

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Robert Kalechman, Simsbury

File Nos. 2016-089A

FINDINGS AND CONCLUSIONS

The Complainant alleges that Respondent Connecticut Business & Industry Association (the "CBIA") and made an impermissible contribution to Respondent John Hampton's campaign committee in the form of an automated telephone call or "robo call."¹

1. At all times relevant hereto, the CBIA was a trade association that received income from member organization dues, investment income, programs and services, and earnings from a wholly owned subsidiary.
2. At all times relevant hereto, Respondent Hampton was a candidate for state representative.
3. At all times relevant hereto, Respondent David M. Moore was the treasurer of Respondent Hampton's campaign committee.
4. "Business Entity" is defined in general Statutes § 9-601, as follows:

"Business entity" means the following, whether organized in or outside of this state: Stock corporations, banks, insurance companies, business associations, bankers associations, insurance associations, trade or professional associations which receive funds from membership dues and other sources, partnerships, joint ventures, 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; trusts or estates; corporations organized under sections 38a-175 to 38a-192, inclusive, 38a-199 to 38a-209, inclusive, and 38a-214 to 38a-225, inclusive, and chapters 594 to 597, inclusive; cooperatives, and any other association, organization or entity which is engaged in the operation of a business or profit-making activity; but does not include professional service corporations organized under chapter 594a and owned by a single individual, nonstock corporations which are not engaged in business or profit-making activity, organizations, as defined in subdivision (7) of this section, candidate committees, party committees and political committees as defined in

¹ Additional allegations contained within the complaint shall be address in a separate document under File No. 2016-089B.

this section. For purposes of this chapter, corporations which are component members of a controlled group of corporations, as those terms are defined in Section 1563 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, shall be deemed to be one corporation.

5. "Expenditure" is defined in General Statutes § 9-601b, as follows, 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; or

6. "Contribution" is defined in General Statutes § 9-601a, as follows, in pertinent part:

(a) As used in this chapter and chapter 157, the term "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;

...

(4) An expenditure that is not an independent expenditure[.]

7. "Independent Expenditure" is defined in General Statutes § 9-601c, as follows, in pertinent part:

(a) As used in this chapter and chapter 157, the term "independent expenditure" means an expenditure, as defined in section 9-601b, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.

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

(a) Contributions or expenditures for candidate or party prohibited. 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.

...

(g) Independent expenditures. Notwithstanding the provisions of this section, a corporation, cooperative association, limited partnership, professional association, limited liability company or limited liability partnership, whether formed in this state or any other, acting alone, may make independent expenditures.

9. General Statutes § 9-622 provides, in pertinent part:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter; . . .

10. The investigation into this matter reveals that the CBIA is a professional and/or trade organization supported by the dues of its member organizations, investment income, programs and services, and earnings from a wholly owned subsidiary.

11. As such, the CBIA is a business entity prohibited from making contributions or expenditures to, or for the benefit of a Connecticut state representative candidate's campaign.

12. The CBIA admits that it authorized a robo call to be placed supporting state representative candidate John Hampton, and paid for the costs of such a call.

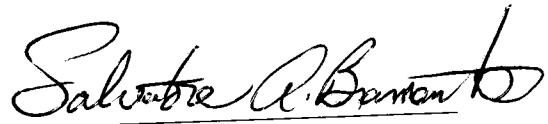
13. The CBIA, however, claims that it was permitted to pay for such a call, as the call was made independent of Respondent Hampton's campaign and, thus, was a permissible independent expenditure.
14. Pursuant to General Statutes § 9-613 the CBIA, as a business entity, is prohibited from making contributions to, or expenditures for the benefit of, a Connecticut state representative candidate.
15. However, pursuant to that same statute, the CBIA is permitted to make independent expenditures in support of Connecticut state representative candidates.
16. Accordingly, whether the robo call in question was permissible turns on whether it was an "independent expenditure."
17. An expenditure is considered independent when it "is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee." General Statutes § 601c.
18. In this case, after an intensive investigation that included statements and records from the Complainant, Respondents, and independent witnesses, the Commission found no evidence that shows any coordination between the CBIA and Respondent Hampton's campaign concerning the robo call.
19. Moreover, the Commission identified no evidence of relationships between the CBIA and Respondent Hampton that would invoke the "rebuttable presumptions" of coordination detailed in General Statutes § 9-601c (b).
20. Accordingly, because the facts in this case do not support the allegations, 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 May, 2017 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~

By Order of the Commission

Salvatore A. Bramante, Vice Chair