



# STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

---

## **ADVISORY OPINION 2014-02:** **Disclosure of Expenditures in Campaign Finance Statements** **Pursuant to Public Act 13-180**

At a regular meeting on July 2, 2014, the State Elections Enforcement Commission (the “Commission”) voted to issue an Advisory Opinion to clarify the filing requirements under the law in light of Public Act 13-180: *An Act Concerning Disclosure of Independent Expenditures and Changes to Other Campaign Finance Laws and Election Laws*.

Public Act 13-180 adjusted the disclosure requirements for persons making independent expenditures. See General Statutes (Supp. 2014) §§ 9-601d, 9-602 and 9-621; see also Declaratory Ruling 2013-02: *Contributions to Political Committees, Independent Expenditures, and State Contractor Contribution Limitations*. Persons, including committees, may make unlimited amounts of independent expenditures in Connecticut elections<sup>1</sup> and referenda. The purpose of this advisory opinion is to clarify attribution and filing requirements, and to instruct as to which forms should be filed when making expenditures for elections and referenda in Connecticut.

As an initial matter, the Commission would like to clarify that when it has prescribed forms, they must be used. Persons may not use forms from other jurisdictions unless expressly provided in statute, nor may they create their own forms. “The Commission has the affirmative duty to create . . . forms to ensure compliance” with the state’s campaign finance laws. *In the Matter of a Complaint by Myrna Watanabe, Harwinton*, 2012-161 at ¶ 3; General Statutes § 9-624 (a) (“The State Elections Enforcement Commission shall prepare . . . the forms required for compliance with this chapter.”); see also General Statutes §§ 9-603(a), 9-675.

To be deemed a filing, a report must, at a minimum: (1) be signed and dated under penalty of false statement by the legally authorized person; (2) cover the applicable time period required by the applicable section or subsection of General Statutes §§ 9-608, 9-601d or 9-712; and (3) be on the proper form required for that person for that filing.<sup>2</sup> Submissions that do not meet these minimal requirements will not be deemed filings and

---

<sup>1</sup>This Advisory Opinion pertains to persons that receive contributions or make expenditures on behalf of candidates for statewide office and the Connecticut General Assembly, candidates in municipal elections, local referenda and statewide ballot questions. It does not pertain to candidates running for federal office.

<sup>2</sup> Pursuant to General Statute § 9-608 (b) the January 10 filing and the seventh day preceding an election filing must be an itemized statement and short forms do not fulfill the filing requirements.

will result in penalties for non-filing; they will, however, be date stamped and made publicly available.

Since the changes brought on by the Supreme Court's decision in *Citizen United v. FEC*, 558 U.S. 310 (2010), persons (other than committees) making independent expenditures have been required to file financial disclosure statements using the SEEC Form 26. Pursuant to Public Act 13-180, the Commission has now bifurcated the SEEC Form 26 into the SEEC Form 26 Long (the long form) and the SEEC Form 26 Short (the short form). The Commission also has developed both a new registration form and a new disclosure form for political committees that will make only independent expenditures.<sup>3</sup> This opinion will explain how and when persons seeking to comply with Connecticut campaign finance law should use the SEEC Form 26: *Independent Expenditure Statement for Persons (Other than Connecticut Political Committees)*, SEEC Form 40: *Itemized Campaign Finance Disclosure Statement for use by Independent Expenditure Only Political Committees*, or SEEC Form 20: *Itemized Campaign Finance Disclosure Statement for use by . . . Treasurers of Political Committees in all Elections [and] Party Committees in all Elections* to properly disclose independent expenditures made in connection with elections or referenda.

### **Who Files**

Practically speaking, there are three categories of “person”<sup>4</sup> covered under the independent expenditure disclosure provisions:

- Any “person” making independent expenditures from its own funds (e.g. an individual, corporation, labor union, nonprofit, PTA, civic organization, but not including a committee) on behalf of candidates in Connecticut elections. There are no registration requirements and incident-based reporting is required only after spending in excess of \$1,000 on independent expenditures. General Statutes § 9-601d.
- A committee registered in Connecticut as an independent expenditure only committee that solicits and receives contributions earmarked for expenditures with respect to Connecticut elections but does *not* make contributions directly to such candidates or make expenditures coordinated with candidates and committees (“independent expenditure only political committees” or “IE only political committees”). General Statutes § 9-602 (as amended by section 33 of

---

<sup>3</sup> The law as it applies to such independent expenditure only political committees is discussed in Declaratory Ruling 2013-02: *Contributions to Political Committees, Independent Expenditures, and State Contractor Contribution Limitation*, p. 22- 24.

