

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Natalie B. Billing,
Mystic

File No. 2014-140

FINDINGS AND CONCLUSIONS

The Complainant filed this Complaint pursuant to Connecticut General Statutes § 9-7b. The Complainant alleged that John Scott, Candidate for State Representative from the 40th General Assembly District, violated various campaign finance laws by running business advertisements that included his name and photograph in a newspaper prior to the November 4, 2014 election. After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. Complainant alleged that newspaper advertisements for Mr. Scott's business appeared "frequently" prior to the November 4, 2014 election, which identified him by name and photograph. Accordingly, Complainant alleged that they were expenditures pursuant to General Statutes § 9-601b, and therefore Mr. Scott violated § 9-621 by failing to include attributions on the advertisements.
2. Complainant further alleged that the photograph appearing in the business advertisements was also used by Mr. Scott's campaign and furthermore that the business' expenditures for the advertisements, design costs and photograph that also appeared in campaign pieces were prohibited business entity expenditures for the benefit of Mr. Scott's election to the General Assembly pursuant to General Statutes § 9-613.
3. By way of background, Mr. Scott was elected at the November 4, 2014 election and is the incumbent member of the General Assembly from the 40th District. At all times relevant to this Complaint Mr. Scott cooperated with this investigation. Mr. Scott has no prior cases with the Commission. Finally, Mr. Scott is an owner of the Bailey Agencies, an insurance company with an office in the Town of Groton.
4. There is no dispute that advertisements for the Bailey Agency appeared featuring a colored photograph of Mr. Scott in the October 19, 22 and 26 editions of *The Day* newspaper. *The Day* is published in New London, and its general circulation and news coverage includes town within the 40th General Assembly District. There is no claim that the advertisements in question specifically reference Mr. Scott's candidacy or otherwise expressly advocate for Mr. Scott's election.

5. 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;

(2) *Any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail; ...*

(b) The term “expenditure” does not mean:

...
(4) *Uncompensated services provided by individuals volunteering their time on behalf of* a party committee, political committee, slate committee or *candidate committee*, including any services provided for the benefit of nonparticipating and participating candidates under the Citizens’ Election Program and any unreimbursed travel expenses made by an individual who volunteers the individual’s personal services to any such committee. *For purposes of this subdivision, an individual is a volunteer if such individual is not receiving compensation for such services regardless of whether such individual received compensation in the past or may receive compensation for similar services that may be performed in the future;*

...
(9) *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.]

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. No business entity shall establish more than one political committee. A political committee shall be deemed to have been established by a business entity if the initial disbursement or contribution to the committee is made under subsection (b) of this section or by an officer, director, owner, limited or general partner or holder of stock constituting five per cent or more of the total outstanding stock of any class of the business entity. [Emphasis added.]

7. 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, ... 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 as a disclaimer (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual ... 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 committee, the name of the candidate.*** [Emphasis added.]

8. Expenditures for advertisements promoting the candidacy of a candidate for General Assembly require an attribution pursuant to General Statutes § 9-621. Further, pursuant to § 9-613 a business entity cannot make a coordinated expenditure for advertisements promoting the candidacy of a candidate for General Assembly.
9. General Statutes § 9-601b (b) (4) provides that the following is *not* an expenditure: *Uncompensated services provided by individuals volunteering their time on behalf of a party committee, political committee, slate committee or candidate committee.*
10. The Commission finds, upon investigation, that the candidate provided proof that photographs used by his campaign, and allegedly from his business advertisements, were taken by a friend at a campaign event on a volunteer basis. Further, the photographs used for his campaign were forwarded to Mr. Scott by his friend and were reproduced at cost by the campaign, not his business. Mr. Scott denies that the campaign for General Assembly and his business shared photographs or cost for the development of any communications.
11. The Commission, in this instance, finds Mr. Scott's explanations as plausible and further finds after investigation that such explanation pertaining to the taking of photographs for the campaign was corroborated by witness testimony.
12. Upon investigation, the Commission finds that the acquisition of the campaign photograph that allegedly was provided by a business was more likely than not acquired through uncompensated services provided by an individual volunteering for his time on behalf of Mr. Scott's campaign and therefore is *not* by definition an "expenditure" pursuant to General Statutes § 9-601b (b) (4). The Commission otherwise finds a lack of evidence suggesting that photographs of Mr. Scott were allegedly shared by his business with his candidate committee and therefore dismisses this allegation.
13. Pertaining to the Bailey Associates advertisements appearing in the October 19, 22 and 26 editions of *The Day* newspaper just prior to the November 4, 2014 election, the commission finds that Mr. Scott provided to the Commission ample business records evidencing a prior history or pattern of similar advertising by that company in *The Day*.
14. More specifically, Mr. Scott provided ten years of records that upon thorough inspection and review demonstrated that his business has a long standing practice of using *The Day* for its advertising. Furthermore, the Commission finds that the pattern of use, as substantiated by such records, appears consistent with the more recent advertising by Bailey Associates in *The Day* in the weeks prior to the November 4, 2014 election that is subject of this complaint.

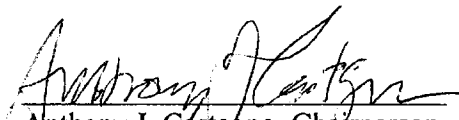
15. General Statutes § 9-601b (b) (9) provides that the following is *not* an expenditure: *A commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate.*
16. The Commission concludes therefore that pursuant to General Statutes § 9-601b (b) (9) the purchase of advertisements by the Bailey Agencies that appeared in the October 19, 22 and 26 editions of *The Day* newspaper and included the name and photograph of Mr. Scott were *not* by definition “expenditures” to benefit his campaign and therefore were *not* prohibited business entity expenditures pursuant to General Statutes § 9-613.
17. The Commission, for the reasons detailed in paragraphs 13 through 16 above, therefore dismisses the allegation pertaining to the appearance of advertisements several weeks prior to the November 4, 2014 election that contained Mr. Schott’s photograph and name in *The Day*.
18. The Commission concludes the advertisements that were subject of this complaint did not require an attribution pursuant to General Statutes § 9-621 (a) because they were not “expenditures” to benefit a candidate, but rather in exception to the expenditure definition and therefore exempted from the attribution requirements. The Commission therefore dismisses the allegations as they pertain a failure to comply with § 9-621 (a).
19. Because the Complainant’s allegations are not supported by the facts and law after investigation this complaint warrants dismissal.

ORDER

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

That the complaint is dismissed.

Adopted this 20th day of October, 2015 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission