

**STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by  
Christopher Healy, Wethersfield

File No. 2009-075

**FINDINGS AND CONCLUSIONS**

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, and alleges that the Respondent, the Stamford Advocate, violated General Statutes § 9-613 by making an impermissible in-kind business entity contribution to Dannel Malloy's exploratory committee in the form of content published in its newspaper that he alleges benefitted the candidate. Complainant further alleges that the Respondent violated General Statutes § 9-621 by failing to include an attribution in association with the content allegedly benefitting the candidate. After the investigation, the Commission makes the following findings and conclusions:

1. The Stamford Advocate is the "DBA" name of and is wholly owned by Hearst Communications, Inc., a stock corporation with a registered business address in the state of New York. Hearst Communications, Inc. is a subsidiary of the Hearst Corporation.
2. The Stamford Advocate is a daily regional print newspaper with coverage focusing mainly on issues in and around Fairfield County, with particular focus on the city of Stamford, Connecticut.
3. The Stamford Advocate also publishes its print content online at the World Wide Web address "<http://www.stamfordadvocate.com>."
4. The online presence of the newspaper also includes additional content not available in the print edition, including, but not limited to a menu of over thirty "blogs" covering a variety of content areas.
5. The authors of the content for these "blogs" vary from employees of the newspaper, such as print columnists Brian Lockhart and Ken Dixon, who report and comment on political issues, to non-employee guest commentators such as the president of Fairfield University, who reports and comments on issues related to higher education.
6. On or about July 22, 2009, Dannel Malloy, who at that time was mayor of the city of Stamford, began providing content for a blog on the Stamford Advocate's online presence called "The Blog That Works." From on or about the aforementioned date through on or about January 18, 2010, Mr. Malloy made 26 entries into the blog.
7. During the time that Mr. Malloy provided content for the Stamford Advocate, he was also a candidate in the "Dan Malloy for Connecticut (CT)", exploratory committee for statewide office excluding Treasurer, pursuant to General Statutes § 9-604.

8. The Complainant here alleges that certain content published on “The Blog That Works” benefitted the “Dan Malloy for Connecticut (CT)” exploratory committee and constituted an impermissible in-kind contribution from the Respondent, a business entity.
9. Connecticut General Statutes § 9-601a (Rev. to August 14, 2010), provides in pertinent part:

(a) As used in this chapter and sections 9-700 to 9-716, inclusive, the term “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.]

10. Connecticut General Statutes § 9-601 (Rev. to June 8, 2010), provides in pertinent part:

As used in this chapter and sections 9-700 to 9-716, inclusive:

...

(8) “Business entity” means the following, whether organized in or outside of this state: *Stock corporations*, banks, insurance companies, business associations, bankers associations, insurance associations, trade or professional associations which receive funds from membership dues and other sources, partnerships, joint ventures, private foundations, as defined in Section 509 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended; trusts or estates; corporations organized under sections 38a-175 to 38a-192, inclusive, 38a-199 to 38a-209, inclusive, and 38a-214 to 38a-225, inclusive, and chapters 594 to 597, inclusive; cooperatives, and any other association, organization or entity which is engaged in the operation of a business or profit-making activity; but does not include professional service corporations organized under chapter 594a and owned by a single individual, nonstock corporations which are not engaged in business or profit-making activity, organizations, as defined in subdivision (6) of this section, candidate committees, party committees and political

committees as defined in this section. For purposes of this chapter, corporations which are component members of a controlled group of corporations, as those terms are defined in Section 1563 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, shall be deemed to be one corporation. [Emphasis added.]

11. Connecticut General Statutes § 9-613 (Rev. to June 8, 2010), provides in pertinent part:

No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office. . . . [Emphasis added.]

12. As a preliminary matter, because the instant matter appears to concern a business entity which may also be a press entity, the Commission must first determine whether or not the Respondent is exempted by the "press exemption" to the definition of "expenditure" in General Statutes § 9-601b.

13. Connecticut General Statutes § 9-601b, provides in pertinent part:

(a) As used in this chapter and sections 9-700 to 9-716, inclusive, 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;

(2) Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard, and (C) is broadcast or appears during the ninety-day period preceding the date of an election, other than a commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate;

...

(b) *The term "expenditure" does not mean:*

...

(5) *Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate;* [Emphasis added.]

14. When investigating a press entity, the Commission is cognizant that it must strike a “necessary accommodation between, on the one hand, the Commission’s duty to investigate possible violations and, on the other, the statutory exemption for the press combined with a First Amendment distaste for government investigations of press functions.”<sup>1</sup>
15. In developing a balanced test to determine whether or not the “press exemption” applies, the Commission has in the past looked to the Federal Election Commission (“FEC”), which has a substantially identical “press exemption” statute on which General Statutes § 9-601b (b)(5) is modeled. *See Complaint of Georgia Michalec*, SEEC File No. 2008-038 (2008). In *Michalec*, the Commission again looked to the FEC and found that the SEEC and FEC tests had diverged since the last time the SEEC looked to the FEC on this subject. Consistent with its prior practice, the Commission here applies the current FEC test.
16. The test of whether an expenditure is exempt is a three-part examination. In order for the exemption to apply, the Commission must find the following:
- 1) that the entity engaging in the activity is a press or media entity;
  - 2) that the entity is not owned or controlled by a political party, political committee, or candidate; and
  - 3) that the entity is acting as a press entity in conducting the activity at issue (i.e., that the press entity is acting in its “legitimate press function”)
- See* FEC Advisory Opinion 2008-14.
17. If the above three criteria are met, the exemption applies and the inquiry ends.
18. As a preliminary matter, the Commission finds that the Stamford Advocate is a press entity. It regularly produces and publishes news stories, editorials and commentary both in print and online.
19. Secondly, the Commission finds no evidence that the Stamford Advocate is owned or controlled by a political party, political committee, or candidate.
20. Finally, in determining whether a press entity was acting as a press entity within its “legitimate press function” the Commission must determine: 1) Was the content produced through the facilities regularly used to produce content for this entity? 2) Was the content distributed to the news entity’s regular audience? 3) Was the particular edition comparable in form to that ordinarily issued by the entity?<sup>2</sup>
21. Here, the Commission finds that in producing and publishing “The Blog That Works,” the Stamford Advocate was acting as a press entity. That is, it was the regular practice

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<sup>1</sup> *FEC v. Readers Digest Ass’n, Inc.*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); *see also Federal Election Com’n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 251; *FEC v. Phillips Publishing*, 517 F. Supp. 1308 (D.D.C. 1981).

<sup>2</sup> *See Massachusetts Citizens for Life, Inc.*, 479 U.S. at 250-51; FEC Advisory Opinion 2005-16.

of the Stamford Advocate and a legitimate press function to publish content at its online presence in the form of guest commentary "blogs." "The Blog That Works" was generally available on the online newspaper's "blogs" page and was concurrently published alongside and among over thirty such "blogs" during the relevant period in this matter.

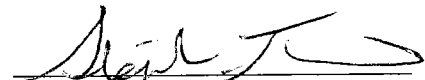
22. After investigation, the Commission finds that the press exemption applies to the facts of this case. Accordingly, it is precluded from making any further inquiry into the substance of the allegations in the instant matter.

### ORDER

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

That the Complaint be dismissed.

Adopted this 22<sup>nd</sup> day of Sept. of 2010 at Hartford, Connecticut

  
Stephen F. Cashman, Chairman  
By Order of the Commission