

FEB 23 2009

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
ENFORCEMENT
COMMISSION

In the Matter of a Complaint by
Michael P. Lawlor, East Haven

File No. 2008-124

**AGREEMENT CONTAINING CONSENT ORDER FOR VIOLATION OF
CONNECTICUT GENERAL STATUTES §§ 9-606, 9-608 & 9-706**

This agreement by and between Ralph J. Vitale, of the Town of East Haven, County of New Haven, State of Connecticut, hereinafter referred to as Respondent, and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with §9-7b-54 of the Regulations of Connecticut State Agencies and §4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Lori Musco was the Republican candidate for state representative for the 99th General Assembly District in the November 4, 2008 state election. She designated "Lori Musco to Hartford 2008" Committee, as her candidate committee and Ralph J. Vitale, as its Treasurer.
2. Lori Musco was a participating candidate in the Citizens Election Program and was awarded a grant for the November 4, 2008 election.
3. Complainant alleged that *Lori Musco to Hartford 2008* failed to report:
 - (1) Expenditures for campaign literature entitled "Lori Musco for State Representative: One of Our Own," and distributed at the Town of East Haven "Senior Day" on August 23, 2008, on committee financial statements covering the period prior to August 23, 2008;
 - (2) Expenditures for lawn signs for Lori Musco at the East Haven Neapolitan Night on August 31, 2008, on committee financial statements covering the period prior to August 31, 2008;

(3) Expenditures for coffee and cookies disseminated by Lori Musco at the East Haven Neapolitan Night on August 31, 2008, on committee financial statements covering the period prior to August 31, 2008; and

(4) Expenditures for an “approximately 30-minute long telephone poll” relating to the campaign for state representative during the days prior to July 27, 2008 on committee financial statements covering the period prior to July 27, 2008.

4. Respondent on August 27, 2008 filed an *Itemized Campaign Finance Disclosure Statement* (SEEC Form 30) covering the period of 07/01/08 thru 08/21/08 that disclosed five expenditures totaling \$463.78, which was designated “*Initial Itemized Statement accompanying application for Public Grant.*”
5. Respondent on September 11, 2008 filed an *Itemized Campaign Finance Disclosure Statement* (SEEC Form 30) covering the period of 08/21/2008 through 09/10/08 and disclosed no expenditures. The “Type of Report” was checked “*Initial Itemized Statement accompanying application for Public Grant.*”
6. Lori Musco’s grant application was continued by the Commission on September 4 and September 17 without prejudice and her application for a grant was approved by the Commission on September 24, 2008. This report, like that of August 27, 2008 was designated “*Initial Itemized Statement accompanying application for Public Grant.*”
7. General Statutes § 9-606, provides in pertinent part:
 - (a) ***The campaign treasurer of each committee shall be responsible for*** (1) depositing, receiving and reporting all contributions and other funds in the manner specified in section 9-608, (2) ***making and reporting expenditures,*** (3) ***reporting expenses incurred but not yet paid,*** (4) filing the statements required under section 9-608, and (5) keeping internal records of each entry made on such statements. ... [Emphasis added.]
8. General Statutes § 9-608, provides in pertinent part:
 - (c) ***(1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to:*** (A) An itemized accounting of each contribution, if any, including the full name and complete address of each contributor and the amount of the contribution; (B) in the case of anonymous contributions, the total amount received and the denomination of the bills;

(C) an itemized accounting of each expenditure, if any, including the full name and complete address of each payee, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be; *(D) an itemized accounting of each expense incurred but not paid*, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee; ... [Emphasis added.]

9. General Statutes § 9-706, provides in pertinent part:

(a)(1) *A participating candidate for nomination to the office of state senator or state representative in 2008*, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, *may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program...*

(c) The application shall be accompanied by a cumulative itemized accounting of all funds received, expenditures made and expenses incurred but not yet paid by the candidate committee as of three days before the date that the application is signed. Such accounting shall be sworn to under penalty of false statement by the campaign treasurer of the candidate committee. The commission shall prescribe the form of the application and the cumulative itemized accounting. The form for such accounting shall conform to the requirements of section 9-608. Both the candidate and the campaign treasurer of the candidate committee shall sign the application. [Emphasis added.]

10. After the complaint was filed in this matter, Respondent on October 9, 2008 filed a financial statement that was dated October 3, 2008 and designated an amendment, though no dates for the reporting period were indicated. Respondent reported

expenditures totaling \$755.73 for a) coffee (\$8.68); b) signs (\$45.05); and c) palm cards (\$702.00) as “expenses incurred but not paid.” The items disclosed were subjects of the complaint, and the Respondent otherwise provided zeroes on the remaining sections of this financial statement, which were not accurate.

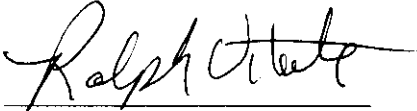
11. The Commission finds that because the expenses for coffee and signs were incurred on August 31, 2008, they should have been reported on the committee’s September 11, 2008 disclosure report. The expense for the palm cards was incurred on July 31, 2008 and should have been reported on August 27, 2008.
12. The expenses incurred but not paid as described in paragraph 11 above were later paid and reported as follows: the coffee and palm cards were paid on October 1, 2008 and reported on the 7 day prior to the election disclosure report dated October 28, 2008; and while payment of the sign was *reported* on October 9, 2008, as part of a \$116.98 reimbursement to committee worker Ted Musco for the period August 22 through September 30, the actual payment date is not disclosed.
13. Respondent completed the treasurer certification and filed a *Citizen’s Election Program-Application for Grant* (SEEC Form CEP 15) on August 27, 2008 and September 11, 2008. Each application was filed with an *Itemized Campaign Finance Disclosure Statement* (SEEC Form 30), however, the expenses incurred but not paid referenced above in paragraphs 10 through 11 were neither itemized nor disclosed at that time, as required by General Statutes §§ 9-606 and 9-608.
14. The Commission concludes that Respondent failed to report expenses incurred but not paid, with Lori Musco’s *Citizen’s Election Program-Application for Grant* (SEEC Form CEP 15) on August 27, 2008 and on September 11, 2008, in violation of General Statutes §§ 9-606, 9-608 and § 9-706.
15. While the disclosure period referenced in paragraph 11 is a matter of weeks, failure to properly report committee’s expenses can hamper the Commission’s ability to monitor spending in a race, or whether supplemental grants should be issued under certain circumstances, and proper reporting takes on increased importance with the Commission’s obligations administering the Citizens’ Election Program.
16. The Commission reviewed the content of the 30 minute telephone poll subject to this complaint, as reported by a recipient of the poll. The Commission finds that the polling questions pertained primarily to the ballot question regarding a constitutional amendment that appeared on the November 4, 2008, and related issues.

17. Respondent and candidate Lori Musco deny authorizing or paying for any telephone polls at the time alleged by the Complainant. Further, they assert that the campaign had no knowledge of or involvement in the telephone poll subject to this complaint, and the Commission finds no evidence to contradict these assertions.
18. The Commission finds that the very nature of the reported poll questions do not support or oppose a candidate but rather deal with the question of a constitutional convention, and make it less likely that a candidate committee was responsible for it. Further, the Commission finds that the poll in question was initially claimed to be the responsibility of a constitutional convention committee, which also had expenditures for such polls.
19. The allegation regarding the telephone polls with respect to the Respondent is dismissed therefore.
20. 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.
21. 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.
22. 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.
23. 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

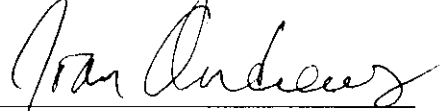
IT IS HEREBY ORDERED that the Respondent shall pay a civil penalty in the amount of four hundred dollars (\$400.00) on or before February 25, 2009 and shall henceforth strictly comply with all the requirements of Connecticut General Statutes §§9-606, 9-608(a) & 9-706.

For the Respondent:

By: 
Ralph J. Vitale
59 Hilltop Road
East Haven, Connecticut


Dated: 2/19/09

For the State Elections Enforcement Commission:

By: 
Joan M. Andrews, Esq.
Director of Legal Affairs & Enforcement
and Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 2/23/09

Adopted this 5th day of March of 2009 at Hartford, Connecticut.


Stephen F. Cashman
Chairman
By Order of the Commission