

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Elizabeth Rhoades, Stafford Springs

File No. 2009-051

FINDINGS AND CONCLUSIONS

Complainant brings this complaint pursuant to General Statutes § 9-7b alleging that *Arlene Avery for State Rep.*, the participating, qualified candidate committee of Democrat Arlene Avery, and the Stafford Democratic Town Committee violated several sections of Connecticut's campaign financing laws. First, Complainant alleges that the candidate committee and town committee violated General Statutes § 9-608 when the two failed to report correctly and fully several organization expenditures. Second, Complainant alleges that the attribution on the candidate committee's website was inaccurate in violation of General Statutes § 9-621 (a). Third, Complainant alleged that the candidate committee failed to report the secondary payee for 14 reimbursements to campaign workers, totaling \$7,386, in violation of General Statutes § 9-608. Finally, Complainant alleges that the town committee underreported the full cost of a television advertisement it produced to promote *Arlene Avery for State Rep.*, thereby violating General Statutes § 9-608, by failing to report an organization expenditure.

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

1. Arlene Avery ran as the nominee of the Democratic Party in the November 4, 2008 election for the 52nd General Assembly seat. On May 25, 2008, she registered a candidate committee, *Arlene Avery for State Rep.*, with the State Elections Enforcement Commission. She named Jennifer R. Fontanella as campaign treasurer for the committee and Georgia M. Michalec as the deputy campaign treasurer. Fontanella and Michalec served in those roles until the termination of the committee on February 9, 2009.
2. Arlene Avery participated in the Citizens' Election Program, filing a CEP Form 10 on August 7, 2008, which was signed by the candidate, Campaign Treasurer Fontanella, and Deputy Campaign Treasurer Michalec.
3. The Stafford Democratic Town Committee (SDTC) is a party committee, properly registered with the State Elections Enforcement Commission. Michael Krol served as the campaign treasurer for the SDTC from 1999 through 2009.
4. The State Elections Enforcement Commission approved the grant application of the candidate committee *Arlene Avery for State Rep.*, thereby authorizing payment of a grant from the Citizens Election Fund to the committee. The committee received a general election grant of \$24,995 from the Citizens' Election Fund on September 3, 2008.

5. General Statutes § 9-608 requires, in relevant part, that:

each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: . . . **(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; . . .**

(5) Each **statement filed** by the campaign treasurer of a **party committee**, a legislative caucus committee or a legislative leadership committee **shall include an itemized accounting of each organization expenditure made by the committee.** Concomitant with the filing of any such statement containing an accounting of an organization expenditure made by the committee for the benefit of a participating candidate for the office of state senator or state representative, such campaign treasurer shall provide notice of the amount and purpose of the organization expenditure to the candidate committee of such candidate.

(6) In addition to the other applicable requirements of this section, the campaign treasurer of a **candidate committee of a participating candidate for the office of state senator or state representative who has received the benefit of any organization expenditure shall, not later than the time of dissolving such committee, file a statement with the State Elections Enforcement Commission that lists, if known to such candidate committee, the committee which made such organization expenditure for such candidate's behalf and the amount and purpose of such organization expenditure.**

[Emphasis added]

6. General Statutes § 9-601 (25), in relevant part, defines “organization expenditure” as:

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;

...

(C) A campaign event at which a candidate or candidates are present;

(D) The retention of the services of an advisor to provide assistance relating to campaign organization, financing, accounting, strategy, law or media;

(E) The use of offices, telephones, computers and similar equipment which does not result in additional cost to the party committee, legislative caucus committee or legislative leadership committee.

[Emphasis added].

7. General Statutes § 9-621 (a) states:

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 including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, 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.

8. General Statutes § 9-704 (c) limits how much a party committee may spend on a candidate for state representative:

(c) Notwithstanding any provision of the general statutes, no party committee, legislative caucus committee or legislative leadership committee shall make an organization expenditure for the benefit of a participating candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state representative in an amount that exceeds three thousand five hundred dollars for the general election campaign.

9. Commission regulations prohibit any expenditures from a qualified, participating candidate committee to a party committee. As stated in § 9-706-2 (b) (8) of the Commission's regulations, participating candidates shall not spend money in their depository account for "[c]ontributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee . . ." Regs., Conn. State Agencies § 9-706-2 (b)(8).
10. Commission regulations require a campaign treasurer to maintain contemporaneous, detailed documentation of each transaction. The regulations state, in relevant part, "the campaign treasurer shall maintain internal records, including but not limited to: . . . contemporaneous records and/or invoices created by the close of the reporting period but in no event later than the date of the primary or election to which the expenditure relates, which set forth the nature and detail of the work performed or services rendered." Regs., Conn. State Agencies § 9-607-1 (a)(2).
11. The SDTC made seven expenditures that benefitted *Arlene Avery for State Rep.* :
- Blue Wave Printing (10/14/08) Purpose: Lawn Signs - \$535.30
Code: A-NEWS; Type: Coordinated without Reimbursement
Benefiting Candidates: Arlene Avery
 - Cox Media (10/23/08) Purpose: Television Ad - \$1008.00
Coded: A-TV; Type: Coordinated without Reimbursement
Benefiting Candidates: Arlene Avery
 - Roger Ingraham (10/24/08) Purpose: Website - \$500
Coded: A-WEB; Type: Coordinated without Reimbursement
Benefiting Candidates: Arlene Avery
 - Cox Media (10/29/08) Purpose: Television Ad - \$739.64
Coded: A-TV; Type: Coordinated without Reimbursement
Benefiting Candidates: Arlene Avery
 - Reminder Press (10/15/08) Purpose: Ad for Campaign Rally - \$208.80
Coded: A-NEWS; Type: Coordinated without Reimbursement
Benefiting Candidates: All Candidates
 - Near the Lake Cafe (10/30/08) Purpose: Campaign Rally - \$85.00
Coded: FOOD; Type: Coordinated without Reimbursement
Benefiting Candidates: All Democratic Candidates
 - Gene Julian (10/31/08) Purpose: Newspaper Ad - \$430.22
Coded: A-NEWS; Type: Coordinated with Reimbursement
Reimbursement to Committee Worker for Ad Purchase
Benefiting Candidates: A Avery/J Courtney; Obama/Biden
12. Krol, then-treasurer of the SDTC, stated that the town committee decided to spend the maximum amount it could to promote Avery's campaign for the General Assembly seat.
13. Based on the Commission's investigation, the \$500 payment to Roger Ingraham for "Website" was identified incorrectly in the SDTC's reporting. Representatives of *Arlene Avery for State Rep.* stated that the \$500 payment actually went to Roger Edward Ingraham, who is the son of Roger Ingraham and a filmmaker. The committee asked Roger Edward Ingraham to produce a television advertisement, and the town committee

paid for his services as an organization expenditure. Krol agrees that the SDTC coding of the \$500 payment to Roger Ingraham is in error.

14. In total, the SDTC spent \$2,782.94 on organization expenditures solely to benefit Avery. Those expenditures included \$535.30 for lawn signs, \$500 to Roger Edward Ingraham to produce a television advertisement, and purchases of televised advertising time from Cox Media of \$1,008 on October 23, 2008 and \$739.64 on October 29, 2008. Interviewed on August 30, 2010, Cox account manager Jodi Champ stated that the SDTC received a credit for unused advertising time, reducing the payment for airtime on October 29, 2008 from the \$947.20 shown on the October 29, 2008 receipt to the \$739.64 paid by the committee.
15. The SDTC identified expenditures totaling \$1,325.14 to benefit Avery and two candidates for federal office: Congressional candidate Joe Courtney and Presidential candidate Barack Obama. The SDTC divided those expenditures for office space and campaign events at which the candidate was present equally between the three candidates, resulting in an invoice to the *Arlene Avery for State Rep.* candidate committee of \$441.71. An additional expenditure made to benefit those candidates – \$430.22 to Reminder Press, Inc., for a newspaper advertisement – was not included in the town committee’s calculations. Assuming that \$430.22 expenditure would also be split equally between the three candidates, the SDTC should have allocated an additional \$143.41 to *Arlene Avery for State Rep.* as an organization expenditure.
16. *Arlene Avery for State Rep.* paid the SDTC \$441.72 on November 12, 2008. This payment represented the amount the town committee assessed to the candidate committee for its share of the office rental, rally advertising, and food on election night.
17. Regulation § 9-706-2 (b)(8) prohibits a qualified, participating candidate committee from making an expenditure to a party committee. By making a payment of \$441.72 to the SDTC, the *Arlene Avery for State Rep.* candidate committee violated the regulation. The SDTC should have designated this \$441.72 as an organization expenditure on behalf of the candidate committee to avoid violating the regulation prohibiting transactions of this type. Or at the time these costs were incurred, the candidate committee should have paid its share of the costs directly to the vendor.
18. The maximum that a town committee may spend on organization expenditures to benefit a qualified candidate committee running for state representative is \$3,500. *See* General Statutes § 9-718 (c). Based on the Commission’s investigation, the SDTC spent a total of \$3,368.06 in organization expenditures for *Arlene Avery for State Rep.*, including the \$441.72 that the party committee should have designated an organization expenditure on behalf of the qualified candidate committee.
19. The expenditures that the SDTC made to promote Avery fell into three categories: party candidate listing (lawn signs and television advertisement); campaign event at which candidate was present (campaign rally, advertising to promote rally, and open house at campaign headquarters); and campaign advisor (producer for television advertisement).

20. The town committee reported the expenditures incorrectly. Instead of reporting those expenditures as “Coordinated without reimbursement sought” the town committee should have designated those expenditures as “Organization” and then delineated under which category of organization expenditure the particular expenditure should be reported – A (party candidate listing); B (printed document maintained by party committee); C (campaign event at which candidate is present); D (campaign advisor); or E (rent or other office expense at no additional cost to party committee).
21. The reporting errors, however, were similar to others found by SEEC auditors during the comprehensive audits conducted of all 2008 candidate committees. They fell within the standards established by the Commission for “audit findings” only, requiring no additional enforcement action by the Commission.
22. Complainant alleged that the attribution on the *Arlene Avery for State Rep.* committee’s website was “incorrect and misleading.” Specifically, the complaint alleges that because the town committee reported paying \$500 to Roger Ingraham for a “Web Site,” the attribution on the website indicating that it was paid for by the Arlene Avery for State Rep. was incorrect.
23. As discussed previously, the SDTC incorrectly reported its \$500 payment to “Roger Ingraham” as being for the candidate committee’s website. Instead, the SDTC paid Roger Edward Ingraham \$500 to produce a television advertisement featuring Arlene Avery. See ¶¶ 13-14 *supra*.
24. The candidate committee paid Roger Ingraham \$275 to create and maintain the website in addition to other voice and data services.
25. Because the candidate committee paid for the website, the attribution on the website is correct.
26. Complainant alleged that the town committee had not fully reported the costs it incurred to produce and air the television advertisement it created on behalf of *Arlene Avery for State Rep.*
27. As discussed previously, the SDTC mistakenly identified a \$500 payment to Roger Ingraham as having been made for a website. Instead, as described above, the \$500 payment was actually made to Roger Edward Ingraham to produce a television advertisement for the Avery campaign. This \$500 production cost plus the two payments to Cox Media for airing the advertisement represent a total cost for the television advertising of \$2,247.64.
28. The SDTC paid for the entire cost of the television advertisement, which met the qualifications of a party candidate listing as outlined by the Commission in Final Decision 2009-061. See *In re. Complaint by John M. Kelly, Newington* (File No. 2009-061).


29. Because the SDTC paid for the entire cost of the television advertisement, the attribution on the advertisement was correct.
30. Complainant also alleged 14 instances where the candidate committee reimbursed campaign committee volunteers but failed to provide the secondary payee related to the underlying transaction. The investigation into these payments revealed that in each case, the secondary payee was a legitimate vendor and the payments were supported by contemporaneous, detailed documentation, as required in § 9-607-1 (a) (2) of the Commission's regulations.
31. These 14 improperly reported reimbursements were also identified in the Commission's audit report. The auditor noted the failure to name a secondary payee as an audit finding.
32. The failure to report the secondary payees was a common mistake for candidate committees during the 2008 campaign. The problems found in the *Arlene Avery for State Rep.* filings fell within the standards established by the Commission for "audit findings" only, requiring no additional enforcement action by the Commission.

ORDER

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

That the complaint be dismissed.

Adopted this 22nd day of Sept, of 2010 at Hartford, Connecticut.


Stephen F. Cashman
By Order of the Commission