



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

Advisory Opinion 2010-03: Treatment of Domain Names

During and after the 2008 election cycle, the advice of the State Elections Enforcement Commission was sought by numerous individuals and candidates regarding the treatment of websites and domain names that the individual or candidate owned before the election, or which the individual or former candidate wished to utilize for personal use after the election was over. Although Commission staff has provided much guidance at the request of various individuals, the Commission itself has not spoken on this issue. This advisory opinion provides general guidance to candidates, their treasurers, and campaign volunteers on how Connecticut's campaign finance laws apply to the use of websites and domain names.

The following specific questions are addressed in this Advisory Opinion:

- Can an individual continue to use, for personal purposes, the same domain name that was used by her candidate committee for personal use, after the completion of an election in which the individual was a candidate?
- Is there a limitation on the content of the website once it is being used as a personal site? For example - can an individual's personal Web page contain links to literature used in a past campaign?
- Does the purchase of a domain name containing an individual's name and a specific future election year such as "Joe Smith 2020," in and of itself, constitute an expenditure to promote a candidate's nomination or election that would trigger the requirement to register as a "candidate"?
- As the next election approaches, what is the trigger for a personal website becoming a campaign website which needs to be reported and paid for by campaign funds?
- What is the proper way to allocate and report expenses paid for domain names which are used during an election cycle to promote a candidate and during non-election periods for personal or non-campaign purposes?

General Background

A "candidate" is defined, in relevant part, as:

[A]n 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 sections 9-700 to 9-716, inclusive, an individual shall be deemed to seek

nomination for election or election if such individual has (A) been endorsed by a party or become eligible or on the ballot at an election or primary, or (B) solicited or received contributions, made expenditures or given such individual's consent to any other person 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.

General Statutes § 9-601 (11).

The term "expenditure" means, in relevant part:

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.

General Statutes § 9-601b (a) (1). Each expenditure made by a candidate committee must fall within the lawful purposes of the committee. General Statutes § 9-607 (g). Permissible expenditures of candidate committees are governed by Connecticut General Statutes § 9-607 (g), which 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

(2) Unless otherwise provided by this chapter, any campaign treasurer, in accomplishing the lawful purposes of his committee, may pay the expenses of: (A) Advertising in electronic and print media; (B) any other form of printed advertising or communications including "thank you" advertising after the election; . . . and (Z) any other necessary campaign or political expense.

General Statutes § 9-607 (g). In addition, candidates who decide to participate in the Citizen's Elections Program (hereinafter, "CEP") are also subject to the CEP regulations governing a participating candidate's use of campaign funds. Section 9-706-1 of the Regulations of Connecticut State Agencies 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.

Regs., Conn. State Agencies § 9-706-1. Section 9-706-2 of the Regulations of Connecticut State Agencies also provides in pertinent part:

(a) 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 participating candidates shall comply with the following Citizens' Election Program requirements. **Permissible campaign-related expenditures shall include but are not limited to expenditures for the following:**

1. Purchase of political campaign advertising services from **any communications medium**, including but not limited to newspaper, television, radio, billboard or **internet**;

2. Political campaign advertising expenses, including but not limited to printing, photography, or graphic arts related to flyers, brochures, palm cards, stationery, signs, stickers, shirts, hats, buttons, or **other similar campaign communication materials**;

* * *

7. Campaign office services, including but not limited to **internet services**, phone services, photocopying and mailing;

Regs., Conn. State Agencies § 9-706-2 (emphasis added).

The law prohibits individuals, including candidates, from using campaign funds or materials for "personal use":

[E]xpenditures for "personal use" include expenditures to defray normal living expenses for the candidate, the immediate family of the candidate or any other individual and expenditures for the personal benefit of the candidate or any other individual having no direct connection with, or effect upon, the campaign of the candidate or the lawful purposes of the committee, as defined in subdivision (2) of this section. No goods, services, funds and contributions received by any committee under this chapter shall be used or be made available for the personal use of any candidate or any other individual. No candidate, committee, or any other individual shall use such goods, services, funds or contributions for any purpose other than campaign purposes permitted by this chapter.

General Statutes § 9-607 (g) (4). Participating candidates who receive CEP grant funds must also follow the CEP regulations, which set forth further prohibitions on personal use of campaign funds:

Participating candidates and the treasurers of such participating candidates **shall not spend funds in the participating candidate's depository account for the following:**

1. ***Personal use***, as described in Section 9-607(g)(4) of the Connecticut General Statutes;

2. ***The participating candidate's personal support or expenses***, such as for personal appearance or the candidate's household day-to-day food items, supplies, merchandise, mortgage, rent, utilities, clothing or attire, even if such personal items (such as the participating candidate's residence, or business suits) are used for campaign related purposes;

Regs., Conn. State Agencies § 9-706-2 (b) (emphasis added).

Based on the foregoing, a candidate committee may only make expenditures that fall within the committee's lawful purpose, and the lawful purpose of any candidate committee is promoting the election to office of the candidate for whom the committee was established. Any and all expenditures must be campaign-related expenditures designed and intended to advance that candidate's election or nomination.

Candidates use their websites as a means to communicate with the electorate, to describe their views on certain topics, and to solicit contributions and other necessary assistance in running a campaign. Put simply, a website serves as a vital means for candidates to communicate their campaign message. Such communications, as part of a website, constitute permissible expenditures pursuant to both the General Statutes and CEP Regulations. See General Statutes § 9-607 (g) (2) (B) and Regs., Conn. State Agencies § 9-706-1 (emphasis added); see also *In the Matter of a Complaint by Frank DeJesus*, Hartford, File No. 2006-193 (purchase and hosting of website containing a candidate's "campaign messages" are campaign expenditures which must be so reported).

Discussion and Analysis:

Question 1: Can an individual continue to use, for personal purposes, the same domain name that was used by her candidate committee for personal use, after the completion of an election in which the individual was a candidate?

Yes, after an election is over and the individual is no longer a "candidate" promoting her nomination or election to an office, she may, in her individual capacity and for personal, non-campaign purposes, use the same domain name that was previously used by the campaign. Where a domain name is used to promote a candidate during an election cycle, and for non-campaign purposes before or after an election cycle, the candidate committee must pay for its *pro rata* proportional use of the domain name, and the individual must pay for his *pro rata* proportional share of her personal use of the domain name.

Committee websites are lawful committee expenditures. The candidate's committee may only pay for expenditures, including a campaign website, which promote the candidate's campaign. A candidate's committee may not make or incur expenditures

for personal use of the candidate or anyone else. General Statutes § 9-607 (g) (1) (A) (i); § 9-607 (g) (4); Regs., Conn. State Agencies § 9-706-2 (b)(1) & (2) (applicable to CEP candidates who receive public funds).

Accordingly, once an election is over, a candidate committee's website no longer serves the lawful purpose of the committee and may not be paid for by that committee. The individual who is no longer a "candidate" for purposes of that election must pay for any personal use of the website. If the candidate's committee has already paid for a period of registration and/or service that extends beyond the campaign's duration, the individual planning to assume the use of an old campaign website for personal purposes should reimburse the candidate committee for the *pro rata* proportional cost for the candidate's personal use, including, but not limited to, the value of any term remaining on the domain name registration, as well as any prepaid domain name hosting or other services related to the hosting of the domain name for which the committee paid in advance.

Question 2: Is there a limitation on the content of the website once it is being used as a personal site? For example - can an individual's personal Web page contain links to literature used in a past campaign?

The Commission does not regulate the content of an individual's website used for personal purposes. The Commission does, however, regulate "candidates" who have "made expenditures or given such individual's consent to any other person 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." General Statutes § 9-601 (11).

The use and maintenance of a website involves expenses. *See, e.g., In the Matter of a Complaint by Frank DeJesus*, Hartford, 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); *In the Matter of a Complaint by Joseph Klett*, Newington, File No. 2004-167 (finding website design services, Internet hosting and support services for candidate committee website were campaign expenditures necessitating reporting); *see also SEEC Advisory Opinion 2008-01, Proposed Political Activity of Nonprofit Association* (the costs associated with setting up a website to communicate endorsements of candidates to the public are expenditures subject to Connecticut's campaign finance laws). Whether such expenditures are regulated by the Commission depend on whether they were made "with the intent to bring about [the] individual's nomination for election or election" to office.

If the substance of the past campaign materials that are contained on or linked from the individual's personal website promotes the candidate's nomination or election for an upcoming campaign period, then the costs associated with producing and maintaining the website may fall within the definition of regulated expenditures. Thus,

for example, if the literature used in a past campaign was titled the “Top Ten Reasons You Should Vote for Joe” and contained a list of attributes and accomplishments as important to voters in an upcoming election as it was to voters in the past election, then the posting of such materials would be classified as an expenditure. If, on the other hand, the past literature was titled “Joe & Friends for 2006” and contained information on a slate of 2006 candidates and when to vote during that election, then such a link would not, on its own, constitute an “expenditure.”

If the website contains material promoting someone’s nomination or election, then such individual has become a “candidate” under the law and has ten days to register with the Commission, and either form a candidate committee, claim an exemption from forming a candidate committee, or form an exploratory committee. General Statutes §§ 9-604 (a) & (c).

Question 3. Does the purchase of a domain name containing an individual’s name and a specific future election year such as “Joe Smith 2020,” in and of itself, constitute an expenditure to promote a candidate’s nomination or election that would trigger the requirement to register as a “candidate”?

No, the purchase of a domain name containing an individual’s name and a specific future election year does not, *in and of itself*, constitute an “expenditure” that would transform the individual into a “candidate” for campaign finance law purposes.

As noted above, “an individual shall be deemed to seek nomination for election or election if such individual has . . . made expenditures or given such individual’s consent to any other person to . . . make expenditures with the intent to bring about such individual’s nomination for election or election to any such office.” General Statutes § 9-601 (11). Several individuals and candidates have asked whether purchase of a domain name, which includes a year of a future election (i.e. “Joe Smith 2020”), constitutes an expenditure made with the intent to promote such candidate’s nomination or election, and would consequently trigger the requirement to register as a candidate or form an exploratory committee. One reason that someone might purchase a domain name long before any election is to prevent another person from registering the individual or potential candidate’s name as a domain name, either to profit by selling it to the individual at a high price, or to use the domain name to create a web site containing negative material about the individual.¹ An individual who thinks there might be even the slightest chance of seeking office at some point in the future might decide to reserve various domain names to ensure that the domain name is available to such individual, should he decide to seek office in the future.

¹ For example, in November 2006, before Barack Obama announced his candidacy for President of the United States, there were approximately 50 web sites registered by third parties pertaining to his anticipated 2008 campaign. Maciulis, Tony, *Cyber Squatting All the Rage for 2008: Squatters Hope Domain Names of a Presidential Candidate Pays Big*, (Nov. 21, 2006), available at <http://www.msnbc.msn.com/id/15843850/> (last accessed April 1, 2010).

In light of these concerns, the Commission finds that the mere fact that an individual has purchased or registered a domain name, which contains the individual's name and a year, does not in itself lead to a *per se* conclusion that such individual has made an expenditure with the intent to promote his nomination or election and become a "candidate" under the law. This means, for example, that if an individual named Joe Smith registers the domain name "Joe Smith 2020," this fact, *standing alone*, does not mean that Joe Smith has become a "candidate" subject to campaign finance registration and disclosure laws. Even if Joe Smith was previously a candidate or is a current officeholder, his purchase of this domain name, by itself, does not transform him into a candidate for the 2020 election cycle. However, if Joe Smith spent any funds, or authorized someone else to spend funds, to develop such website with any content that promotes his nomination or election, or made or authorized any other funds to be spent to promote his nomination or election, then he would be considered a "candidate," and the domain name registration may be seen as one indication, coupled with other indicia, demonstrating that he has become a "candidate."

Question 4. As the next election approaches, what is the trigger for a personal website becoming a campaign website which needs to be reported and paid for by campaign funds?

When an individual's personal website contains information or material that promotes his nomination or election to office, then such individual has made an expenditure with the intent to promote his nomination or election. At this point, the individual becomes a "candidate" and must register as a candidate, and any expenditure for the website must be reported as a campaign expenditure.

Question 5. What is the proper way to allocate and report expenses paid for domain names which are used during an election cycle to promote a candidate and during non-election periods for personal or non-campaign purposes?

As noted earlier, during the time period that a domain name is used for campaign purposes, payment for the domain name and any other campaign website-related services must be made by the candidate committee. During any time periods where the domain name was used for non-campaign purposes by someone who is or was not a candidate, payment for the domain name and any other website-related services *cannot* be paid for out of committee funds.

If the domain name registration required full payment up front and the registration occurred before the individual became a "candidate," then the *pro rata* proportional share of the cost attributed to the campaign constitutes the provision of personal funds by the candidate to his committee. *See In the Matter of a Complaint by Caroline Atwood*, Durham, File No. 2008-081. For example, if Joe Smith purchases a domain name for \$120 on November 15, 2009, and uses the domain name for personal use only or for

nothing, and he becomes a candidate and registers a committee on February 15, 2010 and begins using the website to promote his campaign at this time, then he must report an \$80 provision of personal funds to his committee (\$80 is the pro rata share of the cost of the domain name, since he paid up front for twelve months and his committee is using the domain name for eight months to promote his campaign).

For committees of candidates not participating in the CEP (“*nonparticipating candidates*”), the candidate may provide the domain name to the committee as an in-kind contribution.

If the candidate is participating in the CEP (“*participating candidate*”), and has not yet applied for a grant, this cost must be reported as the provision of personal funds, and counts against the candidate’s personal funds limit as set forth in General Statutes § 9-710 (c).² If the candidate is participating in the CEP and has received grant funds, the candidate committee’s treasurer must write a check to the Citizens’ Election Fund equal to the value of the non-monetary assets provided. In the description field of the check, the treasurer should include a brief description of the assets provided (i.e. “allocation of domain name registration to committee”).³

The foregoing advice is an Advisory Opinion of the Commission. This Advisory Opinion is issued pursuant to the provision of General Statutes § 9-7b (a) (14).

Adopted this ___th day of April 2010 at Hartford, Connecticut by a vote of the Commission.


Stephen F. Cashman, Chairman

² General Statutes § 9-710 (c) provides that:

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.

³ For more details about disclosure and reporting, see SEEC *Advisory Opinion 2008-02, Treatment of Prior Assets Used by Candidate Committee in Current Election Cycle*, pages 3-4 (Sept. 4, 2008).