<sup>4</sup> The General Statutes defines “person” as “an individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company or any other legal entity of any kind but does not mean the state or any political or administrative subdivision of the state.” General Statutes § 9-601 (10). Where this opinion refers to “persons,” it includes committees unless otherwise specified.

Public Act 13-180); *see also* Declaratory Ruling 2013-02: *Contributions to Political Committees, Independent Expenditures and State Contractor Contribution Limitations* (providing that in light of the Second Circuit's recent decision in *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 485 (2d Cir. 2013), the Commission would not enforce the contribution limits imposed by §§ General Statutes §§ 9-612, 613, 615, 618 and 619 against independent expenditure only political committees pending further guidance by the courts or legislature). Registration and reporting is required only after raising or spending in excess of \$1,000.

- A committee registered in Connecticut that (1) solicits and receives contributions for Connecticut elections; and (2) makes contributions directly to such candidates or makes expenditures coordinated with candidates and committees – i.e. “traditional political committees.” Registration and reporting is required only after raising or spending in excess of \$1,000. General Statutes § 9-602.

### **Filing Repository – Where to File**

The law has not materially changed as to where persons making expenditures must file:

- Those making expenditures only in connection with a municipal election or referendum must file statements with the town clerk in the municipality where the municipal election or referendum takes place; and
- Those making expenditures in connection with an election for the office of state representative or state senator, statewide office, or judge of probate or a constitutional referendum must file statements with the State Elections Enforcement Commission.

### **Registration Statements – What to File**

The requirement to register depends upon whether a person makes contributions to or expenditures with candidates or committees, and whether that person solicits or accepts contributions earmarked for expenditures with respect to Connecticut state elections and referenda.

For committees both accepting and making contributions to candidates and committees, i.e. traditional political committees, registration requirements have not changed. Traditional political committees still register using a SEEC Form 3.

The Commission has developed a new registration form for independent expenditure only political committees. The chair of such a committee should register the committee using the new SEEC Form 8 (“Political Committee (PAC) Registration Independent Expenditures Only”) and must disclose financial activity using the new SEEC Form 40 (“Itemized Campaign Finance Disclosure Statement For Independent Expenditure Only Political Committees”).

If a committee currently registered as a traditional political committee would like to change its status to an independent expenditure only political committee, it may file a SEEC Form 8 and check the appropriate box indicating it is a previously registered committee. If it is registering using a new name, it must indicate the new name on the SEEC Form 8. Note that once a committee registers as an independent expenditure only political committee, it may not amend its registration to change to a traditional political committee at a later date.

For persons who are not making contributions to or coordinated expenditures with candidates or committees and who are not soliciting and receiving earmarked contributions, Connecticut only requires incident-based reporting. Formation and registration of a political committee is not required.

### **Financial Disclosure Forms – What to File**

Persons, other than committees, make incident-specific reports using the SEEC Form 26. *See* General Statutes §§ 9-601d (c), (d) & (f), 9-621. When filing for the first time, they use the new SEEC Form 26 Long after making the initial independent expenditures in connection with an election or referendum in excess of \$1,000, and then use the new SEEC Form 26 Short for subsequent required statements. The SEEC Form 26 Long includes certain identifying information about the expending person as well as information about the underlying expenditures. *See* Section 9-601d of the 2014 Supplement to the General Statutes. This form will only be filed one time for each election cycle by the person making the independent expenditure, after the person initially spends in excess of the \$1,000 threshold. Subsequent to filing the SEEC Form 26 Long, any additional statements required under law must be filed using a SEEC Form 26 Short. As is discussed below, the person will use this short form to disclose subsequent independent expenditures which separately exceed \$1,000 in the aggregate.

