

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
John M. Kelly, Newington

File No. 2009-061

FINDINGS AND CONCLUSIONS

The Complainant filed this complaint with the Commission pursuant to General Statutes §9-7b(a)(1), alleging that the campaign of the Republican candidate for Senate in the 9th Senatorial District, Ralph Capenera, seriously underreported expenditures, possibly violating the expenditure limit by over \$13,000.

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

1. The "Capenera for Change" committee (hereinafter "Committee"), which was formed on April 16, 2008, was the candidate committee of Ralph Capenera for the 9th State Senatorial District, in the November 4, 2008 state election.
2. Paul C. Beaulieu was the Committee campaign treasurer and served in that position at all times relevant to this complaint.
3. Ralph Capenera was a participating candidate in the Citizens' Election Program (hereinafter "CEP") and received a grant from the Citizens' Election Fund in the amount of \$85,000 for his campaign.
4. Complainant filed a 9 page complaint "as legal counsel for the *Doyle For State Senate* campaign," and alleged the following violations against Ralph Capenera and his candidate committee:
 1. Failure to report print ads in *Rocky Hill Post*, *Wethersfield Post*, and *Newington Town Crier* weekly newspapers.
 2. Failure to report radio advertising on WTIC AM Radio.
 3. Failure to report production costs for Cox Cable and Comcast television advertisements.
 4. Failure to report re-use of lawn signs from earlier campaigns.
 5. Failure to report expenditure or in-kind receipt for use of this return address.

6. Print ads in *Cromwell Chronicle* and *Middletown Chronicle* were underreported by the committee in their campaign filings.

7. Print ads in *Rare Reminder* underreported by the committee.

8. Underreporting of advertising by campaign in *The Hartford Courant* newspaper; including a front page "Sticker" Advertisement, and the costs of *The Hartford Courant* internet advertisements.

9. The Committee used a business photograph in its campaign website.

10. A mailing sent by the candidate's business benefited his candidate committee.

11. That reported expenses of \$100,328.87, with revised expenditures for underreported and non-reported expenditures, are actually \$113,335.98, and therefore the candidate exceeded expenditure limits as a participating candidate in the CEP.

5. General Statutes § 9-608 provides in pertinent part:

(c) Content of statements. (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: (A) ***An itemized accounting of each contribution, if any, including the full name and complete address of each contributor and the amount of the contribution;*** (B) in the case of anonymous contributions, the total amount received and the denomination of the bills; (C) an itemized accounting of each expenditure, if any, including the full name and complete address of each payee, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be; (D) an itemized accounting of each expense incurred but not paid, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee; ...

(5) Each statement filed by the campaign treasurer of a party committee, a legislative caucus committee or a legislative leadership committee shall include an itemized accounting of each organization expenditure made by the committee. Concomitant with the filing of any such statement containing an accounting of an organization expenditure made by the committee for the benefit of a participating candidate for the office of state senator or state representative, ***such campaign treasurer shall provide notice of the amount and purpose of the organization expenditure to the candidate committee of such candidate.***

(6) In addition to the other applicable requirements of this section, the campaign treasurer of a candidate committee of a participating candidate for the office of state senator or state representative who has received the benefit of any organization expenditure shall, not later than the time of dissolving such committee, ***file a statement with the State Elections Enforcement Commission that lists, if known to such candidate committee, the committee which made such organization expenditure for such candidate's behalf and the amount and purpose of such organization expenditure.***

[Emphasis added.]

