

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

RECEIVED
STATE ELECTIONS

In the Matter of a Complaint by
Christopher Healy, Town of Wethersfield

JAN 25 2011

File No. 2008-123

ENFORCEMENT COMMISSION

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Thomas Kehoe ("Respondent"), of the Town of Glastonbury, County of Hartford, State of Connecticut and the authorized representative of the State Elections Enforcement Commission ("SEEC") is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Christopher Healy ("Complainant") brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that on or around August 31, 2008, surplus annual mailings for Respondent incumbent State Representative Thomas Kehoe of the 31st House District, printed pursuant to General Statutes § 2-15a, were distributed to electors within the district some of which bearing the words "Sorry I missed you. I would appreciate your support Nov. 4—Tom Kehoe" written by hand.
2. At all times relevant to the instant Complaint, the Respondent was the State Representative for the 31st House District in the Connecticut General Assembly, and was the Democratic nominee for reelection in the election held on November 4, 2008.
3. On or about February 18, 2008, the Respondent filed with the SEEC a statement of registration (SEEC Forms 1 & 1A) for the aforementioned candidacy, designating the "Friends of Tom Kehoe" candidate committee as the funding vehicle for his candidacy and naming John H. Ferguson as his treasurer.
4. On or about February 25, 2008, and pursuant to the requirements of Connecticut General Statutes § 9-703, the Respondent and his treasurer Mr. Ferguson filed with the SEEC an "Affidavit of Intent to Abide" (SEEC Form CEP 10) upon which each signed and declared under oath that, *inter alia*, "I intend to participate in the Citizens' Election Program (the "Program") established by Chapter 157 of the Connecticut General Statutes and that I understand my obligation to abide by and will abide by the Program's requirements," and "I certify that I have abided by and will continue to abide by the provisions of the Program governing use of the candidate's personal funds . . . as set forth in [General Statutes] § 9-710." At the time of the filing of the aforementioned Affidavit, the Respondent became a "participating candidate" as that term is defined in § 9-703 (b).
5. On or about July 9, 2008, the Respondent and his treasurer Mr. Ferguson filed with the SEEC an "Application for Public Grant Dollars" ("Application") in which the "Friends of Tom Kehoe" candidate committee sought a general election grant from the Citizens' Election Fund ("CEF").
6. Based on the information provided in the Application, the SEEC found that the Application satisfied all of the requirements precedent to a general election grant from

the CEF. On or about July 18, 2008, the SEEC remitted a grant of \$25,100 from the CEF to the Respondent's designated depository account.

7. The Final Audit Report of the "Friends of Tom Kehoe" candidate committee found that during the 2008 campaign, the committee paid a total of \$29,134.81 in expenditures applicable to its \$30,000 expenditure limit, returned \$965.20 in surplus to the CEF upon termination, and that no unreimbursed personal funds of the candidate were used.
8. Pursuant to the authority of General Statutes § 2-15a, the Respondent used public funds to print annual mailings more than three months preceding the election in which the Respondent was a candidate without the intent to bring about his re-election.
9. General Statutes § 2-15a¹, provides in pertinent part:
 - (a) Each member of the General Assembly *shall be entitled to send an annual mailing to each household in such member's district, for informational purposes.* The mailing shall be conducted under the supervision of the Joint Committee on Legislative Management and in accordance with rules adopted by the committee.
 - (b) In even-numbered years, no such mailing may be sent after July fifteenth. A member shall be deemed in compliance with this subsection if the member delivers the mailing to the offices of the Joint Committee on Legislative Management no later than said July fifteenth. [Emphasis added.]
10. At the time the annual mailings were printed, the content of the mailings was informational and contained no words of advocacy which could be construed as promoting the re-election of the Respondent.
11. The annual mailings in question were produced by the Office of Legislative Management ("OLM") in a quantity of 10,000 using state facilities and equipment.
12. The annual mailings were printed on approximately 70# offset opaque 11x17 paper, tri-folded and printed on both sides using a four-color process.
13. OLM expended public funds totaling \$1,314 to print the 10,000 annual mailings, resulting in a \$0.1314 per unit cost for OLM.
14. On or about June 24, 2008, 9,449 annual mailings were distributed via postal mail by the OLM.

¹ The Commission declines to comment on the Respondent's potential liability under General Statutes § 2-15a (b) for his campaign-related use of the surplus annual mailings within the 90 day prohibitory period enumerated therein. Section 2-15a is not within the Commission's jurisdiction as enumerated in General Statutes § 9-7b.

15. The approximately 551 surplus annual mailings were delivered to the Respondent's legislative office by OLM. The Respondent asserts that he inquired about the permissible use of such mailings and was told by an individual that he believed to be credible that he was permitted to use such mailings in any manner so long as they were not sent via postal mail. However, the Respondent acknowledges that this incorrect advice was not given by Commission staff and has no bearing on his liability in this matter.
16. On or about the day alleged in the Complaint—and after the date on which grant monies had been disbursed to “Friends of Tom Kehoe”—the Respondent personally and solely went door-to-door within the 31st House District and distributed by hand approximately 476 of the surplus annual mailings while advocating for his re-election. At those homes where no individual was present, the Respondent left an annual mailing, upon which he had written words advocating his reelection. No attribution required by General Statutes § 9-621 was included on the face of the annual mailing as distributed by the Respondent.
17. The value of items contributed in-kind to campaigns must be reported as the fair market value of such items at the time the contribution is made, which does not necessarily coincide with the original cost of such items. Here, the Commission finds that the fair market value of the surplus annual mailings was not the state's cost to produce the surplus annual mailings, but what it would have cost the Respondent to print an equal type and number through conventional means.
18. The Respondent asserts that he would not have ordered such a low amount of mailings through conventional means and that the fair market value should be calculated at a per unit cost assuming that the Respondent would have placed a order larger than the number of mailers actually used. However, the Commission declines to base its finding of fair market value on this assertion.
19. According to Express Direct Services, LLC in Bloomfield—which “Friends of Tom Kehoe” used for printing and/or mailing other communications advocating his re-election—the price of a batch of 500 annual mailings using 70# offset opaque 11x17 paper, tri-folded and printed on both sides using a four-color process is \$0.76 per mailer. As such, the Commission finds that, using the price quote by the Respondent's regular printer, the fair market value of the 476 surplus annual mailings is \$361.76.
20. The Respondent did not report the use of the annual mailings to his campaign treasurer prior to the filing of the instant Complaint and the “Friends of Tom Kehoe” candidate committee did not reimburse and/or pay either the State of Connecticut or the Respondent for the value of the annual mailings.
21. General Statutes § 9-601b (Rev. to June 8, 2010), provides in pertinent part:
 - (a) As used in this chapter and sections 9-700 to 9-716, inclusive, 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; . . . [Emphasis added.]

22. General Statutes § 9-610 (c), provides:

(c) A candidate may make any expenditure permitted by section 9-607 to aid or promote the success of his campaign for nomination or election from his personal funds, or the funds of his immediate family, which for the purposes of this chapter shall consist of the candidate's spouse and issue. Any such expenditure shall not be deemed a contribution to any committee. [Emphasis added.]

23. General Statutes § 9-607 (k), provides:

(k) *A candidate shall report to his campaign treasurer each campaign expenditure of more than fifty dollars which he has made directly from his own personal funds, except those expenditures for his own telephone calls, travel and meals for which the candidate does not seek reimbursement from his committee, by the close of the reporting period in which the expenditures were made. The candidate shall indicate whether or not he expects reimbursement by the committee. The campaign treasurer shall report all such reimbursed and nonreimbursed expenditures as "campaign expenses paid by the candidate" on the sworn financial statements he is required to file in accordance with section 9-608 and in the same manner as committee expenditures. [Emphasis added.]*

24. General Statutes § 9-621 (a) (Rev. to June 8, 2010), provides:

No individual shall make or incur any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, and *no candidate or committee shall make or incur any expenditure* including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, *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 solicits funds to benefit any political party or committee unless such communication bears upon its face (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; (B) in the*

case of a committee other than a party committee, the name of the committee and its campaign treasurer; or (C) in the case of a party committee, the name of the committee, and (2) the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual; or (B) in the case of a candidate committee, the name of the candidate.
[Emphasis added.]

25. Participating candidates may make expenditures to aid or promote the success of their campaign for nomination or election to a specified office; however, such expenditures must stay within the limits prescribed in General Statutes § 9-710 (c) and will result in a concomitant reduction of the initial grant prior to submission of an application for a grant or must be reimbursed out of committee funds thereafter. *See* SEEC Advisory Opinion No. 2008-2 (2008).

26. General Statutes § 9-710, provides in pertinent part:

...
(c) A candidate who intends to participate in the Citizens' Election Program *may provide personal funds for such candidate's campaign for nomination or election* in an amount not exceeding: . . . (4) for a candidate for the office of state representative, *one thousand dollars*. Such personal funds shall not constitute a qualifying contribution under section 9-704.; . . .
[Emphasis added.]