Independent expenditure only political committees should file using the new SEEC Form 40. *See* General Statutes §§ 9-602, 9-608.

Traditional political committees will continue to file statements using the SEEC Form 20. *See* General Statutes §§ 9-602, 9-608.

### **Filing Deadlines – When to File**

#### ***Standard Filing Deadline***

For independent expenditures not made during a primary or general election campaign period – i.e. independent expenditures made for the benefit of (1) General Assembly or statewide candidates before the convention, caucus or town committee meeting held for the purpose of endorsing such candidates; or (2) municipal candidates – the person making such independent expenditure files on the next periodic filing date after the

expenditure was made or obligated to be made if they hit the \$1,000 threshold (discussed in more detail below).

For persons other than committees (i.e., SEEC Form 26 filers), the periodic filing dates by which they must file if they have had relevant activity are based on the filing schedule of a candidate committee, which include the following:

- January 10, April 10, July 10, and October 10;
- 7 days preceding the primary, if they have spent in connection with a primary;
- 30 days following the primary, if they have spent in connection a primary;
- 7 days preceding the election.

To reiterate, persons that are not committees are only required to file incident-specific statements – meaning that once the person has filed a statement reporting an independent expenditure or expenditures, it will not have any further disclosure statements if it does not make or obligate to make any additional independent expenditures.

Traditional political committees (SEEC Form 20 filers) and independent expenditure only political committees (SEEC Form 40 filers) must file according to the schedule of a political committee:

- January 10, April 10, July 10, and October 10;
- 7 days preceding the primary or referendum, if they have spent in connection with a primary or referendum;
- 7 days preceding the election (during an odd year, if they have spent in connection with the election; during an even year, they must file regardless of activity);
- 45 days after the election when the election is not held in November.

Unlike other persons, committees must file on the four quarterly dates and the seventh day preceding the election date (during an even year) regardless of whether they had any specific incidents of financial activity.

Commission staff prepares filing calendars for committees setting forth the specific filing deadlines and publishes them on the Commission's website.

### ***24-Hour Filing Deadline***

During a primary campaign or general election campaign period, all persons (including committees) making or obligating to make independent expenditures for statewide or General Assembly candidates that in the aggregate exceed \$1,000 must file reports within 24 hours of making or obligating to make the expenditure. General Statutes § 9-601d (b). Generally speaking, the 24-hour reporting period begins the day after the convention, caucus or town committee meeting is held for the purpose of endorsing those candidates. General Statutes §§ 9-601d (b), 9-700 (7) & (11).

Thus, persons making or obligating to make independent expenditures in excess of \$1,000 in the aggregate for a statewide or General Assembly candidate *prior to the convention* would report on the standard filing deadlines corresponding with their expenditures, as set forth in the previous section. If, however, they make such expenditures *subsequent to the convention*, they must report within 24 hours of the expenditure.

For example, if a person makes independent expenditures exceeding \$1,000 to promote a statewide candidate on March 20, 2014 (before the primary campaign or general election campaign period), the person must file a statement reporting the expenditure with the Commission by no later than April 10, 2014, the standard, quarterly filing date. If, however, such expenditure is made or obligated to be made on July 13, 2014, during the primary campaign period, to promote or oppose a statewide candidate facing a primary, the statement must be electronically filed with the Commission no later than 11:59 p.m. on July 14, 2014.

### ***One Thousand Dollar Threshold***

General Statutes § 9-601d (b) provides that “[a]ny person who makes or obligates to make an independent expenditure or expenditures in an election or primary for [a statewide office or General Assembly candidate] which exceed ***one thousand dollars, in the aggregate, during a primary campaign or a general election campaign, as defined in section 9-700 . . .***” must fulfill the 24-hour filing requirement. Persons making or obligating to make such expenditures must therefore be aware of how this \$1,000 threshold operates.

Given that the new statutory language refers separately to the primary campaign and general campaign periods in referencing the \$1,000 aggregate reporting threshold, the Commission concludes that the \$1,000 threshold resets at the outset of each of these periods. In other words, the \$1,000 threshold will begin running from the start of the election cycle through the convention, reset at the date of the convention through the primary campaign period (if applicable), and then reset again at the start of the general election campaign period. If there is no primary, the \$1,000 threshold will only reset at the date of the convention.

In addition, during the 24-hour disclosure period, the \$1,000 reporting threshold resets after each statement that is filed. This means that if a person makes or obligates to make independent expenditures in excess of the \$1,000 threshold and files a 24-hour statement, the person will not have to file a subsequent statement until they have made or obligated to make additional independent expenditures which exceed \$1,000 in the aggregate on their own. For example, if a person files a 24-hour statement on July 14 reporting expenditures related to a \$2,000 mailing and then makes expenditures totaling \$25 on July 15 for additional stamps, no additional reporting obligation is triggered. If, however, on July 16, the person makes or obligates to make \$1,000 in additional independent expenditures on a second mailing it must electronically file a statement with the Commission by 11:59 p.m. on July 17.

Finally, in calculating whether a person has reached the \$1,000 threshold, all independent expenditures made or obligated to be made by such person during the applicable period should be included, even if the expenditures were for different candidates. For example, if the person makes a \$550 independent expenditure on behalf of candidate A and a \$500 independent expenditure on behalf of candidate B, the person would be required to file because it has reached the \$1,000 threshold in the aggregate.

### **Disclosure of Funding Sources in Campaign Finance Filings**

Public Act 13-180 did not change the reporting requirements with respect to funding sources for SEEC Form 20 filers. These traditional political committees are required to disclose all money coming in on forms designed for that purpose, with contributions aggregating \$50 or less reported in lump sum amounts. *See* General Statutes §§ 9-601a, 9-601b, 9-608 (c) & (e), 9-613 (b), 9-614 (b).

SEEC Form 40 filers are required to disclose funding sources in a manner similar to SEEC Form 20 filers; however, because the contributions limits are largely inapplicable now, the form for such reporting has been restructured and simplified. Declaratory Ruling 2013-02; General Statutes §§ 9-601a, 9-601b, 9-608 (c) & (e), 9-613 (b), 9-614 (b).

For SEEC Form 26 filers, funding sources must only be disclosed when an independent expenditure is made or obligated to be made on or after the date that is 180 days before the date of the applicable primary or election. Section 9-601d (f) of the 2014 Supplement to the General Statutes.<sup>5</sup>

If the 180 day threshold is met, the SEEC Form 26 filers are required to disclose covered transfers received during the twelve month period prior to the applicable primary or election that total \$5,000 or more. *Id.* If the monies from a covered transferor do not aggregate to over \$5,000, they do not have to be reported. If, when a SEEC Form 26 filer looks at all incoming monies received during the relevant year period, every covered transferor has given \$5,000 or less, then there is no reporting of funding sources required on that expenditure report.

In addition, to the extent any covered transfers required to be disclosed have already been disclosed in reports filed with the Federal Election Commission (“FEC”) or Internal Revenue Service (“IRS”), the SEEC Form 26 filer does not need to separately disclose such covered transfers on its statement. Instead, it may submit a copy of such report to the filing repository (the Commission or town clerk) along with the independent expenditure disclosure filing. *Id.*

---

<sup>5</sup> The Commission has analyzed and described the meaning of this provision in detail in Declaratory Ruling 2013-01: *Administration of Independent Expenditure Disclosure Requirements Under Public Act 13-180.*

In determining whether reporting of monetary sources is required, the 180-day period should be determined as if there is a primary until it is known that there is not. *See* Declaratory Ruling 2013-02. The Commission construes the phrase “twelve-month period prior to such primary or election” to mean the twelve months before the date of the primary or election. For example, the twelve month period before the August 12, 2014 primary begins on August 12, 2013; the twelve month period before the November 4, 2014 regular election begins on November 4, 2013.

### **Disclosure of “Top Five” Covered Transfers over \$5,000**

In addition the campaign finance filings submitted on SEEC Forms 20, 40 or 26, persons making independent expenditures for political advertising have disclosure requirements which must appear within a communication itself. General Statutes § 9-621. These include an attribution requirement stating who paid for the communication, a disclaimer requirement indicating that the communication is “made independent of any candidate or political committee,” and a statement that additional information about the person making the communication may be found on the SEEC’s website.