6. Complainant alleged that Respondent Beaulieu failed to report print advertisements in the *Rocky Hill Post*, *Wethersfield Post*, and *Newington Town Crier* for the Committee.
7. Respondent Beaulieu provided bank records for the Committee revealing an October 27, 2008 expenditure to *Middletown Press* in the amount of \$2,542.43. The Respondent claims that this expenditure to the *Middletown Press* represents the purchase of advertisements in the *Rocky Hill Post*, *Wethersfield Post*, and *Newington Town Crier* because at the time of the media buy the *Middletown Press* owned each of these papers. A representative of the *Middletown Press* confirmed that in October 2008 purchases of advertising for *Rocky Hill Post*, *Wethersfield Post*, and *Newington Town Crier* would be made through the *Middletown Press*.
8. The Commission finds that the allegation that the Committee failed to report expenditures for print ads in the *Rocky Hill Post*, *Wethersfield Post* and the *Newington Crier* cannot be substantiated. At the time that the ads were placed, each of the above weekly newspapers was owned by *Middletown Press*. The Committee disclosed expenditures in the amount of \$2,542.43 to the *Middletown Press* for ads that ran in the *Rocky Hill Post*, *Wethersfield Post* and the *Newington Crier*. Accordingly, the allegation pertaining to a failure by the campaign to disclose such expenditures is dismissed.

9. Complainant alleged that Respondent Beaulieu underreported the cost of print advertisements for the Committee in the *Cromwell Chronicle*, *Middletown Chronicle* and the *Rare Reminder*.
10. The Complainant asserts that he was quoted \$716.71 for a ½ page ad in the *Middletown Chronicle* and \$376.00 for a ½ page ad in the *Cromwell Chronicle*. Further, Complainant used these figures to estimate total costs for the Capenera Committee ads in these newspapers to conclude and allege that there was underreporting of costs by the campaign.
11. The Commission finds that the *Rare Reminder* publishes both the *Cromwell Chronicle* and the *Middletown Chronicle*. Further, a quote from the *Rare Reminder*'s advertising department to the Commission confirmed the following prices for ½ page advertisements:
 1. *Cromwell Chronicle and Middletown Chronicle*: \$716.37
 2. *Cromwell Chronicle only*: \$376.33
 3. *Middletown Chronicle only*: \$442.74
12. The complainant's allegations pertaining to the estimated costs of ½ page advertisements in the *Middletown Chronicle* quote of \$716.71, more accurately estimates a quote for a ½ page ad that would run in *both* newspapers. The Commission finds that Capenera Committee paid a total of \$3,853.69 to the *Rare Reminder* for advertising in the *Middletown Chronicle* and \$2,580.08 to the *Cromwell Chronicle* for advertising in that newspaper. Accordingly, the Commission concludes therefore that allegation concerning alleged underreporting of expenditures made for advertising in the *Rare Reminder*, *Cromwell Chronicle* and *Middletown Chronicle* is without merit and is dismissed.
13. Complainant alleged the Committee failed to report expenditures for radio advertisements on WTIC AM radio.
14. Respondents Beaulieu and Capenera deny that any radio advertising was purchased from WTIC-AM in Hartford. Furthermore, the Director of Sales for WTIC-AM's parent company CBS Radio Hartford, indicated that a review of its records indicates a request to receive rate information was made by Ralph Capenera in December 2007, but no time was purchased for this candidate in 2007 or 2008. The Commission finds that the Capenera Committee purchased and reported 181 "radio spots" from WKSS-FM in the amount of \$2,400.

15. The Commission finds that with respect to the allegation concerning failure to report radio advertising on WTIC, the allegation is unsubstantiated. The Commission notes that Complainant upon request of the Commission failed to identify witnesses or otherwise substantiate this claim. Accordingly, this allegation dismissed.

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

...
(25) "Organization expenditure" means an expenditure by a party committee, legislative caucus committee or legislative leadership committee for the benefit of a candidate or candidate committee for:

(A) The *preparation*, display or mailing or other distribution of a party candidate listing. As used in this subparagraph, "party candidate listing" means any communication that meets the following criteria: (i) The communication lists the name or names of candidates for election to public office, (ii) the communication is distributed through public advertising such as *broadcast stations*, cable television, newspapers or similar media, or through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery, (iii) the treatment of all candidates in the communication is substantially similar, and (iv) the content of the communication is limited to (I) for each such candidate, identifying information, including photographs, the office sought, the office currently held by the candidate, if any, the party enrollment of the candidate, a brief statement concerning the candidate's positions, philosophy, goals, accomplishments or biography and the positions, philosophy, goals or accomplishments of the candidate's party, (II) encouragement to vote for each such candidate, and (III) information concerning voting, including voting hours and locations; ...

[Emphasis added.]

17. Complainant alleged that the Committee failed to report the production costs for television advertisements. The Senate Republican Majority Committee (hereinafter "SRMC"), which is a legislative leadership committee within the meaning of § 9-601(23), made an October 1, 2008 "organization expenditure" in the amount of \$750 for media production services for a television advertisement. The *Capenera for Change* Committee was the beneficiary of the expenditure.

18. The Commission finds that paying the production costs for television advertisements by a legislative leadership committee on behalf of a senate candidate committee is a permissible organization expenditure as a party candidate listing under General Statutes § 9-601(25)(A). The Commission concludes the Committee received the benefit of "organization expenditure" from the SRMC for television production costs in the amount of \$750 for ads that ran on Cox Cable.

19. However, the investigation revealed that the SRMC failed to timely send notice to the Capenera campaign, as required by General Statutes § 9-608(c)(5). While the failure to receive notice of the value of the organization expenditure is certainly a mitigating factor, the *Capenera for Change* Committee knew it received the benefit of the production of the television ads and yet failed to report the receipt of the organization expenditure prior to dissolution, in violation of General Statutes § 9-608(c)(6). Notice was finally sent by the SRMC on or about August 4, 2009. The SRMC has filed a letter of apology with the Commission and will make an amended disclosure. Accordingly, the Commission will take no further action against the SRMC.
20. Accordingly, the Committee should have disclosed on its November 28, 2008 *Itemized Campaign Finance Disclosure Statement* (SEEC Form 30) the receipt of an organization expenditure from SRMC in Section M of that statement as required by General Statutes § 9-608(c)(6). However, due to the failure by the SRMC to provide notice to the Committee, and its subsequent correction of this error (the committee amended), the Commission will take no further action against the Capenera campaign regarding this allegation.
21. With regard to the alleged failure to report the re-use of campaign signs by the Committee, the homeowner of the property identified by Complainant as bearing such signs stated that the sign for Ralph Capenera she had in the front lawn of her property at 158 Bailey Road was one that she owned from a previous election and had found it in her garage. Further, she explained that, on her own initiative, she put it up to replace a 2008 Committee sign that she claimed was stolen from her front yard.
22. The Commission finds that the sign at issue was not one the Committee had possession or control of, but one that the homeowner had retained and reused. Accordingly, the allegation is dismissed.
23. With regard to the allegation of underreporting cost for advertising in *The Hartford Courant*, an account executive for the newspaper verified for the Commission a detailed statement regarding the expenditures by the Committee.
24. Specifically, the *Hartford Courant* account executive indicated that the "AdNote," an adhesive label promoting Ralph Capenera, placed on the front of 39,977 newspapers cost the campaign \$2,464.00, while the "online" cost for two weeks was \$1,000.00. The total print costs for traditional newspaper ads, according to the account executive were \$10,057.00, for a "total campaign" cost of \$13,521.34.

25. The Commission finds that on the seventh day preceding the election *Itemized Campaign Finance Disclosure Statement* (SEEC 30) filed by the Committee, Respondent Beaulieu reported an expenditure in the amount of \$2,264.00 paid to the *Hartford Courant* on October 14, 2008 for "Newspaper – Advertising." Furthermore, on that same statement the campaign reported an expenditure in the amount of \$7,888.34 paid to the *Hartford Courant* on November 14, 2008 for "Newspaper – Advertising."
26. The Commission finds that on November 1, 2008, the Committee reported a \$3,169.00 expenditure to The *Hartford Courant* made on October 22, 2008 for "Newspaper – Advertising" made on check # 119 in its "*Initial Supplemental Statement*" for the election. The total disclosed in expenditures to the *Hartford Courant* by the Committee and detailed herein totals \$13,521.34, which is the same total claimed by Respondents and the account executive at the *Hartford Courant*. Finally, a copy of a November 30, 2008 invoice from the *Hartford Courant* indicates that Capenera for Change had a balance paid of \$7,265.34, a new balance totaling \$6,623.37 and a credit of (\$641.97) for previous "wrong rates" that were billed to the campaign.
27. The Commission finds based on paragraphs 23 through 25, above, that the total owed and paid as represented by invoices from the *Hartford Courant* was \$13,246.74. The Commission further concludes that when compared to the explanation by Respondents and an account executive of the *Hartford Courant*, this reconciles their estimates to within \$274.60. Each total figure described above, between \$13,200.00 and 13,600.00, is supported by documents and well below the Complainant's "estimated" \$20,193.00 of value and advertising provided by the *Hartford Courant* to the Committee, and alleged to have underreported more than \$7,000 in ad purchases.
28. The Commission concludes that the allegation concerning underreporting of expenditures to the *Hartford Courant* upon investigation is unsubstantiated and is therefore dismissed.
29. General Statutes § 9-710 provides, in relevant 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: (1) For a candidate for the office of Governor, twenty thousand dollars; (2) for a candidate for the office of Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, ten thousand dollars; (3) **for a candidate for the office of state senator, two thousand dollars;** or (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.

30. General Statutes § 9-705 provides in pertinent part:

...
(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;

31. The allegation concerning failure to report use of a campaign return address concerns a post office box rented personally by Respondent Capenera. Respondent estimates the cost was no more than \$4 per month, and had no reason not to report it, but presently has no record of it.

32. As a condition of participating in the CEP, each participating candidate must report all personal expenditures, as the amount would be deducted from the candidate's grant (approximately \$20).

33. With regards to the allegation that the Committee used a photograph from Respondent's business on its website, Respondent acknowledges that the same photograph has been used by both his business and his campaign. However, Respondent Capenera asserts that the photograph of him and his wife was a professional portrait taken for their personal use in their home, well before it was used by his business or his campaign. Respondent Capenera further contends that, while he cannot recall the exact cost or year the photograph was taken, that no business funds were used to produce it, and that the photograph likely predates his first candidacy in 2004. There is no evidence supporting the allegation that the picture was a business expenditure.

34. The Commission finds that the use of a personal photograph described in paragraph 33, above, is the use of a "prior asset" for the campaign and must therefore be valued at its original cost to the candidate, or if lapse of time or relevant circumstance precludes determining such cost, that a prior asset should be valued based on a reasonable estimation of its present value. *See Advisory Opinion 2008-02, Treatment of Prior Assets Used by Candidate Committee in Current Election Cycle.* Furthermore, the Commission concludes that if there was a cost associated with converting that prior asset for use in the campaign, such as reproduction or copyright costs for a photograph, such costs must be reported as expenditures by the candidate committee.

35. Due to the lapse of time, the original purchase price of the photograph of the candidate and his spouse cannot be determined with precision by the Commission. However, Respondents Beaulieu and Capenera should have valued and disclosed the use of prior assets by a candidate for his campaign. Such valuations are important as they would have reduced the amount of this grant by the valuation disclosed, pursuant to § 9-705(j)(1). Due to the low amounts of these expenditures by the candidate, and due to the fact that this was the first election for the CEP, the Commission will take no further action regarding the allegations pertaining to the use of the post office box and the photograph of Respondent Capenera with his spouse.

36. The Commission notes that surplus in excess of the likely value of the use of the post office box and the photograph, \$343.14, was returned to the Citizens' Election Fund.

37. Connecticut 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;

(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 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; ...*

[Emphasis added.]

