



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

DECLARATORY RULING 2011-01:

Communications on Behalf of Candidates by Party Committees, Legislative Leadership Committees, and Legislative Caucus Committees

At its regular meeting on November 17, 2010, the Commission initiated a declaratory ruling to memorialize advice repeatedly requested throughout the 2008 and 2010 election cycles regarding how party committees, as well as legislative leadership and legislative caucus committees, may assist candidates in promoting the candidate and in evincing that committee's support of the candidate. This Declaratory Ruling addresses the permissible methods of support that these specific committees may utilize, and specifically addresses party candidate listings, a type of organization expenditure as defined by General Statutes § 9-601 (25). This Declaratory Ruling will summarize some of the basic attributes of a permissible party candidate listing and some characteristics that would be considered by the Commission to fall outside that scope, as well as permissible forms of party candidate listings and the applicable attribution requirements.

Summary

- Legislative leadership, legislative caucus, and party committees may provide advertising assistance to certain candidates by making monetary or in-kind contributions. Candidates voluntarily participating in the Citizens' Election Program ("CEP"), however, may *not* accept contributions from these sources, instead opting to run their campaigns with small dollar donations and public campaign funds.
- Legislative leadership, legislative caucus, and party committees may also provide advertising assistance to certain candidates by making "organization expenditures" which are narrowly defined and do not constitute contributions. CEP candidates may receive the benefit of organization expenditures.
- An organization expenditure known as a "party candidate listing" may be used for such purposes. Party candidate listings are limited in content. They may not solicit funds or speak negatively about a candidate.
- Party candidate listings may take various forms and may include not only the actual advertisement but also the costs associated with displaying and distributing the advertisement, as long as the advertisement would otherwise fit within the definition of a party candidate listing.
- The law requires a party candidate listing to contain an attribution, including "approved by" and the name(s) of the candidate(s) it supports. The Commission will not enforce against party candidate listings featuring five or more candidates where

the attribution says “approved by” followed by a broad reference to the candidates who are otherwise identified in the communication’s body – i.e., “Approved by the Above Listed Candidates.”

Contributions by Legislative Leadership, Legislative Caucus, and Party Committees

There are many ways in which legislative leadership, legislative caucus, and party committees¹ may work with a candidate running for office to provide assistance to advertise and promote the candidate. For candidates not participating in the CEP, these committees may provide direct financial assistance to cover advertising costs by making monetary contributions to the candidate committee. The party and legislative leadership and caucus committees may also pay for the advertising themselves while coordinating with the candidate to produce the advertisement. This benefit would be considered an in-kind contribution to the candidate committee. Candidate committees of candidates participating in the CEP may not receive contributions from any other committee.

Contribution Limits to Candidate Committees of Candidates Not Participating in the CEP

The amount of contributions, whether monetary or in-kind, that each of these committees may contribute to candidate committees of candidates not participating in the CEP are subject to the following aggregate limits, which apply separately to primaries and elections and depend on the office being sought:

Office Sought	State Central Committee	Town Committee	Legislative Leadership / Caucus Committee
Governor	\$50,000	\$7,500	PROHIBITED
Lt. Governor, State Treasurer, Comptroller, Attorney General and Secretary of State	\$35,000	\$5,000	PROHIBITED
State Senator	\$10,000	\$5,000	\$10,000
State Representative	\$5,000	\$3,000	\$5,000
Probate Judge	\$10,000	\$3,000	PROHIBITED
Chief Executive Officer of the Municipality (e.g. Mayor, First Selectman)	\$10,000	\$3,000	PROHIBITED
Other Municipal Offices	\$5,000	\$1,500	PROHIBITED
Exploratory Committee (undetermined office)	\$375	\$375	PROHIBITED

¹ The definition of “party committee” means a state central committee or a town committee. General Statutes § 9-601 (2).

State Elections Enforcement Commission
Declaratory Ruling 2011-01

Office Sought	State Central Committee	Town Committee	Legislative Leadership / Caucus Committee
Political Slate Committee (Municipal Offices)	\$2,500	\$1,500	PROHIBITED
Political Slate Committee (Town Committee Primary)	UNLIMITED	UNLIMITED	PROHIBITED

CEP Candidates May Not Receive Contributions from Other Committees

Candidates voluntarily participating in the CEP may not receive contributions from these sources, instead opting to run their campaigns with small dollar donations from individual human beings and CEP funds. *See* General Statutes § 9-704 (a); Declaratory Ruling 2007-03: *Citizens' Election Program: Qualifying Contributions* (Sept. 12, 2007). Thus, participating candidates may not receive monetary or in-kind contributions from legislative leadership, legislative caucus, or party committees.

Organization Expenditures Generally

All candidates funded by a candidate committee may, however, receive the benefit of organization expenditures. An organization expenditure is a type of payment to benefit candidates made by a party committee, legislative caucus committee, or legislative leadership committee that is exempt from the definitions of contribution and expenditure. *See* General Statutes §§ 9-601 (25), 9-601a (b) (16), 9-601b (b) (8). Since organization expenditures are not considered contributions, candidates participating in the CEP may receive the benefit of organization expenditures.

Organization Expenditures Made by Party Committees

Party committees may make unlimited organization expenditures on behalf of participating and nonparticipating statewide candidates, nonparticipating General Assembly candidates, and candidates running for Judge of Probate or a municipal office, if the candidate is funded by a candidate committee. Party committees may also make unlimited organization expenditures for candidates in an exploratory committee, regardless of the office(s) they are seeking.² As for General Assembly candidates participating in the CEP, party committees may make organization expenditures on their behalf within certain limits – \$3,500 for state representative candidates and \$10,000 for state senate candidates for the general election campaign. *See* General Statutes § 9-718 (a) & (c). Party committees may also make limited organization expenditures on behalf of a candidate who has filed an exemption from the requirement to form a candidate

² If the primary campaign has begun, note that organization expenditures for General Assembly candidates may not include party candidate listings during this period. *See* General Statutes § 9-718 (b) & (d).

committee because the candidate does not intend to spend or receive over \$1,000 (and the organization expenditure would not otherwise put the candidate over that threshold).³

Organization Expenditures Made by Legislative Leadership Committees or Legislative Caucus Committees

Legislative leadership and legislative caucus committees may only make organization expenditures on behalf of General Assembly candidates – *not* statewide, Judge of Probate, or municipal candidates – given the lawful purpose of these types of committees. *See* General Statutes §§ 9-607 (g) (1), 9-618. For General Assembly candidates not participating in the CEP, legislative leadership and legislative caucus committees make unlimited organization expenditures on behalf of such candidate committees, while for General Assembly candidates participating in the CEP, they are limited to \$3,500 for state representative candidate committees and \$10,000 for senate candidate committees for the general election campaign. *See* General Statutes § 9-718 (a) & (c).⁴ They may also make limited organization expenditures for nonparticipating General Assembly candidates who have filed a 1B exemption as not intending to spend or receive over \$1,000 (and the organization expenditure would not otherwise put them over that threshold).⁵

Party Candidate Listings as Organization Expenditures

Organization expenditures, and in particular party candidate listings, are defined in substantial detail. *See* General Statutes § 9-601 (25). Because organization expenditures are an exception to the definitions of contribution and expenditure, *see* General Statutes §§ 9-601a (b) (16), 9-601b (b) (8), their definition must be narrowly construed, like all exceptions in the law. *See Commission on Human Rights and Opportunities v. Sullivan*, 285 Conn. 208, 222, 939 A.2d 541 (2008); SEEC Advisory Opinion 2008-01: *Proposed Political Activity of Nonprofit Association* (June 11, 2008)

³ A candidate who has filed an exemption from forming a candidate committee because she intends to finance her campaign entirely from personal funds or does not intend to receive or expend *any* funds may not receive organization expenditures. *See* General Statutes § 9-604 (b) (2) & (4). Similarly, a candidate who has filed an exemption from forming a candidate committee because he is on a slate of candidates solely funded by a party committee or political slate committee may not receive organization expenditures (in the case of a candidate funded by a party committee, that committee is of course permitted to make unlimited expenditures to promote that candidate). *See* General Statutes § 9-604 (b) (1). If such a candidate receives or wishes to receive the benefit of organization expenditures, the candidate must amend his registration and form a candidate committee (unless he still qualifies for the exemption of not intending to spend or receive over \$1,000 and would like to remain exempt from forming a candidate committee). *See* General Statutes § 9-604 (b). The candidate's registration statement must be amended within three days of the change in circumstances. General Statutes § 9-604 (b).

⁴ Please note that party committees, which may support both statewide and General Assembly candidates, may make organization expenditures on behalf of exploratory committees; however, legislative leadership committees and legislative caucus committees may not do so.

⁵ *See* previous footnote for a discussion of how the organization expenditure provisions generally apply to candidates who have filed an exemption from the requirement to form a candidate committee.

(construing exception to definition of expenditure narrowly). Because the criteria for each type of organization expenditure differs and the ramifications for making an organization expenditure versus a contribution differ, committees making the organization expenditure should take care to understand whether their expenditure falls within the definition of in-kind contribution or organization expenditure. As discussed above, CEP candidates may not receive in-kind contributions.

In the context of advertising for a candidate, party candidate listings are a common type of organization expenditure that party committees and legislative caucus and legislative leadership committees may wish to utilize.

Content of Party Candidate Listings

The scope of what constitutes a party candidate listing is narrowly defined and construed. General Statutes § 9-601 (25) provides, in relevant part:

“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).

Committees wishing to make use of this type of organization expenditure must take care to limit the communication's content to the scope of the definition of a party candidate listing.⁶ Otherwise, the expenditure could be deemed acceptance of an

⁶ During the primary campaign, party committees and legislative leadership and legislative caucus committees **may not** make organization expenditures for a party candidate listing which includes a General Assembly candidate participating in the CEP. See General Statutes § 9-718 (b) & (d).

impermissible in-kind contribution if the benefiting candidate is participating in the CEP, or, if the candidate is nonparticipating, in excess of the respective contribution limit.

In particular, committees should be aware of two types of content that, if present, take a communication or advertisement outside the scope of a party candidate listing – (1) negative content and (2) solicitation. These are not the only types of content that fall outside the scope of a party candidate listing, but they are the most common subject of questions so we address them more fully below.

In order to constitute a party candidate listing, a communication may not contain negative content about a candidate or party. *See Complaint of Edward H. Raff, et al.*, Hartford, File No. 2008-141 (“[T]he expenditure in question did not qualify as an ‘organization expenditure’ pursuant to § 9-601 (25) because the advertisement contains *language arguably discouraging electors from voting for [major party] candidates* and is therefore not limited to encouragement to vote for such candidates.” (emphasis added)); *In the Matter of Complaints by Kathleen Prudden and Elizabeth A. Rhoades*, Stafford Springs, File No. 2007-405 (finding that a town committee’s distribution of a simulated ballot highlighting the names of all of the Democratic candidates alongside the (un-highlighted) names of the Republican candidates fell outside of the definition of a party candidate listing because the candidates were not treated in substantially similar fashion and it discouraged voting for the un-highlighted, named candidates); *In the Matter of a Complaint by Matthew Knickerbocker*, Bethel, File No. 2008-132 (finding a town committee purchase of an advertisement that explicitly called for the defeat of the incumbent representative did not constitute a party candidate listing because the advertisement was negative).

Thus, to the extent any individual candidate or party is mentioned in a party candidate listing, the discussion must be limited to encouragement to vote for said party or candidate and cannot contain any negative treatment of any opposing party or candidate that would constitute discouragement to vote for said opposing party or candidate. In short, in order to qualify as a party candidate listing, a communication must only contain positive treatment of candidates supported by the expending committee.

In addition, party candidate listings may not solicit funds for any involved candidate or committee. Again, the content of a party candidate listing is limited to what is defined in General Statutes § 9-601 (25) (A), which does not contain any reference to solicitation.

Party Committee Expenditures Soliciting Funds for the Party Committee and Which Mention Names of Candidates and Office Sought

As discussed above, party committees may make contributions to candidate committees of nonparticipating candidates (but not to CEP candidates’ committees), and may make organization expenditures, including party candidate listings, to benefit candidate committees of CEP and nonparticipating candidates. Party candidate listings may not contain solicitations.

Notwithstanding these provisions, the Commission recognizes that party committees commonly distribute communications soliciting funds for themselves which merely mention the names of candidates that the committee supports and the offices sought. Such communications do not qualify as organization expenditures that CEP candidates may accept. Any promotional benefit to these candidates of being merely listed as among those that the soliciting party committee or legislative leadership or legislative caucus committee intends to support may, however, fall within the *de minimis* exception to contribution recently adopted by the legislature. *See* General Statutes § 9-601a (b) (18) (as amended by Public Act 10-1).

Form of Party Candidate Listings

A party candidate listing may take many forms. In clarifying the definition of a party candidate listing, the statute provides, “[T]he 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” General Statutes § 9-601 (25) (A) (emphasis added). Thus, a party candidate listing may take the form of a television or newspaper advertisement, a direct mailer, an electronic mail or a website, or a telephone call, assuming it otherwise meets the definition of a party candidate listing. This list is non-exhaustive. Signs, for example, would be a permissible form for a party candidate listing. The relevant criterion is that the party candidate listing be distributed through some type of public advertising.

The Commission has received numerous questions concerning not just whether a particular advertisement qualifies as a party candidate listing, but whether costs associated with delivering or presenting that advertisement can be categorized as a party candidate listing as well – for example, envelopes to deliver a direct mail party candidate listing, or frames or stakes to display lawn sign party candidate listings.

The statute defines the party candidate listing organization expenditure as follows: “The preparation, ***display or mailing or other distribution*** of a party candidate listing.” General Statutes § 9-601 (25) (A) (emphasis added). The language plainly states that it is not just the party candidate listing itself that qualifies as an organization expenditure, but also any costs associated with the display, mailing, or other distribution of the party candidate listing. Therefore, legislative leadership, legislative caucus, and party committees may pay for the envelopes that distribute a direct mail party candidate listing as well as the stakes or frames that display a lawn sign party candidate listing.

Moreover, even if the candidate committee pays for the underlying communication, the legislative leadership, legislative caucus, or party committee may pay for the costs to distribute or display the communication as an organization expenditure. For example, if a candidate committee pays for a direct mail piece, a town committee could pay for the envelopes and postage to mail that piece as an organization expenditure as long as the communication itself still otherwise meets the definition of a

party candidate listing. For instance, the mailer could not solicit funds for the candidate or speak negatively of his opponent.

Attribution Requirements for Party Candidate Listings

The statute pertaining to attribution specifically requires that party candidate listings contain an attribution:

(a) No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and ***no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing***, as defined in subparagraph (A) of subdivision (25) of section 9-601, as amended by this act, for any written, typed or other printed communication, or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or promotes or opposes any political party or solicits funds to benefit any political party or committee unless such communication bears upon its face (1) the words "***paid for by***" and the following: (A) In the case of such an individual, the name and address of such individual; ***(B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer; (C) in the case of a party committee, the name of the committee;*** or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, and (2) the words "***approved by***" and the following: (A) ***In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate;*** or (B) in the case of a candidate committee, the name of the candidate.

General Statutes § 9-621 (a) (as amended by Public Act No. 10-187) (emphasis added).

Thus, party candidate listings paid for by a party committee must bear the attribution "paid for by" and the name of the party committee and "approved by" and the name(s) of the candidate(s) listed. Party candidate listings paid for by a legislative leadership committee or legislative caucus committee must bear the attribution "paid for by" and the name of the legislative leadership or legislative caucus committee and the name of its treasurer and "approved by" and the name(s) of the candidate(s) listed.

Accordingly, if the communication lists three candidates, all three candidates' names must appear after the "approved by" language.

With the passage of the new law, some have voiced concern over the impracticality of listing all candidates after the "approved by" language when the legislative leadership, legislative caucus, or party committee is sponsoring a party candidate listing that includes many candidates, such as, for example, if it were to include the entire slate of candidates running under one party in a particular district.

With this consideration in mind, the Commission will not otherwise enforce at this time against a committee paying for a party candidate listing featuring *five or more* candidates where the body of the listing contains each of the candidates' names and the attribution contains the "approved by" language immediately followed by a broad reference to the candidates – for example, "Approved by the Above Listed Candidates." The Commission concludes that this language is substantially in compliance with the statutory requirement as it is in keeping with the legislature's intent to have it be known that the benefiting candidates approve the advertisement, while recognizing the unworkability of requiring a party candidate listing containing many candidates' names to list all candidates' names in the attribution after they have already appeared in the advertisement itself. Treasurers of the sponsoring committee must always ascertain that they do indeed have the approval of the candidates whose names appear in the communications.

In the case of a party candidate listing in the form of a sign, the sign would only need an attribution if the sign's surface area is over 32 square feet. *See* General Statutes § 9-621 (a) & (d).

Where the legislative leadership, legislative caucus, or party committee is only paying for the costs to display or distribute the candidate's communication, that committee's attribution would still be required even if the candidate committee paid for the actual communication. For example, if a candidate committee pays for a direct mail piece (that otherwise fits the definition of a party candidate listing), and the town committee pays for the envelopes and postage, the town committee's attribution would also be required to appear within the mailing.

Joint Expenditures between Candidate Committees and Party, Legislative Leadership or Legislative Caucus Committees

Alternatively, if the type of communication the committees wish to pay for does not fit within the definition of a party candidate listing and the legislative leadership, legislative caucus or party committee does not wish to pay for the entire cost as a contribution to the candidate (or cannot, if such a contribution would be impermissible or in excess of the maximum contribution limit), the committees may pay for the communication jointly, with each paying its proportional share.

State Elections Enforcement Commission
Declaratory Ruling 2011-01

This constitutes a declaratory ruling pursuant to General Statutes § 4-176, and provides guidance about communications on behalf of candidates by party committees, legislative leadership committees, and legislative caucus committees. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

This declaratory ruling is only meant to provide general guidance and addresses only the issues raised. Any further questions regarding the issues discussed in this declaratory ruling may be raised to the staff of the State Elections Enforcement Commission.

Adopted this 26th day of January, 2011, by Order of the Commission.



Stephen F. Cashman, Chairman