*Only* if the communication is made during the ninety-day period prior to the primary or election, the attribution must also include the names of the five persons who, during the twelve-month period immediately prior to such primary or election, made the five largest aggregate covered transfers to the person making the communication. *See* General Statutes § 9-621 (h) & (l) (as amended by Public Act 13-180); *see also* Declaratory Ruling 2013-01: *Administration of Independent Expenditure Disclosure Requirements Under Public Act 13-180*. A covered transfer refers to “any donation, transfer or payment of funds by a person if the person receiving the donation, transfer or payment makes independent expenditures or transfers funds to another person who makes independent expenditures,” with certain exceptions.<sup>6</sup> General Statutes § 9-601 (29) (A).

---

<sup>6</sup> The term “covered transfer” does not include: “(i) A donation, transfer or payment made by a person in the ordinary course of any trade or business; (ii) A donation, transfer or payment made by a person, if the person making the donation, transfer or payment prohibited the use of such donation, transfer or payment for an independent expenditure or a covered transfer and the recipient of the donation, transfer or payment agreed to follow the prohibition and deposited the donation, transfer or payment in an account which is segregated from any account used to make independent expenditures or covered transfers; (iii) Dues, fees or assessments that are transferred between affiliated entities and paid by individuals on a regular, periodic basis in accordance with a per-individual calculation that is made on a regular basis; (iv) For purposes of this subdivision, ‘affiliated’ means (I) the governing instrument of the entity requires it to be bound by decisions of the other entity; (II) the governing board of the entity includes persons who are specifically designated representatives of the other entity or who are members of the governing board, officers, or paid executive staff members of the other entity, or whose service on the governing board is contingent upon the approval of the other entity; or (III) the entity is chartered by the other entity. ‘Affiliated’ includes entities that are an affiliate

This disclosure requirement applies *only* to amounts of \$5,000 or more in the aggregate during the year before a primary or election. General Statutes § 9-621 (l). If no donor has given an amount aggregating to over \$5000, then no disclosure of the top five is required within the communication.

Any “top five donor” required to be included as part of the attribution for a communication must also be disclosed on the SEEC Form 20, 40 or 26 reporting that independent expenditure.

### **Nesting Dolls” Provision Relating to Covered Transfers**

Communications which require the top five donors to be revealed may also trigger the so-called “nesting dolls” provision. General Statutes § 9-621 (j). When a “top five” donor identified in the attribution is not an individual but is instead a group that has itself *received* covered transfers, there may be some additional disclosure regarding the top five funding sources for that entity.

If a top five donor listed in the communication accepts covered transfers, then the filer of the SEEC Form 20, 40 or 26 in some instances must report the top five covered transferors of that donor. This provision ensures disclosure of the source of any funds given to the person to be intentionally used on an independent expenditure. In other words, a person cannot mask its intentions to make an independent expenditure by giving to another person and having that person make the actual expenditure.

There are broad exemptions to this second level of covered transfer disclosure for: (1) all organizations recognized under Section 501 (c) (4) of Internal Revenue Code of 1986; and (2) makers of covered transfers identified in the attribution that accept covered transfers from at least one hundred different sources provided no such source accounts for ten percent or more of the covered transfers accepted by the recipient during the twelve-month period immediately prior to the primary or election. General Statutes § 9-621 (j) (2) & (3).

If further assistance is needed in completing these forms, the Commission has attorneys available to answer questions during regular business hours. The Commission also offers a helpdesk dedicated to providing technical support in filing through the Commission’s Electronic Campaign Reporting System (“eCRIS”), which is monitored at all times, including nights and weekends.

---

of the other entity or where both of the entities are an affiliate of the same entity.”  
General Statutes § 9-601 (29) (B).

State Elections Enforcement Commission  
*Advisory Opinion 2014-02*

This constitutes an Advisory Opinion pursuant to General Statutes § 9-7b (a) (14). This Advisory Opinion is only meant to provide general guidance and addresses only the issues raised. Additional questions about the specific requirements for disclosure of independent expenditures should be directed to the Commission staff.

Adopted this 2 day of July, 2014 at Hartford, Connecticut by a vote of the Commission.

  
Anthony J. Castagno, Chair