38. Connecticut 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.
[Emphasis added.]

39. Complainant alleged that a mailing sent in mid-October, 2008 by "Uptown Consignment" to the 9th State Senate District "illegally benefited" *Capenera for Change*. Uptown Consignment is a business owned and operated by Respondent Capenera and his wife that sells clothing on consignment.
40. The Commission finds that in the mailing pertaining to Uptown Consignment described above, there is no mention of Ralph Capenera's candidacy or that of his opponent's, no mention of the 2008 election, or any exhortation to vote for him or against his opponent on the business mailing. Further, there is no mention of his opponent on the business mailing, there is no shared text between the two mailings and its use was not an expenditure within the meaning of § 9-601b(a)(1).
41. The Commission concludes that the direct mail advertising piece done for Uptown Consignment, Ralph and Barbara Capenera's business, was (1) not made for purposes of influencing an election, and while it featured a picture of Respondent Capenera and his wife it was (2) not broadcast on radio or television, and did not appear in a newspaper, magazine or on a billboard. Therefore, the Commission concludes that the direct mail piece was not an expenditure within the meaning of General Statutes § 9-601b(a)(2), and accordingly, the allegation pertaining to an improper business entity contribution from Uptown Consignment to Capenera for Change based on the direct mailing described above is dismissed.
42. General Statutes § 9-711 provides:

(a) If an expenditure in excess of the applicable expenditure limit set forth in subsection (c) of section 9-702 is made or incurred by a qualified candidate committee that receives a grant from the Citizens' Election Fund pursuant to section 9-706, (1) the candidate and campaign treasurer of said committee shall be jointly and severally liable for paying for the excess expenditure, (2) the committee shall not receive any additional grants or moneys from the fund for the remainder of the election cycle if the State Elections Enforcement Commission determines that the candidate or campaign treasurer of said committee had knowledge of the excess expenditure, (3) the campaign treasurer shall be subject to penalties under section 9-7b, and (4) the candidate of said candidate committee shall be deemed to be a nonparticipating candidate for the purposes of sections 9-700 to 9-716,

inclusive, if the commission determines that the candidate or campaign treasurer of said committee had knowledge of the excess expenditure. The commission may waive the provisions of this subsection upon determining that an excess expenditure is de minimis. The commission shall adopt regulations, in accordance with the provisions of chapter 54, establishing standards for making such determinations. Such standards shall include, but not be limited to, a finding by the commission that the candidate or campaign treasurer has, from the candidate's or campaign treasurer's personal funds, either paid the excess expenditure or reimbursed the qualified candidate committee for its payment of the excess expenditure.

(b) If an individual, who is associated with the campaign of a candidate whose qualified candidate committee has received a grant from the Citizens' Election Fund pursuant to section 9-706, makes or incurs an expenditure in excess of the applicable expenditure limit set forth in subsection (c) of section 9-702 for said committee, without the consent of the candidate or campaign treasurer of the committee, the individual shall (1) repay to the fund the amount of such excess expenditure, and (2) shall be subject to penalties under section 9-7b. The provisions of this subsection shall not apply to an individual who is the candidate or the campaign treasurer of such committee. [Emphasis added.]

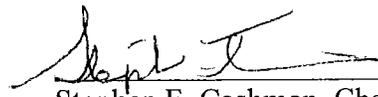
43. Complainant alleges that the "revised expenditures for underreported and non-reported expenditures" by *Capenera for Change* was at least \$113,335.98, and therefore over the expenditure limit for participating candidates for state senate participating in the Citizens' Election Program.
44. The Commission finds that due to the number of allegations detailed above that could not be substantiated upon investigation of the facts, the evidence does not support the conclusion that that the Committee exceeded its spending limit by underreporting expenditures. Furthermore, upon investigation of the various claims of underreporting and business entity contributions, and the reconciliation and corroboration of reported costs, it is concluded that the Committee did not exceed its expenditure limit under the CEP.

ORDER

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

That the matter be dismissed.

Adopted this 20th day of May of 2010 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission