



# STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

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## **Advisory Opinion 2010-08: Allocating *Pro Rata* Share for Joint Campaign Events**

The Commission has received many inquiries from candidates and treasurers regarding when an event is considered a joint campaign event with another committee such that the candidate committees benefiting from the event should allocate and pay for a *pro rata* share of the event costs and how such an allocation should be made. This Advisory Opinion provides general guidance on these topics.

### *Questions Addressed and Brief Answers:*

#### **1. Whether an event is a joint campaign event requiring cost allocation**

- Not every campaign event for one candidate at which another candidate is present will be considered a joint campaign event for which both candidates must pay a share of the costs.
- The Commission considers several indicia in determining whether a candidate is the beneficiary of a joint campaign event, including whether the candidate was featured on invitations to the event, whether the media was alerted to the candidate's presence, whether the candidate notified supporters that he or she would be there, whether the candidate's literature is distributed at the event, whether the candidate is fundraising at the event, the extent to which the event targets that candidate's voters or donors, and the extent to which the candidate is speaking at the event regarding his or her own campaign.

#### **2. How to allocate *pro rata* share of a joint campaign event**

- Candidate committees must pay for their reasonable *pro rata* share of the costs of a joint campaign event. Committees should allocate reasonable *pro rata* share based on the indicia laid out in the response to Question No. 1.
- Candidates do not always benefit equally from an event and accordingly, candidate committees will not always have to split the costs of a joint event equally.
- If subsequent to receiving a grant, a participating candidate committee receives the benefit of a joint campaign event and cannot pay its share of the event costs directly to vendors, the committee should reimburse the expending committee for its reasonable proportionate share of the event costs. This is so even though, once committees of candidates participating in the Citizens' Election Program

(“Program”) receive grant funds, they are not permitted to make expenditures to other committees.

**3. Record-keeping requirements for joint campaign events**

- One candidate committee may not appoint another committee as the keeper of all or a portion of its records for a joint campaign event.

**4. Whether a town committee event is a campaign event requiring cost allocation**

- In determining whether a town committee event is a campaign event for a candidate, the Commission considers the indicia laid out in the response to Question No. 1.
- If the town committee event is considered a campaign event for the candidate, either the candidate committee may pay its *pro rata* share of the event or the town committee may pay for the entire event and allocate and report a portion of it as a contribution (if permissible) or as an organization expenditure made on behalf of the candidate committee.

*Legal Analysis and Conclusions:*

This advisory opinion provides guidance to candidates with separate candidate committees that would like to hold joint campaign events, as well as town committees seeking to hold events benefiting a candidate.

As an initial matter, Connecticut campaign finance law prohibits a candidate committee from making a contribution to another candidate committee. *See* General Statutes § 9-616 (a). The term “contribution” is defined broadly in the General Statutes to include “anything of value, made for the purpose of influencing the nomination for election, or election, of any person.” General Statutes § 9-601a (a). The law does not distinguish between the provision of funds and the provision of non-monetary items – they are both considered contributions under the law. Accordingly, if a candidate committee makes expenditures for an event which benefits another candidate committee, this could result in an impermissible in-kind contribution from the expending candidate committee to the benefiting candidate committee if the latter has not paid for its share of the event.

**1. When is an event a joint campaign event such that the candidate committees benefiting must pay and report a *pro rata* share of the cost of the event?**

Not every campaign event for one candidate at which another candidate is present will be considered a campaign event for both candidates such that both candidate committees must pay for a *pro rata* share of the costs of the event to avoid running afoul of General Statutes § 9-616 (a). The Commission will consider several indicia in determining whether an event is a campaign event for a candidate, including:

- 1) Whether the invitations for the event tout the candidate's presence and/or the chance to hear her message;
- 2) Whether the media was alerted as to the candidate's presence at the event;
- 3) Whether the candidate notified his supporters that he would be present at the event;
- 4) Whether the candidate is distributing her campaign literature at the event or in connection with the event;
- 5) Whether the candidate is fundraising at the event;
- 6) The extent to which the event targets the voters or in-district donors of the candidate; and
- 7) The extent to which the candidate is speaking at the event regarding his campaign.

So, for example, if Candidate Committee A is hosting a fundraising event for its candidate – Candidate A – and Candidate B attends that event but she does not speak at the event about her own legislative record or candidacy, does not set up a fundraising table at the event, does not urge her supporters to attend because she would be there, and her name was not used to promote the event in invitations or advertising, this would not be considered a campaign event for Candidate B. If an attendee at this event approaches Candidate B and makes a contribution to her candidate committee, this fundraising initiated by a third party, without more, would not transform the event into a campaign event for Candidate B necessitating her payment for a portion of the event's costs. Likewise, if during the event, Candidate A announces Candidate B's presence at the event and Candidate B says a few words, this, without more, would not transform the event into a campaign event for Candidate B. If, however, Candidate A asks Candidate B to say a few words at the event, and Candidate B uses this invitation as a platform to give a long speech advocating for her own candidacy and solicit contributions, this may transform the event into a campaign event for which her committee should pay some small share of the costs. Likewise, if Candidate B was advertised as a speaker at the event, uses her speech as a platform to campaign for her own election, and sets up a table to collect contributions and distribute literature this would be a joint campaign event for which she should pay an adequate portion.

The Commission recognizes that that the balancing of the above indicia is not an exact science and encourages treasurers to carefully record the basis for their good faith efforts to ascertain appropriate treatment of an event. The greater the expense associated with an event, the more important allocation and adequate documentation supporting that allocation becomes. Finally, where great expense is involved, the Commission strongly recommends that treasurers err on the side of caution when determining whether to deem the event to be joint when their candidate takes part.

## **2. How should candidate committees allocate *pro rata* share for a joint campaign event?**

Even if an event is deemed to be a "joint event" for which some cost allocation is appropriate, candidates are not necessarily required to pay an equal share of the event

costs. The law merely requires that a candidate committee pay for its *pro rata* share of a joint campaign event to avoid making a contribution to another candidate committee. This means that a candidate committee need only pay for the portion of the costs for the event that are proportionate to the benefit received by the candidate.

In the past, the Commission has taken the position that it will not dispute a committee's determination of its *pro rata* share of a joint expenditure unless it is found to be clearly erroneous. *In the Matter of a Complaint by Joseph P. Secola*, Brookfield, File No. 97-294. Nevertheless, candidates and campaign treasurers have asked for general guidance regarding how to properly determine reasonable *pro rata* share. The indicia articulated above provide a good measure for how to allocate *pro rata* share for a joint campaign event. The more indicia which are evident for a given candidate at an event reflect the extent a candidate has benefitted from that event. It is conceivable that a joint campaign event might be primarily for the benefit of one candidate. For example, if an event is advertised as a fundraising event for Candidate A – “Come meet your candidate for Governor and hear about her plans for Connecticut” – and the campaigns of Candidates B, C, and D are present and have fundraising tables set up at the event but are not otherwise campaigning at the event, it would be reasonable for Candidate A's candidate committee to pay for the majority of the event's costs and the other candidate committees to pay for a small share. However, if it is clear from the invitations, advertising, and the event itself that it is being held for the purpose of promoting all of the candidates equally then it would be reasonable to allocate an equal share of the event costs to each benefiting candidate committee. For example, if an event is advertised as a chance to “Come out and meet the team and hear Candidates A and B talk about their platforms” and at the event both candidates are given equal time to promote their candidacies, it would be reasonable to allocate the event costs equally. If, however, Candidate A is fundraising at this event and Candidate B is not fundraising or accepting contributions, it would be reasonable to have Candidate A's committee pay for a greater share of the costs of the event. Likewise, if Candidate A speaks for an hour at the event and Candidate B speaks for just ten minutes, it would be reasonable to have Candidate A's committee pay for a greater share of the costs of the event.

The Commission has also received many questions about campaign events for one candidate that become a joint campaign event for another candidate after the first candidate committee has already made expenditures to vendors for the event. For example, an event might be advertised as a campaign event solely for Candidate A. After the event is planned and paid for, Candidate B might, by his actions surrounding the event, change the tenor of the event by using the event to speak extensively about his candidacy, inviting his own supporters to attend the event to support his candidacy, and fundraising and handing out campaign paraphernalia at the event. If this were the case, Candidate B should bear a reasonable proportionate share of the event costs and reimburse Candidate A for this share to avoid receipt of an impermissible in-kind contribution.

