

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Complaint of
Edward Calandro, et al., West Haven

File No. 2007-349

FINDINGS AND CONCLUSIONS

The Complainants, Edward Calandro, Brent Coscia, Dominic Francese, Philip Romanik, and Robert Symmes bring similar complaints pursuant to Connecticut General Statutes § 9-7b, which have been consolidated. They allege that the Mayor of the City of West Haven (the "City"), John Picard, violated Connecticut General Statutes § 9-610 (d) (1) when he used public funds to produce a promotional mailing that was distributed within three months of an election in which he was a candidate. One Complainant also asserts that Mayor Picard violated General Statutes § 9-621 (a) when he failed to include the proper attribution on that mailing.

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

1. The Complainants allege that Mayor Picard violated General Statutes § 9-610 (d) (1) when he authorized the use of public funds to produce and distribute a three page mailing concerning a June 2007 transaction between Yale University ("Yale") and Bayer HealthCare ("Bayer"). They assert that the mailing was promotional and that Mayor Picard intended it to bring about his reelection.
2. General Statutes § 9-610 (d) (1) provides in pertinent part as follows:

No incumbent holding office shall, during the three months preceding an election in which he is a candidate for reelection or election to another office, use public funds to mail or print flyers or other promotional materials intended to bring about his election or reelection.
3. In order to address properly the Complainants' claim, it is important to first describe the Yale-Bayer transaction. Prior to the fall of 2007, Bayer maintained a 136 acre pharmaceutical research complex in West Haven and Orange, Connecticut. On November 9, 2006, Bayer announced that it would close that facility which employed at least 1000 people. Bayer had been West Haven's biggest taxpayer providing the City with over \$2 million in tax revenue. It also provided several hundred jobs for West Haven residents.
4. On June 13, 2007, Yale University ("Yale") and Bayer announced that Yale had agreed to purchase the complex. Bruce Alexander, Yale's Vice-President for New Haven-State Affairs and Campus Development, described the transaction as "very high profile" and "a big deal in West Haven." According to news articles written at the time, Yale agreed to make voluntary annual payments to West Haven and planned to invest \$1 million in local schools. In addition, West Haven would also receive funds from the state's

Payment in Lieu of Taxes, or PILOT, program in recognition of the property's nontaxable academic status.

5. A public forum was held in West Haven in mid-June, 2007 to allow the public to discuss the Yale-Bayer transaction. Mayor Picard, Mr. Alexander, and Sandra Oliver, the Vice President of Public Policy and State Government Affairs for Bayer Healthcare, were present at that meeting and each fielded questions from those in attendance. Each maintains that during the meeting they learned that residents were extremely concerned about the tax impact of the transaction, the loss of jobs, and Yale's use of the property.
6. However, only about 75 to 100 of the City's 50,000 plus residents attended the meeting. As a result, all three individuals recognized a further need to communicate with the public about the impact of the Yale-Bayer transaction. Thus, they agreed to join together to draft a single mailing that would be signed by Mayor Picard and Mr. Alexander.
7. Between September 6th and 10th of 2007, the Complainants each received a three page mailing regarding the Yale-Bayer transaction. That mailing was dated August 27, 2007, was written on Mayor Picard's City of West Haven letterhead and bears his seal, as well as the seal of the City. The first two pages of the mailing consist of a letter signed by Mayor Picard and Mr. Alexander. A brief description of the Yale-Bayer transaction appears on the first page. It then describes the way in which the City would benefit from that transaction. The second page contains quotations regarding the transaction. One of those quotes was provided by Mr. Alexander and states as follows:

"Mayor Picard got the University interested in locating on the Bayer campus when I joined his West Haven Economic Development task force, and we look forward to helping create more jobs for local residents."
8. The final two paragraphs of the second page state Yale's beneficial impact on the City. They also provide that:

"The Yale/Bayer transaction was made possible by the development of policies now in place. It is my goal to use this transaction as a foundation to build a better community through economic development."
9. The third page of the mailing is a copy of an editorial that appeared in the New Haven Register on June 17, 2007 regarding that transaction. It provides a description of the impact of that transaction on the City. There is, however, no reference to Mayor Picard on that page.
10. Mayor Picard was the incumbent Mayor of the City at the time the mailing was produced, and has held office since November, 2005. Additionally, he was a candidate for reelection for that office at the time of the mailing. Furthermore, the mailing at issue was prepared and distributed for release in August of 2007, which is within the three months preceding the November 6, 2007 municipal election.
11. Finally, the Commission finds, and Mayor Picard admits, that public funds were used to prepare the mailings for distribution. At a minimum, approximately \$3100 was used to

print and prepare the mailing for distribution. That estimate includes the cost of the paper and envelopes used, as well as the rate of pay for the individuals involved in producing the mailings. However, public funds were not used to cover the costs of postage of those mailings; Bayer covered that \$5736.95 cost.

