

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Roberta Clapper
Norwich

File No. 2015-153

FINDINGS & CONCLUSIONS

Complainant Roberta Clapper of Norwich filed this complaint pursuant to Connecticut General Statutes § 9-7b alleging that Chelsea Botanical Gardens, a non-profit organization in Norwich, had made an expenditure that benefitted candidates for municipal office in Norwich by hosting an event to tour the garden facilities before the election. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. Chelsea Gardens Foundation, Inc., is a not-for-profit entity organized under Chapter 501 (c) (3) of the Internal Revenue Code as a charitable organization. The complainant identified foundation president Hugh Schnip as well as municipal candidates Peter Nystrom and Braddock Tucker as potential respondents.
2. Complainant alleged that the Chelsea Gardens Foundation hosted an event that benefitted candidates running for election to the Norwich City Council. Specifically, Complainant alleged that:

Chelsea Gardens has promoted the success of political candidates who publicly endorse their own success, and provided assets, resources, influence and expenditures on behalf of the attending political candidates, subsequently promoting the defeat [of] their competitive political counterparts who are without the benefits of Chelsea Garden Expenditures (sic), influence, and media connections and contributors.¹

3. Based on the Commission's investigation, on October 24, 2015, the Chelsea Gardens Foundation hosted a "Walking Tour for Community Leaders" at its Chelsea Botanical Gardens facility in Norwich. The tour included transportation to the site via bus from the Norwich Transportation Center.² According to respondents' statements as well as information gathered during the course of this investigation, the Chelsea Gardens

¹ Affidavit of Complaint, Roberta Clapper, Norwich, SEEC File No. 2015-153 (State Elections Enforcement Comm'n., Oct. 30, 2015) (reflecting allegations against Chelsea Gardens Foundation for campaign finance violations).

² See Invitation, Chelsea Botanical Gardens "A Walking Tour for Community Leaders."

Foundation invited more than 150 individuals representing various groups to the tour,³ including:

- all sitting members of the Norwich City Council and the mayor;⁴
- candidates for the city council and the board of education;⁵
- members of the Democratic and Republican Town Committees in Norwich;⁶
- members of the board and the executive board and staff of the Greater Norwich Area Chamber of Commerce;⁷
- members of the board and staff of the Norwich Community Development Corporation;⁸
- members of the Norwich Rotary Club;⁹
- state officials representing Norwich in the General Assembly;¹⁰
- community volunteers and citizens;¹¹ and,
- media representatives.¹²

³ See “Chelsea Botanical Gardens Tour – Purpose and Invitation Logistics,” received by SEEC on Dec. 7, 2015 (signed by Karen Neeley, volunteer, Chelsea Botanical Gardens; Hugh Schnip, president; and Brandon Hyde, assistant treasurer).

⁴ See Email from Rafaela Rivera, secretary to the mayor, to Bill Eyberse, Mark Bettencourt, Pete Desaulniers, Sofee Noblick, Terrell Wilson, and William Nash (Oct. 8, 2015) (forwarding email invitation from Chelsea Botanical Gardens to members of Norwich City Council).

⁵ See, e.g., Email from Karen Neeley to Pete Desaliners, Mark Bettencourt, Tucker Braddock, Elanah Sherman, Ed Martin, and campaign@browningfornorwichcouncil.net (Oct. 20, 2015) (disseminating information about Chelsea Botanical Gardens prior to candidate debate and inviting city council candidates to walking tour). Peter Nystrom, a Republican candidate for Norwich City Council, acknowledged in his response to this complaint that he had attended the event at Chelsea Botanical Gardens on October 24, 2015. See Letter from Peter Nystrom to Scott Branfuhr (Dec. 2, 2015) (responding to allegations in complaint 2015-153).

⁶ See Email from Karen Neeley to Shiela Hayes (asking Hayes to forward invitation to Norwich DTC members). See also Email from Karen Neeley to Brandon Hyde, *et al.* (Oct. 8, 2015) (asking Hyde to facilitate sending invitation to secretary of Norwich RTC).

⁷ See Email from Karen Neeley to “Angie” (membership@norwichchamber.com) (Oct. 8, 2015) (asking “Angie” to distribute invitation to walking tour to staff and board of Greater Norwich Area Chamber of Commerce).

⁸ See Email from Karen Neeley to Bob Mills (Oct. 8, 2015) (asking Mills to distribute walking tour invitation to board and staff at NCDC).

⁹ See Email from Karen Neeley to Mary Richardson (Oct. 8, 2015) (asking Richardson to send email to “noontime Rotary secretary” inviting members to walking tour). Neeley later remarked that she would send the invitation to members of the “Daybreak” Rotary club. See Email to Brandon Hyde, *et al.*, *supra* at footnote 5.

¹⁰ See Email from Karen Neeley to Rep. Ryan, Kevin [Kevin Ryan] (Oct. 13, 2015) (inviting Ryan to walking tour at Chelsea Botanical Gardens); Email from Karen Neeley to Sen. Osten [Cathy Osten] (Oct. 13, 2015) (inviting Osten to walking tour at Chelsea Botanical Gardens).

¹¹ Karen Neeley sent an email to a long list of individuals – mostly identified only by email address – but among the recipients were community volunteers and political candidates.

¹² See List of Attendees at October 24 Walking Tour (including representatives from BULLETIN and THE DAY).

4. According to respondents, the Chelsea Gardens Foundation decided to make the walking tour on October 24 a “private, invitation only tour” because of “a strong social media presence of opposition to this project . . .”¹³ The purpose of the tour, according to its organizers, was “to give a general overview of the status of the project to community leaders involved in other committees, initiatives and leadership roles in hopes of clarifying any inaccurate information they had heard, to date, and to educate them about the plans to develop the gardens moving forward.”¹⁴ Foundation president Hugh Schnip and Brandon Hyde were the only individuals who presented any information at the tour, according to the foundation.¹⁵
5. General Statutes § 9-601 (8) defines “business entity” for the purposes of Connecticut’s campaign finance statutes to include “private foundations, as defined in Section 509 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended . . .”¹⁶
6. Chelsea Gardens Foundation, Inc., was established as a private foundation under the guidelines of section 509 (a) (2) of the Internal Revenue Code.¹⁷
7. General Statutes § 9-613 prohibits “business entities” from making non-independent expenditures on behalf of or contributions to candidates or candidate committees.¹⁸
8. General Statutes § 9-601b defines an expenditure as “[a]ny 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 . . .”¹⁹

¹³ See “Chelsea Botanical Gardens Tour – Purpose and Invitation Logistics,” *supra* at footnote 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ General Statutes § 9-601 (8) (defining “business entity” for purposes of Connecticut’s campaign finance regime).

¹⁷ See Form 990, Schedule A “Public Charity Status and Public Support” – Chelsea Gardens Foundation, Inc., (Rec’d. Nov. 12, 2013) (indicating that Chelsea Gardens Foundation has tax-exempt status as 509 (a) (2) private foundation).

¹⁸ See General Statutes § 9-613 (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 . . .”) Subsection (g) does allow business entities to make independent expenditures when acting alone. See General Statutes § 9-613 (g).

¹⁹ General Statutes § 9-601b (a) (1) (emphasis added) (defining “expenditure” under Connecticut’s campaign finance regime). See also General Statutes § 9-601b (b) (13) (exempting from definition of “expenditure” “[a] lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code . . .”) In this instance, however, the potential expenditure was not a “communication” but an event.

9. General Statutes § 9-601a defines a contribution as “[a]ny gift, subscription, loan, advance, payment or deposit of money or anything of value, *made to promote the success or defeat of any candidate* seeking the nomination for election, or election 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”²⁰
10. While the definitions contain subtle differences, to qualify as either an “expenditure” or a “contribution” under Chapter 155, the purpose motivating a payment must be to “promote the success or defeat of any candidate.”
11. In this case, the stated purpose for the “event” was to garner support among community leaders for Chelsea Botanical Gardens, but an “event” could actually become promotional of a candidate or candidates even if it were initially planned as a non-partisan, non-promotional gathering.
12. In prior cases, the Commission has relied upon a rubric to determine if an event were actually a “campaign event” promoting candidates.²¹ The indicia considered to evaluate these events includes:
 - 1) Whether the invitations for the event tout the candidate’s presence and/or the chance to hear [the candidate’s] message;
 - 2) Whether the media was alerted as to the candidate’s presence at the event;
 - 3) Whether the candidate notified . . . supporters that [the candidate] would be present at the event;
 - 4) Whether the candidate is distributing . . . 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 [the candidate’s] campaign.²²

²⁰ General Statutes § 9-601a (a) (1) (emphasis added) (defining “contribution” under Connecticut’s campaign finance regime).

²¹ See Findings & Conclusions – In the Matter of a Complaint by Nancy J. DiNardo, Hartford, SEEC File No. 2012-152 (State Elections Enforcement Comm’n., April 17, 2013) (adopting indicia first outlined in SEEC Advisory Opinion 2010-08 to determine whether event qualifies as “campaign event” promoting candidates).

²² *Id.* at paragraph 28.

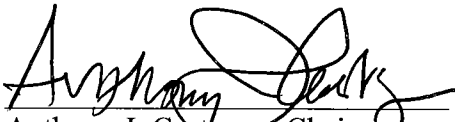
13. According to the Commission's investigation, the event hosted by the Chelsea Gardens Foundation met none of the above-stated indicia to indicate that the event was actually promotional of candidates who attended the event. Invitations to the event simply asked recipients to "Learn More About Chelsea Botanical Gardens" at "A Walking Tour for Community Leaders."²³ Nothing in the invitation announced that candidates would be attending or which "community leaders" had been invited. At the event, none of the candidates who attended spoke to the group, distributed campaign literature, or solicited for funds. A newspaper report on the event did mention that two candidates for Norwich City Council – Tucker Braddock and Peter Nystrom – attended the event.²⁴ Nystrom was quoted in the article regarding the controversy surrounding the project but not about his candidacy.²⁵
14. Based on the facts in this case, there is no evidence to support the allegation that Chelsea Gardens Foundation, Inc., its officers, or the candidates that attended the walking tour to learn about Chelsea Botanical Gardens on October 24, 2015, violated Connecticut's campaign finance statutes.
15. The Commission shall dismiss this matter.

ORDER

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

This case will be dismissed.

Adopted this 13th day of April, 2016 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission

²³ See Invitation, *supra* note 2.

²⁴ See Blessing, Ryan, "Community Leaders tour Chelsea Gardens site" THE BULLETIN (October 24, 2015) (reporting on walking tour of Chelsea Gardens site by community leaders).

²⁵ *Id.*