

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Jeffery S. Winter, New Milford

File No. 2017-072

FINDINGS AND CONCLUSIONS

The Complainant, Jeffery S. Winter, brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Respondent, Peter Bass improperly sent out a mailer to potential voters, and solicited information from such voters, to benefit his candidacy for Mayor of New Milford.¹ It is the Commission's determination that this matter should be dismissed. The following are the Commission's findings of fact and conclusions of law:

1. At all times relevant hereto, the Respondent was a member of the New Milford Town Council.
2. On May 5, 2017 the Respondent sent a letter (the "Letter") to some constituents requesting feedback concerning the town. The letter read as follows:

Dear [resident's name],

I am writing this letter with the hopes that you can offer me advice on how to improve our Town! My name is Pete Bass, and I was re-elected to serve on the Town Council approximately a year ago.

I intend to ensure that every issue and decision considered by the Town Council will be evaluated so that your desires are taken into account, discussed and communicated prior to any decision on the Town's direction.

I have heard time and time again, "my opinion doesn't matter," or, "the Town doesn't care what I have to say." I am writing you today to tell you **that is not true!** In order to ensure that your voice may be heard I ask that you fill out the attached postcard and mail it back to me (Postage is already on it). By doing this, I will be able to better understand your needs and desires as I carry out my duties on the Town Council.

I also ask that you include a couple of ways for me to contact you so that I may keep you updated, no more than once per month, on issues facing the Town. This

¹ Any allegation not specifically addressed herein is hereby dismissed as such allegations, even if true, would not have amounted to violation of Connecticut's election laws.

way, if you have an issue you feel strongly about you will be able to bring it to my attention so that I can properly represent you! If you would like to reach out to me with additional questions or concerns my e-mail is [redacted].

Thank you in advance for allowing me to serve you for another term and I look forward to working with you to help make New Milford the best that it can be!

Best regards,
Pete Bass

3. The mailing with the Letter included a post card that requested contact information of each recipient along with two questions: 1) "The Thing I love Most About New Milford Is:" and 2) "One Thing I Would Improve About New Milford Is:".
4. The Respondent personally paid for the printing and distribution of the letter out of his own personal funds.
5. On July 11, 2017, the Respondent announced that he was a candidate for Mayor of New Milford.
6. The Complainant alleges that the mailing of the Letter should have been classified as an expenditure promotional of the Respondent's campaign for Mayor of New Milford.
7. If the Letter were considered promotional of the Respondent's candidacy for New Milford, the Respondent would have been required to both disclose such expenditure on a financial disclosure statement, and form a candidate committee within ten days of such expenditure. See General Statutes §§ 9-604, 9-608.
8. Specifically, General Statutes § 9-604 requires that, "Each candidate for a particular public office or the position of town committee member shall form a single candidate committee . . . , not later than ten days after becoming a candidate, with the proper authority as required by section 9-603."²
9. General Statutes § 9-601 (11) defines "candidate" to mean:

an individual who seeks nomination for election or election to public office whether or not such individual is elected, and for the purposes of this chapter and chapter 157, an individual shall be deemed to seek nomination for election or

² Certain candidates may be exempted from the requirement to form a candidate committee if, for example, the intend to completely self-fund their campaigns. To take advantage of such exemption, however, the candidate must file a form declaring such election within ten days of becoming a candidate. No such form was filed by the candidate in this case.

election if such individual has (A) been endorsed by a party or become eligible for a position on the ballot at an election or primary, or (B) solicited or received contributions, other than for a party committee, made expenditures or given such individual's consent to any other person, other than a party committee, to solicit or receive contributions or make expenditures with the intent to bring about such individual's nomination for election or election to any such office. "Candidate" also means a slate of candidates which is to appear on the ballot in a primary for the office of justice of the peace. For the purposes of sections 9-600 to 9-610, inclusive, and section 9-621, "candidate" also means an individual who is a candidate in a primary for town committee members.

10. Thus, if printing and transmitting the Letter were deemed to be an expenditure, making such expenditure would necessitate the Respondent form a candidate committee within ten days of the date such expenditure were made.

11. General Statutes § 9-601b defines "expenditure" as it is used within Chapter 155. It provides, in pertinent part, that an expenditure is "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;"

12. As the Commission has previously noted:

To the extent that the phrase "made for the purpose of influencing the nomination for election" as contained in the definition of contribution and expenditure needs further elucidation, the United States Supreme Court has held that words such as "promote," "oppose," "attack," and "support" "provide[d] explicit standards for those who apply them" and "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *McConnell v. 11 Fed. Election Comm'n*, 540 U.S. 93, 170 n. 64 (2003). See also *Vermont Right to Life Comm., Inc. v. Sorrell*, 875 F. Supp. 2d 376, 389 (D. Vt. 2012) (reading "for the purpose of ... influencing an election ... or affecting the outcome of an election" as simply, "supporting or opposing one or more candidates"). These standards, sometimes referred to as the "PASO test," are what we apply to case such as the instant matter.

The Commission also has issued further guidance in other contexts as to factors considered in deciding whether something promotes, attacks, supports or opposes. In the context of endorsements, the Commission has looked to these indicia to determine if a publicity piece promotes an endorsing candidate: the candidate appears or is identified in the communication; when the communication was created, produced, or distributed; how widely the communication was distributed; and what role the candidate or an agent of the candidate played in the creation, production and/or dissemination of the communication. See Declaratory Ruling

2011-3. In the context of the spending of public funds by incumbent candidates, the Commission has looked to the timing of the release, and whether it appears to be one of a series of communications that collectively seem to advocate for the re-election of an incumbent as well as whether there is mention of the candidacy of the person running; the person's legislative record or policies; an exhortation to vote; or text identifying the record or accomplishments of the appearing candidate in a laudatory manner. See, e.g., *In the Matter of a Complaint by Robert Burke, Bethel*, File No. 2011-128.

In the Matter of a Complaint by Benjamin Ancona, Newington, File No. 2013-140.

13. The Respondent noted that, in response to the information he received in response to the Letter, the Respondent took several actions in his official capacity as councilman. Specifically, the Respondent put a constituent in touch with the Public Works Department to address a road repair issue. He also voted against a solar energy project proposal that was being considered by the Town Council after receiving negative feedback about the project in response to the Letter.
14. While the language does paint the Respondent in a favorable light, suggesting that he is a responsive elected representative that cares about the input of his constituents, taken as a whole, and considering that the responses from the Letter were used by the Respondent in his official capacity, the Commission concludes that the letter was not an "expenditure" as defined by General Statutes § 9-601b. Accordingly, incurring the cost for the Letter did not trigger the requirement that the Respondent form a candidate committee.
15. In addition to the content of the Letter, the Respondent would have been responsible for forming a candidate committee and reporting a contribution and/or expenditure to or by his candidate committee, if the responses to his letter were used by his campaign. General Statutes §§ 9-604 & 9-608. *See also, In the Matter of a Complaint by Anthony Santino, Hamden*, File No. 2013-042 (When a poll is conducted prior to a candidate forming a candidate committee, and that information is used for the campaign, a portion of the cost of the poll, at least, is properly considered a campaign expenditure and requires both the formation of a candidate committee and the disclosure of such expense.).
16. After a detailed investigation, including witness interviews with those that received the mailer, and a thorough review of documents obtained from the Complainant, Respondent, relevant public officials, and third parties, the Commission could not identify any evidence suggesting that the information obtained in response to the letter was used as part of the Respondent's mayoral campaign.

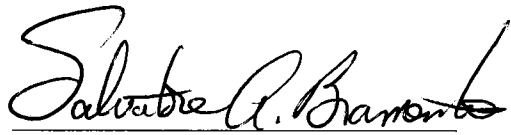
17. The Respondent specifically denies retaining the mailing list used to send the letters and claims it was formed based upon a publicly available list provided by the town's Registrars of Voters. The Respondent further denies that any of the responses to the Letter were used to identify potential donors, voters, or form the platform of his campaign.
18. Accordingly the Commission determines that, based on the specific facts of this case, the Commission should take no further action concerning this complaint. However, the Commission cautions that it will take a highly skeptical view of any candidate or potential candidate sending communications or soliciting information from potential voters in the months immediately preceding the candidate's formation of a candidate committee. Had any evidence been discovered that suggested that anything related to the responses to the Letter had been used as part of the Respondent's mayoral campaign, the outcome of this case would have likely been different.

ORDER

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

That the Commission take no further action with regard to this Complaint.

Adopted this 16th day of MAY, 2018 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~ Salvatore Bramante
By Order of the Commission