12. It is important to note that the Democratic primary for Mayor was held in West Haven on September 11, 2007. The Complainants appear to assert that that primary triggered three month period set forth in § 9-610 (d) (1). Sections 9-610 (d) (1) is, however, narrow in its application and limited to the three months preceding an *election* not a primary.
13. In light of those facts and the language of § 9-610 (d) (1), the determinative issue in this case is whether the mailing at issue was a “promotional materials intended to bring about [Mayor Picard’s] . . . reelection.” Intent can be inferred from the factual circumstances surrounding the matter at issue. Matter of a Complaint by Peter Torrano, File No. 99-214, affirmed by *Carol D. Nichols v. State Elections Enforcement Commission*, Conn.Super. 2001, 2001 WL 1468891. As such, we first look to the actual content of the communication as the best measure of the communicator’s intent . . .” *Id.* In reviewing that content, we look to see if there is language that either expressly advocates the Mayor Picard’s reelection or is so laudatory as to implicitly advocate such reelection. *Id.*
14. In the present case, the mailing does not expressly advocate Mayor Picard’s reelection; thus, the Commission must determine if that mailing implicitly advocates his reelection. In determining whether a communication implicitly advocates the reelection of an incumbent, the Commission considers the consistency of the language of the communication in relationship to its governmental purpose. In prior cases, the Commission has determined that a printed communication implicitly advocates a candidates reelection when that communication referenced: (1) the candidacy or party affiliation of the elected official; (2) the record of the elected official; or (3) a solicitation for contributions or other support for the official’s campaign for reelection or providing the support of any other candidate, political committee or political party. See, e.g., Complaint of Roger J. Roche, File No. 2007-390.
15. The mailings at issue do not reference Mayor Picard’s candidacy or party affiliation, nor do they solicit contributions or other support for his campaign for reelection. Moreover, the evidence establishes that the governmental purpose of the mailing was to address the Yale-Bayer transaction and allay the concerns expressed by residents. The large majority of the content of the mailing was consistent with that purpose.
16. The letter included in that mailing does, however, include limited references to Mayor Picard’s record. The question is whether those references are relevant to the governmental purpose of the letter. The Commission has previously tolerated relevant record references where the communication does not mention the incumbent’s candidacy, party affiliation, or solicit contributions or votes. See, e.g., Complaint of Roger J. Roche, File No. 2007-390. “A relevant record reference is one announcing or explaining a recent government action of legitimate public importance.” *Id.* Whereas, “[an] irrelevant record reference is one that touts past accomplishments more remote in time and relevance . . .” *Id.*

17. Here, as noted, a quote by Mr. Alexander appears on the second page of the mailing that states that "Mayor Picard got the University interested in locating on the Bayer campus . . ." Additionally, the second page of the mailing provides that "[t]he Yale/Bayer transaction was made possible by the development of policies now in place." It also states that: "It is my goal to use this transaction as a foundation to build a better community through economic development." Mayor Picard also provided a quote for the mailing but it does not laud the Mayor or reference his record.
18. The Commission finds that the limited references to the Mayor's record in the three page mailing are not so remote in time and applicability as to make them irrelevant to the communication at issue. As a consequence, the Commission concludes that the language of the mailing is not sufficiently laudatory as to implicitly advocate Mayor Picard's reelection. Put another way, the actual content of the communication does not establish that Mayor Picard possessed the requisite intent necessary to establish a violation of General Statutes § 9-610 (d) (1).
19. Furthermore, the factual circumstances surrounding that mailing do not establish that Mayor Picard possessed the requisite intent necessary to establish a violation of General Statutes § 9-610 (d) (1). The Commission therefore concludes that Mayor Picard's use of public funds to produce the mailing at issue did not violate § 9-610 (d) (1).
20. One Complainant also alleges that Mayor Picard violated General Statutes § 9-621 when he failed to include the proper attribution on the mailings at issue. However, § 9-621 (a) (Rev. 2007) only provided as follows:

No individual shall make or incur any expenditure . . . and no candidate or committee shall make or incur any expenditure for any written . . . communication, . . . which promotes the success or defeat of any candidate's campaign for nomination at a primary or election . . . 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 . . . and (2) the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual; or (B) in the case of a candidate committee, the name of the candidate. . . .
[Emphasis added.]

21. Thus, § 9-621 (a) applies to expenditures made by *individuals, candidates or candidate committees* for written communications that promote the success or defeat of a candidate. Here, the payments for the mailings were made by the City of West Haven and Bayer; entities which do not fall within the definition of "individual," "candidate" or "candidate committee" as set forth in General Statutes § 9-601. Thus, the City and Bayer do not fall within the purview of § 9-621.

22. Furthermore, the payments made by Bayer and the City for the mailings do not constitute "expenditures" as they were not made for the purpose of influencing Mayor Picard's nomination or election. See C.G.S. § 9-601b (1). Finally, the mailing does not promote Mayor Picard's success as it does not contain words that expressly advocate Mayor Picard's election or the functional equivalent of such express advocacy. Accordingly, it is concluded that no violations of § 9-621 (a) occurred with respect to the mailings at issue.

ORDER

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

That the complaint be dismissed.

Adopted this 25th day of June, 2008 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission