

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Christopher Healy,
Wethersfield

File No. 2008-137B

FINDINGS AND CONCLUSIONS

Complainant filed the instant complaint with the Commission pursuant to General Statutes §9-7b, alleging that the official website of the candidate committee Friends of John McCarthy, www.friendsofjohnmccarthy.com contains a link to Friends of Nick Creed, a candidate participating in the CEP. Complainant alleges that Friends of John McCarthy is prohibited from making a contribution to another candidate, including another participating candidate. Complainant alleges that the committees of both McCarthy and Creed have violated the letter and spirit of the CEP laws.

After an investigation of the matter, the Commission makes the following findings and conclusions:

1. Friends of John McCarthy was the duly designated candidate committee for John McCarthy's candidacy for State Senator in the 32nd Senatorial District for the November 4, 2008 election. Creed for State Representative was the duly designated candidate committee for Nick Creed's candidacy for State Representative in the 66th Assembly District for the November 4, 2008 election.
2. Mr. McCarthy applied for his grant on June 19, 2008 and Mr. Creed applied for his grant on August 6, 2008. Mr. McCarthy's candidate committee was awarded a grant on June 25, 2008. Mr. Creed's candidate committee was awarded a grant on August 13, 2008.
3. The Friends of John McCarthy campaign (hereinafter, the McCarthy campaign) manager was contacted on October 4, 2008 by the Creed for State Representative campaign (hereinafter, the Creed campaign). The Creed campaign requested that McCarthy campaign post a link to the Creed campaign website from the McCarthy campaign website.
4. On October 7, 2008, the McCarthy campaign webmaster added a box on the McCarthy campaign website with a link to the Creed campaign website as requested. On October 14, 2008, the McCarthy campaign learned that a complaint had been filed regarding the link to the Creed campaign website. On October 15, 2008, the link to the Creed campaign website from the McCarthy campaign website was removed.
5. State Elections Enforcement Commission Advisory Opinion 2008-01 provides: "[U]se of the Internet to communicate with the public would be

considered an expenditure subject to Connecticut's campaign finance laws. See, e.g., *In the Matter of a Complaint by Frank DeJesus, Hartford, State Elections Enforcement Commission File No. 2006-193* (civil penalty imposed for failure to report expenditure related to purchase and payment of web hosting services for website that, at various times, contained messages made for the purpose of influencing an election); see also FEC Advisory Opinion 1998-22 (reporting requirements apply to Connecticut individual's independent creation of a website, costs associated with creating and maintaining that website).

6. General Statutes § 9-601 provides in pertinent part:

As used in this chapter and sections 9-700 to 9-716, inclusive:

(19) "*Coordinated expenditure*" means an expenditure made by a person:

(A) *In cooperation, consultation, in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (i) a candidate, candidate committee, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;*

...

(G) *For a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or said person's agent, has informed said candidate, the candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of said candidate, candidate committee, political committee or party committee, concerning the communication's contents, intended audience, timing, location or mode or frequency of dissemination. [Emphasis added.]*

7. General Statutes § 9-601a provides in pertinent part:

(a) As used in this chapter and sections 9-700 to 9-716, inclusive, "*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 when made by a person with the cooperation of, or in consultation with, any candidate, candidate committee or candidate's agent or which is made in concert with, or at the request or suggestion of, any candidate, candidate committee or candidate's agent, including a coordinated expenditure; [Emphasis added.]*

8. General Statutes § 9-601b 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.]

9. Pursuant to the express language of General Statutes § 9-702 (b)(3), a participating candidate committee is not eligible to receive a grant unless it, *inter alia*, returns the value of all non-monetary contributions to the respective contributors. That express eligibility requirement necessarily implies a legislative intention to prohibit a participating candidate's candidate committee from receiving any non-qualifying contribution, including but not limited to non-monetary contributions, after that candidate applies for an initial grant under General Statutes § 9-706. Said legislative intention is supported by an examination of the remaining provisions of Chapter 157 as well as the legislative history of Public Act 05-5.

10. In order to determine whether the Creed campaign received an impermissible in-kind contribution, the Commission must first determine (1) that the McCarthy campaign made an "expenditure" as that term is defined in General Statutes § 9-601b; and (2) that that expenditure was not an independent expenditure as that term is defined in General Statutes § 9-601 (18) but rather was made with the cooperation of, in consultation or concert with, or at the request or suggestion of Mr. Creed or their agents or was otherwise a coordinated expenditure.

11. In the instant case, the evidence supports the conclusion that the McCarthy campaign made an expenditure as that term is defined in General Statutes § 9-601b by posting a link from the McCarthy campaign website to the Creed campaign website and that that expenditure was not an independent expenditure as that term is defined in General Statutes § 9-601 (18) but rather was a coordinated expenditure as that term is defined in General Statutes § 9-601(19), made with the cooperation of, in consultation or

concert with, or at the request or suggestion of the Creed campaign and or their agents.

12. Furthermore, the coordinated expenditure by the McCarthy campaign constitutes a contribution as that term is defined in General Statutes § 9-601a(a)(4).

13. General Statutes § 9-607 provides in pertinent part:

(1) As used in this subsection, (A) "the lawful purposes of his committee" means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, ... [Emphasis added.]

14. General Statutes § 9-616 provides in pertinent part:

(a) A candidate committee shall not make contributions to, or for the benefit of, (1) a party committee, (2) a political committee, (3) a committee of a candidate for federal or out-of-state office, (4) a national committee, or (5) another candidate committee . .

15. Regulations of Connecticut State Agencies § 9-706-1 provides in pertinent part:

(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.

16. Regulations of Connecticut State Agencies § 9-706-2 provides in pertinent part:

(b) In addition to the requirements set out in Section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following Citizens' Election Program requirements. Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:

...

8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee;

...

17. The McCarthy campaign, by making a contribution to the Creed campaign in the form of posting the Creed campaign web link to the McCarthy campaign web page, violated General Statutes § 9-616(a). The McCarthy campaign also violated Regulations of Connecticut State Agencies §§ 9-706-1(a) and 9-706-2(b) in connection with posting the link. Additionally, the Creed campaign by contacting the McCarthy campaign and requesting that they post a link on their website to the Creed campaign website and having the link posted, violated Gen. Stat. § 9-702(b).
18. Nevertheless, the fair market value of a link under these specific facts is negligible or de minimis. The link was only up for a total of eight days and the cost of the link was negligible or de minimis. Under these specific facts and circumstances, the Commission has determined to take no further action as it would not be an optimal use of its resources.

ORDER

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

That the matter be dismissed.

Adopted this 21st day of April 2010 at Hartford, Connecticut

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", written over a horizontal line.

Stephen F. Cashman, Chairman
By Order of the Commission