

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Mary Pugh, Norwalk

File No. 2007-355

**AGREEMENT CONTAINING CONSENT ORDER AND
PAYMENT OF A CIVIL PENALTY FOR VIOLATIONS OF
CONNECTICUT GENERAL STATUTES (Rev. to 2005) §§ 9-333i (g) (as amended
by P.A. 06-137), 9-333x (10), and 9-333w (as amended by P.A. 05-188)**

This Agreement, by and between Scott E. Clingenpeel, of the City of Norwalk, County of Fairfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The instant Complaint, dated May 19, 2007, alleges that the "Dr. Scott P. Merrell for Governor 06" candidate committee made an expenditure for an advertisement, a portion of which benefitted his 2007 campaign for Mayor of the City of Norwalk. The Referral further alleges that after said advertisement, the Respondent failed to timely file a registration statement forming a single candidate committee on behalf of the 2007 campaign for Mayor or, alternately, a certification in accordance with the provisions of General Statutes § 9-604 (b).¹
2. Respondent Scott P. Clingenpeel was at all times relevant to the instant matter the treasurer for the "Dr. Scott P. Merrell for Governor 06" candidate committee, which was organized in support of Scott P. Merrell's 2006 election campaign for Governor.
3. Respondent Scott P. Clingenpeel was also at all times relevant to the instant matter the treasurer for the "Merrell Campaign" candidate committee, which was organized in support of Mr. Merrell's 2007 election campaign for Mayor of the City of Norwalk.
4. For the 2006 gubernatorial campaign, Mr. Merrell was part of a slate of candidates petitioning under the "Independent Party" for the offices of Governor, Lieutenant Governor, United States Senator, Secretary of State and State Treasurer. The Independent Party slate, including Mr. Merrell, was unsuccessful in petitioning onto the ballot statewide.
5. Mr. Merrell did not attempt to register as a gubernatorial write-in candidate by the deadline set forth in General Statutes § 9-373a, which is no more than 90 days and no less than 14 days prior to Election Day.
6. Accordingly, Mr. Merrell ceased to be a candidate for the office of Governor for the 2006 election as of no later than October 24, 2006.

¹ The allegations with respect to Respondent Scott P. Merrell are addressed in a separate document.

7. After the November 4, 2006 election, “Dr. Scott P. Merrell for Governor 06,” with the cooperation of and in consultation with Scott P. Merrell, made expenditures for two advertisements that ran in “The Hour,” a local Norwalk newspaper on December 24 and 31, 2006. According to the Statements of Receipts and Expenditures filed by that committee and covering the period from October 24, 2006 through December 31, 2006, the committee made expenditures totaling \$1,600 for said advertisements.
8. Said advertisements promoted Mr. Merrell generally and made reference to his 2006 candidacy for Governor, but also promoted his “undeclared” candidacy for Mayor of the City of Norwalk in 2007 and solicited contributions for the “Merrell Campaign.”
9. Said advertisements included an attribution at the end which read “Paid for by Dr. Scott P. Merrell for Governor 06,” along with the address of the committee.
10. General Statutes (Rev. to 2005) § 9-333b (now § 9-601a), provides in pertinent part:

(a) As used in this chapter “contribution” means:

(1) Any gift, subscription, loan, advance, payment or deposit of money or *anything of value, 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;*

...

(4) An *expenditure when made by a person with the cooperation of, or in consultation with, any candidate, candidate committee or candidate’s agent or which is made in concert with, or at the request or suggestion of, any candidate, candidate committee or candidate’s agent, including a coordinated expenditure;* . . .

[Emphasis added.]

11. General Statutes (Rev. to 2005) § 9-333c (now § 9-601b), provides in pertinent part:

(a) As used in this chapter, the term “expenditure” means:

(1) 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;* . . . [Emphasis added.]

12. General Statutes (Rev. to 2005, as amended by P.A. 06-137) § 9-333i (now § 9-607), provides:

(g) *Permissible expenditures.* (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;* [Emphasis added.]

13. The Commission concludes that Respondent, as treasurer of "Dr. Scott P. Merrell for Governor 06," violated General Statutes (Rev. to 2005, as amended by P.A. 06-137) § 9-333i (g). The expenditures for the aforementioned advertisements were not permissible expenditures within the meaning of § 9-333i (g) because: a) the advertisements occurred after the November 4, 2006 election and after the period in which Scott P. Merrell was a candidate for Governor; b) the advertisements were not made for the promotion of the nomination or election of the candidate who established the committee (Scott P. Merrell for Governor in 2006), but rather inured to the benefit of another candidate (Scott P. Merrell for Mayor in 2007); and c) the advertisements were not post-election "thank you" advertising.

14. General Statutes (Rev. to 2005) § 9-333x (now § 622), provides:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-333y:

....

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter; [Emphasis added.]

15. The expenditures for the aforementioned advertisements also constituted in-kind contributions to Mr. Merrell's candidacy for Mayor of the City of Norwalk, in the value of the advertisements, because, as discussed above, said advertisements inured to the benefit there of and were made with the cooperation of and in consultation with Mr. Merrell.

16. As such, the Commission further concludes that the Respondent violated General Statutes (Rev. to 2005) § 9-333x (10), as the contributions in the form of the aforementioned advertisements were, as set forth above, otherwise prohibited by General Statutes (Rev. to 2005, as amended by P.A. 06-137) § 333i (g).

17. General Statutes (Rev. to 2005, as amended by P.A. 05-188) § 9-333w (now § 9-621), provides:

(a) No individual shall make or incur any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, and *no candidate or committee shall make or incur any*

expenditure 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 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; or (C) in the case of a party committee, the name of the committee, 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.]

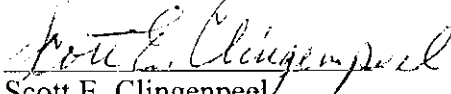
18. Finally, the Commission concludes that Respondent, as treasurer of "Dr. Scott P. Merrell for Governor 06," violated General Statutes (Rev. to 2005, as amended by P.A. 05-188) § 9-333w, as the aforementioned advertisements included an attribution at the end which read "Paid for by Dr. Scott P. Merrell for Governor 06," along with the address of the committee, but failed to include the name of the treasurer and the words "approved by" followed by the name of the candidate.
19. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
20. It is understood and agreed that this Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
21. The Respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
22. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

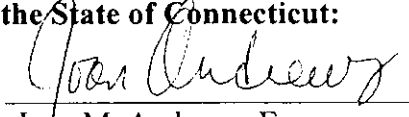
IT IS HEREBY ORDERED that the Respondent shall:

- 1) Pay a civil penalty of five hundred dollars (\$500.00) to the Commission on or before May 25, 2009;
- 2) Complete one campaign finance seminar produced by Commission staff on or before September 1, 2009;
- 3) Henceforth strictly comply with the requirements of Connecticut General Statutes §§ 9-607, 9-616, and 9-621.

The Respondent:


Scott E. Clingenpeel

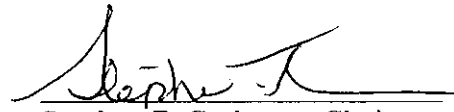
For the State of Connecticut:

BY: 
Joan M. Andrews, Esq.
Director of Legal Affairs & Enforcement
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: May 18, 2009

Dated: 5/20/09

Adopted this 27th day of May of 2009 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission