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ENFORCEMENT
COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Selim Noujaim, Waterbury

File No.2009-009

**AGREEMENT CONTAINING CONSENT ORDER AND PAYMENT OF A CIVIL
PENALTY FOR VIOLATIONS OF CONNECTICUT GENERAL STATUTES §§9-621(a),
9-607(g), 9-706 (c) & REGULATIONS OF CONNECTICUT STATE AGENCIES
§§ 9-706-1 & 9-706-2(b)(8)**

This agreement by and between Lawrence V. DePillo, of the City of Waterbury, 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. The Complainant, Representative Selim Noujaim, alleged that Mr. Frank Burgio, an opponent of his for Representative for the 74th General Assembly District at the November 4, 2008 election, failed to include the proper disclaimer as required by Connecticut General Statutes § 9-621 (a).
2. Respondent was the treasurer of the Burgio 2008 committee, a candidate committee formed by Frank Burgio for the November 4, 2008 election. The expenditure for the flyer in question was \$192, and was made on September 26, 2008.
3. In addition to promoting Frank Burgio's candidacy, the two-sided subject flyer contains exhortations for two Independent Party candidates, as well as for the federal offices of President and Representative, and the exhortation "Vote Independent Party on November 4th." Furthermore, the flyer contains the following: "*Vote Yes On Nov 4, 2008 - For a Constitutional Convention.*"
4. The Commission at its March 25, 2009 meeting authorized staff to investigate whether portions of the flyer that benefited other candidates and advocated for a constitutional question, was within the lawful purpose of the *Burgio 2008*, a candidate committee. Further, staff was authorized to determine whether the expenditure for the flyer was a permissible expenditure of the committee, pursuant to General Statutes §§ 9-607 and 9-706, and Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2(b)(8).
5. Respondent asserts that the expenditure for the flyer was made by the committee without the coordination of another candidate or candidate committee named in the flyer. Further, Respondent asserts that he did not seek or receive reimbursement from any committees or individuals for the flyer. The Commission finds no evidence that contradicts these assertions.

6. Connecticut General Statutes § 9-621, provides in pertinent part:

(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, ... 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.]

7. In this instance, the candidate approved the expenditure by his candidate committee for the flyer, and therefore pursuant to General Statutes § 9-621(a) the disclaimer, which indicated "Paid by: Burgio 2008 DePillo, Treasurer," should also have included the word "approved by" and the name of the candidate Frank S. Burgio, Sr., as well as the word "for" following "Paid."

8. The Commission concludes that by failing to include approved by and the name of candidate, Respondent violated General Statutes § 9-621(a).

9. General Statutes § 9-607 provides in pertinent part:

... (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, ...* [Emphasis added.]

10. 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 ...

(b) The application shall include a written certification that:

- ... (7) The campaign treasurer of the candidate committee ***will expend all moneys received from the fund in accordance with the provisions of subsection (g) of section 9-607 and regulations adopted by the State Elections Enforcement Commission*** under subsection (e) of this section; and
[Emphasis added.]

11. Section 9-706-1 of the Regulations of Connecticut State Agencies provides in pertinent part:

(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, ***shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election...*** [Emphasis added.]

12. Section 9-706-2 of the Regulations of Connecticut State Agencies provides in pertinent part:

(b) In addition to the requirements set out in Section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following Citizens' Election Program requirements. ***Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:***

...
(8) ***Contributions, loans or expenditures to or for the benefit of another candidate,*** political committee or party committee;

(9) Any expenditure made 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;*** ... [Emphasis added.]

13. Mr. Burgio, pursuant to General Statutes § 9-706(a)(1), was a "participating candidate" in the Citizens' Election Program and as an endorsed minor party candidate was awarded a 1/3 grant from the Citizens' Election Fund for the November 4, 2008 election. Mr. Burgio

filed his application with the Citizens' Election Program on October 9, 2008 and his grant from the Citizens' Election Fund was issued on October 15, 2008. Furthermore, on November 29, 2008, *Burgio 2008* received an additional partial post-election grant based upon his vote totals at the election.

14. An analysis of the two-sided flyer in question reveals that approximately 60% or more benefits Frank Burgio's candidacy, while approximately 20% benefits the Independent Party, 10% or less benefits four other candidates and less than 10% advocates a "yes vote" on the ballot question pertaining the constitutional convention.
15. The September 26, 2008 expenditure in the amount of \$192 made to support additional candidates and the Independent Party, does not comport with the lawful purpose of a candidate committee or permissible expenditures for a participating candidate pursuant to General Statutes § 9-607 or Commission Regulations. More specifically, Regs., Conn. State Agencies § 9-706-1 requires that all campaign-related expenditures be made "...to directly further the participating candidate's nomination for election or election."
16. With respect to Commission Regulations, Respondent maintains that *Burgio 2008* had not yet received public funds at the time of the September 26, 2008 expenditure at issue. However, Respondent did file a *Citizen's Election Program-Affidavit of Intent to Abide* (SEEC Form CEP 10) and had at the time of the expenditure indicated that he would abide by the Citizen Election Program requirements.
17. Specifically, by filing the SEEC Form CEP 10 on August 12, 2008, Respondent certified that he would comply with the requirements of the program including all applicable statutes, regulations and declaratory rulings relating to the Citizens' Election Program.
18. The Commission concludes that the expenditure to support other candidates and the Independent party does not satisfy the requirement of Section 9-706-1 of the Regulations of Connecticut State Agencies that Frank Burgio as a participating candidate limit his expenditures to those that "directly further" his election.
19. Furthermore, Section 9-706-2 of the Regulations of Connecticut State Agencies, prohibits a participating candidate from using public funds in the participating candidate's depository account to make "...expenditures to or for the benefit of another candidate," and is not limited to grant funds.
20. General Statutes § 9-607 prohibits *any* candidate committee from making an expenditure in support of another candidate committee and is not limited to participating candidates.
21. The Commission concludes that by making such an expenditure in support of other candidates, Respondent violated General Statutes §§ 9-607(g), 9-706, and Regulations of Connecticut State Agencies §§ 9-706-1 and 9-706-2(b)(8).

22. The Commission has previously found that a candidate *can* express views about a ballot question in describing a platform or views. However, it would *not* be permissible to use one's grant funds to finance a mailer where the only primary purpose is advocating a "yes" vote or a "no" vote on a ballot question. See SEEC Opinion of Counsel 2008-16, *Propriety of Hyperlinks on Candidate Committee Website to Certain Media Pieces and Commercial Websites*.
23. 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.
24. 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.
25. 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.
26. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him or the *Burgio 2008* committee pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent shall pay a civil penalty in the amount of three hundred dollars (\$300.00) by September 24, 2009 and shall henceforth strictly comply with all the requirements of Connecticut General Statutes §§9-621(a), 9-607(g), 9-706 (c) and and Regulations of Connecticut State Agencies §§ 9-706-1 & 9-706-2(b)(8).

**For the Respondent:
Commission:**

For the State Elections Enforcement

By: *Lawrence V. DePillo*
Lawrence V. DePillo
11 Steuben Street
Waterbury, Connecticut

By: *Joan Andrews*
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: 9/14/2009

Dated: 9/18/09

Adopted this 30th day of September of 2009 at Hartford, Connecticut.

Stephen F. Cashman
Stephen F. Cashman
Chairman
By Order of the Commission