The Commission notes that that once committees of candidates participating in Program receive grant funds, they are not permitted to make expenditures to other

committees. Regs. of Conn. State Agencies, § 9-706-2 (b) (8). It is also impermissible after the receipt of a program grant for grant recipients to make expenditures “in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure.” Regs. of Conn. State Agencies, § 9-706-2 (b) (10). Thus, after the receipt of a grant, a participating candidate committee should pay for its proportionate share of event costs by paying this share directly to event vendors.

Nevertheless, the Commission has received many questions about what a committee should do if a candidate committee attended an event that became a joint event after the event was paid for or if a mistake was made resulting in one committee paying the vendors in full. The Commission has determined that the tension between the two relevant provisions of the law must be resolved in favor of a participating candidate curing the receipt of an impermissible in-kind contribution and preserving compliance with the voluntary expenditure limits. Accordingly, the Commission advises that if, subsequent to receiving a grant, a participating candidate committee receives the benefit of a joint campaign event and cannot pay its share of the event costs directly to vendors, the committee should reimburse the expending committee for its reasonable proportionate share of the event costs. The Commission will of course consider the circumstances of the reimbursement and the necessity of such a cure in evaluating any potential violation of Program regulations and any committee facing this scenario should keep detailed records concerning the need for the reimbursement and the steps taken to avoid breaching the voluntary expenditure limits.

### **3. What are the record-keeping requirements for joint campaign events?**

The Commission has been asked whether one or the other candidate committee may keep the records of the expenditures for a joint event. This would not be in compliance with the law. Each candidate committees must maintain internal records to substantiate all expenditures, including joint expenditures. General Statutes § 9-606 (a). The treasurer of one committee may not rely on another committee to fulfill this obligation. The Commission recommends that whenever possible candidate committees benefiting from a joint expenditure should document the agreed upon *pro rata* share allocation for the expenditure prior to the expenditure being made.

In addition, each campaign is required to retain documentation of all campaign expenditures made for four years from the filing date of the candidate committee’s final disclosure statement. General Statutes § 9-607 (f). Therefore, all benefiting committees should retain documentation of joint campaign expenditures which may include copies of invoices, receipts and contracts pertaining to a joint expenditure as well as any invitations or advertising produced for joint campaign events. One candidate committee may not appoint another as the keeper of all or a portion of its records.

**4. When is an event by a town committee considered a campaign event for the candidate such that a *pro rata* share of the cost of the event must be allocated to the candidate committee?**

Often, town committees will host events at which candidates are present. Similar to candidate committee events, not every town committee event at which a candidate is present will be considered a campaign event, the costs of which must be partially allocated to the benefiting candidate committee. Rather, in determining whether such an event is a campaign event, the Commission will consider the same indicia referenced in Question No. 1.

If the treasurers involved consider the town committee event at issue to be a campaign event benefiting the candidate pursuant to the aforementioned indicia, then the associated costs may be addressed in one of three ways. First, similar to a joint event with a candidate committee, the candidate committee may pay its *pro rata* share of the event. Second, the town committee may pay for the entire event and designate that portion benefiting the candidate committee as a contribution from the town committee to that candidate committee. Keep in mind that this must be within the proper limits and town committees may not make contributions to candidate committees of candidates participating in the Program. General Statutes §§ 9-617 (a), 9-704(a); Declaratory Ruling 2007-03. Third, the town committee may pay for the entire event and allocate and report that portion benefiting the candidate committee as an “organization expenditure.” An “organization expenditure” is a type of expenditure made by a party committee, legislative caucus committee or legislative leadership committee that is exempt from the definition of contribution and expenditure. General Statutes §§ 9-601 (25), 9-601a (b) (16), 9-601b (b) (8). There are five types of organization expenditures, one of which is “[a] campaign event at which a candidate or candidates are present.”

If the town committee is reporting as an organization expenditure a campaign event at which a participating General Assembly candidate is present, the committee should keep in mind that there are limits on the amount of organization expenditures it may make on behalf of certain candidates – \$10,000 for a participating state senate candidate and \$3,500 for a participating state representative candidate. General Statutes § 9-718.

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

Adopted this 28th day of July 2010 at Hartford, Connecticut by a vote of the Commission.

  
Stephen F. Cashman, Chairman