

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Robert Brown, Waterford

File No. 2010-095

FINDINGS AND CONCLUSIONS

Complainant brings this complaint pursuant to General Statutes § 9-7b alleging that candidate Kevin Lembo made public declarations of his intention to run for the office of lieutenant governor while in exploratory committee for an undetermined statewide office and failed to form a candidate committee as required under General Statutes § 9-604 (c). The complainant charges that once Lembo made those declarations he was obligated to transition from exploratory committee into a candidate committee for lieutenant governor. According to the complainant, by failing to transition from exploratory committee to candidate committee within the timeframe contemplated by the statute Lembo violated General Statutes § 9-608 (f). The complainant requested that the State Elections Enforcement Commission assess whether the qualifying contributions raised by the Lembo 2010 exploratory committee were available to the Lembo 2010 candidate committee, which was created to run for the office of state comptroller.

After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. Kevin Lembo registered an exploratory committee to run for an undetermined statewide office on Nov. 24, 2009. The registration statement excluded the office of state treasurer from the list of potential offices he might seek.
2. After registering the exploratory committee, the Lembo 2010 campaign issued a press release stating that Lembo was exploring a potential run for lieutenant governor.
3. The Lembo 2010 press release specified that Lembo was considering a run for lieutenant governor, and while it did reference his status as an exploring candidate, the announcement did not mention the potential for Lembo to opt to run for another office. In the press release, the Lembo campaign also stated that it had sent a letter to the Democratic Party leaders across the state alerting them to Lembo's intention to seek the nomination for lieutenant governor.
4. The Connecticut Democratic Party held its annual Jefferson-Jackson-Bailey Dinner on April 12, 2010. During the event, state Democratic Party chairwoman Nancy Dinardo introduced Lembo to the gathered crowd as "Candidate for Lt. Governor Connecticut Healthcare Advocate Kevin Lembo." No mention was made of Lembo's exploratory status. The Jefferson-Jackson-Bailey Dinner was broadcast on CT-N, a Connecticut public affairs channel, and video of the event is archived at the channel's website.
5. The Lembo campaign created a flyer for distribution at the Jefferson-Jackson Bailey event, that included quotes from various sources about Lembo's qualifications for elected office.

Most notably, the handout quoted a column by Hartford *Courant* writer Colin McEnroe in which McEnroe called Lembo the “front-runner in the race for lieutenant governor.” The flyer did not clarify that Lembo was only exploring a run for lieutenant governor or that he was potentially interested in other offices.

6. On May 12, 2010, Lembo announced that he was running for state comptroller instead of lieutenant governor. He filed a notice with the Commission on June 3, 2010, declaring his intent to run for the office of state comptroller and to dissolve his exploratory committee and form a candidate committee for state comptroller. He formed a candidate committee for state comptroller on May 20, 2010, and dissolved his exploratory committee on June 21, 2010.
7. As part of the exploratory-committee-dissolution process, the committee’s treasurer filed an accounting with the Commission identifying the value of items the committee intended to carry forward from the exploratory committee into the candidate committee. According to that filing, the exploratory committee transferred assets valued at \$548.91 into the candidate committee. See Letter from Liza Janssen Petra, campaign treasurer for Lembo 2010 exploratory committee, to State Elections Enforcement Comm’n of June 14, 2010. The exploratory committee’s termination report filed on June 21, 2010 indicated that committee raised a total of \$16,240 in contributions.
8. On July 16, 2010, the Lembo campaign applied for a primary grant through the Citizens’ Election Program.
9. Also on July 16, 2010, this complaint was filed alleging that Lembo made a public declaration for lieutenant governor on three occasions: when he sent a letter to Democratic leaders across the state announcing the formation of his exploratory committee; when he was introduced as candidate for lieutenant governor at the Democrat’s Jefferson-Jackson-Bailey Dinner on April 12, 2010; and when his exploratory committee distributed a handout at the Jefferson-Jackson-Bailey Dinner discussing his qualifications for lieutenant governor. The complaint stated that because Lembo had made a public declaration and should already have transitioned into a candidate committee “contributions to Mr. Lembo’s exploratory committee could not constitute eligible funds to allow for qualification for his State Comptroller candidate committee for Program funding.” The complainant asked the Commission to “investigate the eligibility of Mr. Lembo’s funding for the Program.”
10. Upon the initiation of this complaint on Friday, July 16, Commission staff notified the Lembo candidate committee of the complaint’s allegations. The candidate committee had three options at that point: seek an expedited hearing on the claims before approval of the grant; abandon the contributions collected during the exploratory phase and raise new contributions to support their application for a grant for the state comptroller candidate committee; or pursue both paths simultaneously. The committee chose to replace the qualifying contributions it had raised in exploratory committee. The committee abandoned the \$16,240 in challenged qualifying contributions.

11. The committee raised an additional \$6,480.10 between July 15 and July 18 to support the application.
12. The Commission approved the grant application for Lembo 2010, certifying that the committee had raised the sufficient amount of qualifying contributions by the deadline to qualify for a primary grant.
13. The campaign of Michael Jarjura, Lembo's primary opponent, filed an action with the superior court in Hartford seeking a temporary injunction to prevent the transfer of the grant monies claiming that the Commission had incorrectly interpreted and applied the statutes governing the Citizens' Election Program. The superior court agreed with the Commission's handling of the application process and affirmed the Commission's decision to allow the Lembo campaign to raise additional contributions after the campaign had submitted its application. *See Jarjura for Comptroller, et al. v. State Elections Enforcement Comm'n, Docket No. HHD CV105034997 (Graham, J., July 30, 2010) (denying plaintiffs' request for injunction since they were unlikely to succeed at trial).*
14. As part of the approval process the Commission treated the \$548.91 that the candidate committee had received from the exploratory committee as personal assets of the candidate and deducted from the total grant amount.
15. General Statutes § 9-608 (f) directs that any candidate exploring for a potential run who makes a "public declaration" for a specific office must dissolve his exploratory committee and form a candidate committee. Under the statute, the campaign treasurer must file a notice of intent to dissolve the exploratory committee within 15 days of the candidate's public declaration for a particular office. As stated in § 9-608 (f):

If an exploratory committee has been established by a candidate pursuant to subsection (c) of section 9-604, the campaign treasurer of the committee shall file a notice of intent to dissolve it with the appropriate authority not later than fifteen days after the candidate's declaration of intent to seek nomination or election to a particular public office, except that in the case of an exploratory committee established by a candidate for purposes that include aiding or promoting the candidate's candidacy for nomination or election to the General Assembly or a state office, the campaign treasurer of the committee shall file such notice of intent to dissolve the committee not later than fifteen days after the earlier of: (1) The candidate's declaration of intent to seek nomination or election to a particular public office, (2) the candidate's endorsement at a convention, caucus or town committee meeting, or (3) the candidate's filing of a candidacy for nomination under section 9-400 or 9-405.

16. Within 15 days of filing that notice of intent to dissolve, the candidate must form a candidate committee, according to General Statutes § 9-604 (c). As stated in § 9-604 (c), in relevant part:

Not later than fifteen days after a public declaration by the candidate of the candidate's intention to seek nomination or election to a particular public office, the candidate shall form a single candidate committee, except that in the case of a candidate establishing an exploratory committee for purposes including aiding or promoting the candidate's candidacy for nomination or election to the General Assembly or a state office, the candidate shall form a single candidate committee not later than fifteen days after the date that the campaign treasurer of such exploratory committee is required to file a notice of intent to dissolve the committee under subsection (f) of section 9-608.

17. The Commission issued Declaratory Ruling 2009-01 in May 2009, outlining the factors the Commission would apply in assessing whether a candidate had made a "public declaration" triggering the 15-day deadline to file notice of intent to dissolve the candidate's exploratory committee.
18. Declaratory Ruling 2009-01 defined "public declaration" as "an announcement made to a wide audience within the state or relevant community that the candidate seeks nomination or election to a specific office." Declaratory Ruling 2009-01, "Public Declarations by Candidates in Exploratory Committee," 4 (State Elections Enforcement Comm'n, May 6, 2009). In order to satisfy this definition, an announcement must meet both requirements, namely that it is both "public" and a "declaration" of candidacy for a particular office. *See id.* A declaration of one's intent to seek a particular office that is not public will not meet this definition. Likewise, a public statement that is not a declaration for a particular office will also not satisfy this definition.
19. In 1998, before the adoption of the Citizens' Election Program or Declaratory Ruling 2009-01, the Commission concluded that a candidate whose stated intention to run for the General Assembly was reported in a newspaper interview had made a "public declaration." The Commission concluded that the candidate was required to dissolve his exploratory committee and form a candidate committee. *See Complaint by Douglas Hageman, Southington, File No. 98-230 (State Elections Enforcement Comm'n Dec. 10, 1998).*
20. In that case, the candidate's intention to run for a specific office was reported in a March 6, 1998 newspaper article, but the candidate did not form a candidate committee until August 10, 1998. *See id.*
21. The failure to terminate the exploratory committee and form a candidate committee within the statutory deadlines represented a violation of Connecticut's election laws, the Commission concluded. The exploratory committee's campaign treasurer, however, had continued to file all required campaign finance disclosure reports required by state statute, to which the public had access, so there was no evasion of the public reporting requirements. The Commission imposed a civil penalty of \$100 and required the Committee to relinquish two impermissible campaign contributions it had received while in exploratory phase that would have been impermissible if the committee had properly transitioned into a candidate committee. *See id.*

22. Since the adoption of the advent of the Citizens' Election Program, the Commission has had two opportunities to evaluate whether a candidate had made a "public declaration" in the exploratory phase of a campaign.
23. In File No. 2009-079, the Commission considered several statements that candidate Dannel Malloy made regarding his candidacy for governor. Malloy had established an exploratory committee in February 2009. When the complaint was filed in August 2009, Malloy remained in the exploratory phase and was raising money through his exploratory committee to finance a potential run for the governor's office. The complaint alleged that through his campaign website and in several radio appearances, Malloy had made a public declaration of his intent to seek the governor's office. *See Complaint of Christopher Healy*, Wethersfield, File No. 2009-075 (State Elections Enforcement Comm'n, Feb. 17, 2010) (alleging that Malloy's exploratory committee should have dissolved because candidate's statements represented "public declarations" requiring the dissolution of exploratory committee under General Statutes § 9-608(f)).
24. In reviewing the evidence, the Commission concluded that although Malloy's statements on his website and in media appearances implied that he likely was going to run for governor, the candidate was careful to qualify his candidacy with statements that implied he had yet to make up his mind definitively. By hedging his statements about whether he would definitely run for governor, the Commission said, Malloy had made a public statement regarding his candidacy but had not publicly declared his intention to seek a particular office. *See id.* at 10.
25. The Commission dismissed the count of the August 2009 complaint alleging that Malloy had made a public declaration, noting that it appeared that several professional and personal decisions remained to be addressed before Malloy could commit to running for a particular public office. *See id.*
26. The Commission turned in April 2010 to a case stemming from the 2008 election cycle. Deb Noble, a Working Families Party candidate for state representative in the 16th Assembly District, was alleged to have made a "public declaration" for the office and failed to dissolve the exploratory committee and transition into a candidate committee as specified in the statutory timeframe. *See Complaints of Linda Schofield, et al.*, Simsbury, File No. 2008-079 (State Elections Enforcement Comm'n, April 21, 2010) (concluding that respondent had declared publicly for state representative seat).
27. The Commission concluded that by filing a CEP Form 10 – an affidavit declaring the candidate's intention to abide by spending limits imposed under the Citizens' Election Program – Noble had made a public declaration of her intent to seek a particular office. *See id.* at 5.
28. Noting that the Commission's declaratory ruling defining public declarations by exploring candidates was not released until after the events in this case had occurred, the Commission decided against pursuing an enforcement action against Noble and her

campaign treasurer given the novelty of the 'public declaration' issue. Accordingly, the Commission dismissed the complaint. *See id.* at 6.

29. The handout that Lembo 2010 distributed at the Jefferson-Jackson-Bailey event on April 12, 2010, satisfied the definition for a "public declaration" referenced in General Statutes § 9-608 (f) and explained in Declaratory Ruling 2009-01. Through quotes from news sources and other elected officials, the flyer stated Lembo's intention to seek the specific office of lieutenant governor, argued why Lembo was qualified to serve as lieutenant governor, and was distributed broadly to members of the public present at the Jefferson-Jackson-Bailey dinner. By disseminating the flyer to the public, beyond those persons that would determine who would receive the party's nomination, and by making an unequivocal statement regarding seeking the nomination for a specific office, the flyer from the Lembo campaign represented a "public declaration" under General Statutes § 9-608 (f).
30. Assuming that Lembo made a public declaration on April 12, the date his exploratory committee distributed a handout about his candidacy for lieutenant governor at the Jefferson-Jackson-Bailey dinner, his exploratory committee campaign treasurer should have filed a notice of intent to dissolve the committee by April 27.
31. The campaign treasurer filed the notice of intent to dissolve the exploratory committee on June 3, 2010. This was after the candidate had announced his intention to run for state comptroller on May 12, 2010 and had formed a candidate committee to run for state comptroller on May 20, 2010.
32. As discussed previously, during the pendency of this complaint, the candidate committee voluntarily abandoned \$16,240 in qualifying contributions that the exploratory committee had raised. Because of that decision, none of the qualifying contributions that the committee had raised in the exploratory phase was carried over into the state comptroller candidate committee.
33. When it awarded the primary grant to Lembo 2010, the Commission also reduced the grant by \$548.91, the amount of prior assets that the exploratory committee reported as carrying over to the candidate committee.
34. The exploratory committee terminated on June 21, 2010 and distributed no surplus to the candidate committee.
35. Based on these facts, the candidate committee that Lembo formed to run for state comptroller was required to account for or abandon any assets it may have had remaining from the exploratory committee.
36. Following the filing of this complaint, the Lembo 2010 candidate committee purged itself of the benefits it might have received from the exploratory committee.

37. Because the state comptroller candidate committee received no financial benefit from the exploratory committee, the Commission will take no further action on this complaint since the most serious penalty that would have been applied to the candidate committee – abandonment of the contributions received by the exploratory committee that should have gone to another candidate committee – already was applied to the committee during the grant application process.

ORDER

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

That no further action be taken.

Adopted this 16th day of February of 2011 at Hartford, Connecticut.



Stephen F. Cashman
By Order of the Commission