reflects no significant problems that would require additional investigation by the Commission's Enforcement Unit.
3. Complainant alleged that Respondent French violated General Statutes § 9-601b, § 9-616, § 9-706, et al, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, by making expenditures as a CEP candidate that attacked Governor Malloy's record. *See* Advisory Opinion 2014-04, *Negative Communications Featuring Candidates for Different Offices* (pertaining to its application of General Statutes § 9-601b, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2).
4. More specifically, Complainant alleged that the Committee disseminated a double-sided postcard by mail, on or about October 21, 2014, to multiple households in the 29th District that "has the patently obvious ... purpose of bringing about the defeat of Governor Malloy and promoting the election of Tom Foley, the Republican candidate for Governor" and thereby violating Connecticut campaign finance law because Governor Malloy was not Respondent's direct opponent. *See* General Statutes § 9-601b, § 9-616, § 9-706, et al; Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2; and Advisory Opinion 2014-04.

5. The Commission notes that Respondent French and Respondent Pennewill have no prior cases with the Commission. Furthermore, Respondents cooperated fully with this investigation and provided comprehensive financial records from their committee, including checks, invoices and receipts, for the expenditures pertaining to this complaint and investigation.
6. By way of background, the Commission at its October 17, 2014 regular monthly meeting voted to issue an Advisory Opinion to respond to requests for clarification regarding the ability of candidates in the CEP to make expenditures for communications that refer to – and oppose or feature in a negative light – other candidates who are not their direct opponents.
7. As a result, Advisory Opinion 2014-04 reiterated longstanding Commission advice that in order to avoid making an impermissible expenditure from a CEP candidate committee, committees of candidates and political parties must pay their proportionate share of the communication’s costs as a joint expenditure. *See* Advisory Opinion 2014-04.
8. General Statutes § 9-601b, provides 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 to promote the success or defeat of any candidate seeking 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 the success or defeat of any political party;
9. General Statutes § 9-607, provides in pertinent part:
 - (g) (1) As used in this subsection, (A) “the lawful purposes of the committee” means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate; ...
 - (2) Unless otherwise provided by this chapter, any treasurer, in accomplishing the lawful purposes of the committee, may pay the expenses of: (A) Advertising in electronic and print media; (B) any other form of printed advertising or communications including

“thank you” advertising after the election; (C) campaign items, including, but not limited to, brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, campaign business cards, direct mailings, postcards, palm cards, “thank you” notes, sample ballots and other similar items; ... and (Z) any other necessary campaign or political expense.

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

(b) A candidate committee may pay or reimburse another candidate committee for 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, including any shared expenses for which only the committee being paid or reimbursed was under a contractual obligation to pay.

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.

11. General Statutes § 9-706, provides in pertinent part:

(a) (1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, ... The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of subsections (d) to (g), inclusive, of this section.

...

(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive.

12. Regulations of Connecticut State Agencies § 9-706-1, provides:

(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.

(b) The absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate's nomination for election or election shall mean that the expenditure was not made to directly further the participating candidate's nomination for election or election, and thus was an impermissible expenditure. Contemporaneous detailed documentation shall mean documentation which was created at the time of the transaction demonstrating that the expenditure of the qualified candidate committee was a campaign-related expenditure made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements. Contemporaneous detailed documentation shall include but not be limited to the documentation described in section 9-607(f) of the Connecticut General Statutes.

13. Regulations of Connecticut State Agencies § 9-706-2, provides in pertinent part:

(a) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following citizens' election program requirements. Permissible campaign-related expenditures shall include but are not limited to expenditures for the following:

1. Purchase of political campaign advertising services from any communications medium, including but not limited to newspaper, television, radio, billboard or internet;

2. Political campaign advertising expenses, including but not limited to printing, photography, or graphic arts related to flyers, brochures, palm cards, stationery, signs, stickers, shirts, hats, buttons, or other similar campaign communication materials;
3. Postage and other commercial delivery services for political campaign advertising; ...

(b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following citizens' election program requirements. Participating candidates and the treasurers of such participating candidates ***shall not spend funds in the participating candidate's depository account for the following:***

...

8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee;

...

10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure; ...

13. Independent expenditures to benefit another candidate;

14. Expenditures in violation of any federal, state or local law;

[Emphasis added.]

14. On October 17, 2014, the Commission issued Advisory Opinion 2014-04 instructing and cautioning candidates regarding negative communications that feature candidates other than their opponents or for different office. The Commission directed that:

[W]hen a CEP candidate makes a communication that is not directly related to the candidate's own race and that also promotes the defeat of or attacks a candidate that is not opponent direct opponent of the candidate sponsoring the communication, but is in a different race, then the cost of that communication must be properly allocated. ... [T]he candidate committee of a CEP

participant may not attack candidates opposing other members of such candidate's party.

15. The Commission finds that the campaign mailer that is the subject of this complaint and investigation is in the form of a postcard and provides a disclaimer from the Committee pursuant to General Statutes §9-621. Further, the Commission finds that the postcard references Respondent French's opponent Mae Flexer and Governor Malloy, includes photos of Governor Malloy and contains the following excerpts:

With a gas tax of 49.6 cents per gallon – this may be the best way to get to work (There is a photo of Dan Malloy along with Representative Flexer riding on a motorcycle and each is named.)

Governor Malloy and Mae Flexer continue to hit our families where it hurts most – our wallets.

Governor Malloy and Mae Flexer are taxing families right out of Connecticut.

Say no to more taxes. – Say no to Malloy and Flexer.

16. The Commission finds that the above postcard was an expenditure pursuant to Regs. Conn. State. Agencies § 9-706-1 that benefited the gubernatorial campaign of Thomas Foley and opposed the re-election of Governor Malloy. The Committee was limited by both statute and regulation to making expenditures of the Committee's funds for its own benefit. Therefore, this expenditure by the Committee was inconsistent with the advice of Advisory Opinion 2014-04 and contrary to the Commission's advice and directives therein. *See* Advisory Opinion 2014-04, § 9-601b, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.
17. Respondents should have, pursuant to General Statutes § 9-610 (b) and consistent with Advisory Opinion 2014-04, properly allocated a portion of the cost of the subject mailer with the Thomas Foley campaign or the Party Committee because the communication opposed Governor Malloy, clearly identified him as a candidate, portrayed his policies in a negative light and Governor Malloy was not a direct opponent to Respondent French in his campaign for State Senate from the 29th Senatorial District.
18. After investigation, it was determined that the subject mailer was produced and delivered to the post office by the Committee for distribution by mail prior to the publication of Advisory Opinion 2014-04 by the Commission. The investigation did not reveal any coordination between the Respondents and Thomas Foley, his candidate committee or its agents or the Republican Party.

19. The Commission stresses that in addition to being prohibited from making contributions to benefit other candidates, candidate committees are prohibited from making independent expenditures for the benefit of another candidate because a candidate committee may only make expenditures to promote the nomination or election of the candidate who established the committee. *See* General Statutes § 9-607 (g) (1) (A) (i), Advisory Opinion 2014-04.
20. Under these circumstances there is no allegation or facts discovered to show that the Respondents coordinated the mailers at issue with Thomas Foley's candidate committee. However, the Commission cautions that such an expenditure is still prohibited by Connecticut's campaign finance laws, as an expenditure to attack a candidate that is not the candidate's opponent is, by definition, not an expenditure to promote the nomination or election of the candidate.
21. The Commission concludes, for the reasons detailed herein, that Respondent French and Respondent Pennewill violated General Statutes § 9-607 (g), § 9-706 and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, by using CEP funds to support another candidate and to oppose, through negative references, a candidate committee other than the direct opponent of the Committee.
22. While the Commission notes that Advisory Opinion 2014-04 reiterated the Commission's longstanding advice regarding joint expenditures and the allocation of costs for the same, nevertheless it finds the levying of a civil penalty, under these narrow and specific circumstances, as unwarranted because (1) Respondents did correctly disclose and report the Committee's expenditures for the postcard in question and (2) the Commission reiteration and clarification pertaining to the rules for negative advertisements that included candidates other than opponents in Advisory Opinion 2014-004 was published *after* the postcard in question was produced and delivered by the Committee for distribution by mail.
23. The Commission stresses that had the Respondents arranged for organization expenditures from appropriate committees to cover the costs of the communication that is subject of this complaint pursuant to General Statutes § 9-601b (b) (8), it would have been entirely permissible.
24. Moreover, the Commission's intent in regulating such communications is not with regard to regulating speech pursuant to Advisory Opinion 2014-04, but rather, merely to verify the appropriate campaign finance funds for each communication are properly allocated to each committee benefited pursuant to General Statutes § 9-610. This goal is particularly urgent when, as in this instance, a candidate committee is participating in the CEP and therefore using public funds when engaging in *pro rata* expenditures for joint communications.

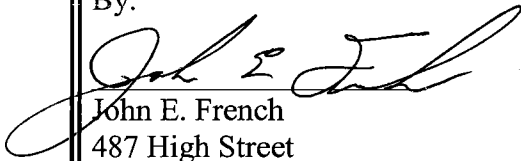
25. Respondents admit all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.
26. The Respondents waive:
 - a. Any further procedural steps;
 - 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.
27. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her concerning this matter.
28. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by either party in any subsequent hearing, if one becomes necessary.

ORDER

IT IS HEREBY ORDERED THAT Respondents shall henceforth strictly comply with the requirements of General Statutes § 9-607, § 9-706 and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.

Respondents

By:



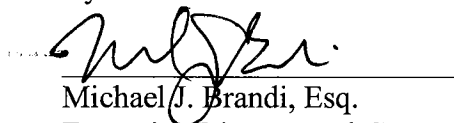
John E. French
487 High Street
Willimantic, Connecticut

Dated:

11/10/16

For the State of Connecticut

By:



Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated:

11/14/16

By:

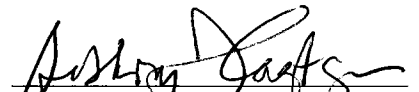


Charles L. Pennewill
35 Obara Drive
Windham, Connecticut

Adopted this ¹⁶~~13~~ day of July, 2016 at Hartford, Connecticut by vote of the Commission.

ASC

ASC



Anthony J. Castagno, Chairman
By Order of the Commission

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ENFORCEMENT COMMISSION