27. General Statutes § 9-705 (Rev. to Aug. 13, 2010), provides in pertinent part:

...
(f) . . . (2) The qualified candidate committee of a candidate for the office of state representative who has been nominated, or has qualified to appear on the election ballot in accordance with subpart C of part III of chapter 153, shall be eligible to receive a grant from the fund for the general election campaign in the amount of *twenty-five thousand dollars*, provided in the case of an election held in 2010, or thereafter, said amount shall be adjusted under subsection (h) of this section.

...
(j) Notwithstanding the provisions of subsections (a) to (i), inclusive, of this section:

(1) The initial grant that a qualified candidate committee for a candidate is eligible to receive under subsections (a) to (i), inclusive, of this section *shall be reduced by the amount of any personal funds that the candidate provides* for the candidate's campaign for nomination or election pursuant to subsection (c) of section 9-710;. . . [Emphasis added.]

28. The Commission finds as an initial matter that for the purposes of, *inter alia*, General Statutes §§ 9-610 (c), 9-607 (k), 9-621, 9-705 and 9-710, the Respondent's distribution of the 476 surplus annual mailings in the furtherance of his campaign for re-election constituted the Respondent's use of such items as personal property.
29. Furthermore, the Respondent's use of those mailings in that manner constituted a gift of something of value made to his candidate committee with the purpose of influencing his election. Thus, the Respondent made an expenditure pursuant to General Statutes § 601b (a)(1). The value of that expenditure is the fair market value of the mailings, \$361.76, which is the price the Respondent would have paid for them.
30. Because the use of the mailers was an expenditure by the Respondent, he was required by General Statutes § 9-607 (k) to report the value of the aforesaid expenditure to the treasurer of his candidate committee. Immediately upon the filing of the instant Complaint, the Respondent offered to report the value as required.² However, he does not dispute that had the Complaint not been brought, he would not have reported such use, as he was not previously aware that this requirement applied to his use of the annual mailings.
31. Because the Respondent utilized the mailers towards his campaign, the treasurer, pursuant to General Statutes § 9-705 (j)(1), was required to report the value of the mailers and reimburse the Respondent in that value. If the instant Complaint had not been brought and the Respondent had failed to report his use of the mailers to his treasurer, the treasurer would have been unable to fulfill this important duty and the "Friends of Tom Kehoe" campaign would have been impermissibly benefitted in the amount of \$361.76.
32. However, the Commission takes notice that the "Friends of Kehoe" candidate committee would not have exceeded the expenditure limit set in General Statutes § 702 (c) by reimbursing the Respondent for his use of personal property, even if such amount had been timely reported. As found by the final audit of the committee, "Friends of Kehoe" returned \$965.20 to the Citizens' Election Fund.
33. Accordingly, the Commission finds that the Respondent violated General Statutes § 9-607 (k) by failing to report the expenditure associated with the use of the \$361.76 worth of annual mailings to his treasurer.
34. Further, the Commission finds that Respondent violated General Statutes §9-621 (a) by failing to include the proper attribution identifying who paid for and approved the annual mailers.
35. The parties acknowledge that this agreement and resulting consent order is a compromise of a disputed claim and that its entry shall not constitute an admission of

² Commission staff instructed the Respondent at the time to withhold reporting of the expenditure for the annual mailing in any filing required by General Statutes § 9-608 until the conclusion of the instant matter. In lieu of an amendment to any past filing by the 2008 "Friends of Kehoe" candidate committee, the Commission considers this Agreement as disclosure of the \$361.76 in-kind contribution of the Respondent.

any kind by either party and that it is not intended to be used by any other agency or entity as proof of any of the matters asserted herein.

36. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
37. It is understood and agreed that this Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
38. The Respondent waives:
 - (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.
39. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

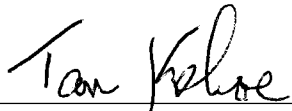
ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with the requirements of Connecticut General Statutes §§ 9-607 (k), 9-621, 9-705 (j)(1) and 9-710 (c).

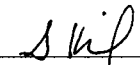
IT IS HEREBY FURTHER ORDERED THAT for his violations of General Statutes § 9-607 (k) and 9-621 (a), the Respondent shall pay civil penalties of four hundred dollars (\$400.00) and fifty dollars (\$50.00), respectively, to the Commission on or before January 25, 2011.

The Respondent:

For the State of Connecticut:



Tom Kehoe
53 Acorn Ridge Rd.
South Glastonbury, CT

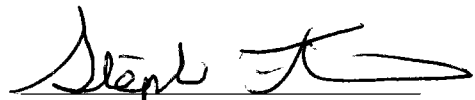
BY: 

Shannon C. Kiehl, Esq.
Legal Program Director
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 1/24/11

Dated: 1/25/11

Adopted this 26th day of JAN of 2011 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission