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STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by David Baxter *et al.*, File No. 2009-080
Wallingford

AGREEMENT CONTAINING CONSENT ORDER AND
PAYMENT OF CIVIL PENALTIES FOR VIOLATIONS
OF CONNECTICUT GENERAL STATUTES § 9-612(g).

This agreement by and between David Baxter and Marci Baxter of the Town of Wallingford, County of New Haven, hereinafter referred to as Respondents, 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. On September 4, 2009, the Commission received a letter from Respondents, who are spouses, self-reporting and detailing a February 19, 2009 \$100 contribution to *Friends of Susan 2010* from David Baxter, and a February 23, 2009 \$150 contribution to *Friends of Susan 2010* from Marci Baxter. These contributions were made from personal checking accounts.
2. *Friends of Susan 2010* is an exploratory committee established by the Secretary of the State Susan Bysiewicz to determine whether to seek the office of governor. At the time of the relevant contributions, Mr. Jason E. Doucette was treasurer of *Friends of Susan 2010*.
3. On February 19, 2009 Respondents completed a joint "*Qualifying Contribution Certification Form for Candidates Participating in the Citizens' Election Program*" and submitted it with their contributions to *Friends of Susan 2010*. Each Respondent signed the contributor card certifying that he/she was not a principal of a state contractor or an immediate family member of a principal of a state contractor. The copied certification card provided to the Commission does not include "Definition of Terms" that defines "*A principal of a state contractor.*"
4. David Baxter is the Chief Financial and Operating Officer of the Hopkins School (hereinafter "Hopkins") in New Haven, Connecticut. Hopkins is a not-for-profit independent co-educational day school that has been working with the Connecticut Health and Educational Facilities Authority (hereinafter "CHEFA") on a bond refinancing transaction. This transaction is intended to refinance debt, known as the Series A bond agreement, issued by CHEFA on behalf of Hopkins in 1998.

5. CHEFA submitted its state contractors to the Commission, using SEEC Form 14, entitled "*Agency Certification of Names of State Contractors and Prospective State Contractors*" (SEEC Form 14) which is an online form available to quasi-public agencies under the Commission's State Contractor Contribution Ban Electronic Filing System. This CHEFA submission included the Hopkins School in its list of state contractors. However, the Commission did not process this submission because CHEFA failed to disclose Hopkins' nine digit Federal Employer Identification Number (FEIN), which is a mandatory field included on the Commission's SEEC Form 14. A state contractor or prospective state contractor's FEIN number is necessary in order for the Commission to be able to aggregate expenditure or contract amounts of other state agencies, quasi-public agencies and Higher Education with respect to the same contractor.
6. David Baxter was the signatory on behalf of Hopkins in a prior agreement with CHEFA from June 2008 known as the "Series B" contract, and negotiated that agreement on behalf of Hopkins as its Chief Financial and Operating Officer.
7. On June 26, 2009 The Hopkins Committee of Trustees authorized a refinancing through CHEFA, known as the "Series C" agreement, which essentially refinanced the 1998 "Series A" bond issuance. The CHEFA Board of Directors authorized this transaction on July 28, 2009. Under current market rates, the present value savings to Hopkins of a refinancing are approximately \$680,000. These savings would be used to further the not-for-profit purposes of Hopkins.
8. In July 2009, while preparing the Series C agreement, CHEFA provided David Baxter with a campaign contribution affidavit required by Governor's Executive Order No. 7C, par. 10, July 13, 2006 prior to entering into a loan agreement. Also included in the contracting package was a *Notice to Executive Branch Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Ban* (SEEC Form 11), required by General Statutes § 9-612(g)(2)(E).
9. Upon careful review of the SEEC Form 11 Notice and its definitions, David Baxter sought clarification from Hopkins' attorneys regarding executing the campaign contribution affidavit in light of the campaign contributions he and his wife made to *Friends of Susan* in February 2009. After reviewing the SEEC Form 11 Notice, David Baxter realized that he might be a principal of a state contractor and subject to the state contractor contribution ban in General Statutes § 9-612(g). After Baxter informed Hopkins, Hopkins brought this issue to the attention of CHEFA.
10. David Baxter also thereafter contacted *Friends of Susan 2010* to alert the committee to this matter and to request a return of the contributions made by Respondents in February 2009. On August 15, 2009, David and Marci Baxter were reimbursed in the amount of their contributions by *Friends of Susan 2010* from its committee checking account. Notably, this reimbursement did not occur

within the 30 day or reporting period time frame in § 9-612(g)(2)(C), which allows a reimbursement to cure a violation.

11. Respondents self reported this complaint to the Commission, in part to invoke its authority to determine whether mitigating circumstances exist concerning such violation, such that the mandatory contract consequences in § 9-612(g)(2)(C) would not operate to prohibit Hopkins from proceeding with the Series C loan refinancing of the Series A bond issuance with CHEFA, a quasi-public agency.
12. On August 24, 2009 Hopkins had a preliminary meeting with representatives of the Commission seeking clarification of the contribution and solicitation ban in light of General Statutes § 9-612(g) and the facts and circumstances described above in paragraphs 1 through 11.
13. General Statutes § 9-612 provides, in pertinent part:
 - ... (g)(1)(F) "***Principal of a state contractor or prospective state contractor***" ***means*** (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) ***an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract***, (v) ***the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph***, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

... (11) "***Managerial or discretionary responsibilities with respect to a state contract***" means ***having direct, extensive***

and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities. ...

... (2)(A) No state contractor, prospective state contractor, *principal of a state contractor* or principal of a prospective state contractor, *with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency* or a holder, or principal of a holder of a valid prequalification certificate, *shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;*

... (C) *If a state contractor or principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, as determined by the State Elections Enforcement Commission, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after the effective date of this section may void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited unless the commission determines that mitigating circumstances exist concerning such violation.*

No violation of the prohibitions contained in subparagraph (A) or (B) of this subdivision shall be deemed to have occurred if, and only if, the improper contribution is returned to the principal by the later of thirty days after receipt of such contribution by the recipient committee treasurer or the filing date that corresponds with the reporting period in which such contribution was made, ...

(3) (A) On and after December 31, 2006, neither the Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, **any candidate for any such office nor any agent of any such official or candidate shall knowingly, wilfully or intentionally solicit contributions on behalf of an exploratory committee** or candidate committee established by a candidate for nomination or election to any public office, a political committee or a party committee, **from a person who he or she knows is prohibited from making contributions, including a principal of a state contractor** or prospective state contractor with regard to a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder of a valid prequalification certificate. ...
[Emphasis added.]

14. General Statutes § 9-608, provides in pertinent part:

... (3) In addition to the requirements of subdivision (2) of this subsection, **each contributor who makes a contribution to a candidate or exploratory committee for Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State, State Treasurer, state senator or state representative, any political committee authorized to make contributions to such candidates or committees, and any party committee that separately, or in the aggregate, exceeds fifty dollars shall provide with the contribution a certification that the contributor is not a principal of a state contractor or prospective state contractor, as defined in subsection (g) of section 9-612, nor a communicator lobbyist or a member of the immediate family of a communicator lobbyist and shall provide the name of the employer of the contributor. The State Elections Enforcement Commission shall prepare a sample form for such certification by the contributor and shall make it available to campaign treasurers and contributors. Such sample form shall include an explanation of the terms "communicator lobbyist" and "principal of a state contractor or principal of a prospective state**

contractor". The information on such sample form shall be included in any written solicitation conducted by any such committee. If a campaign treasurer receives such a contribution and the contributor has not provided such certification, the campaign treasurer shall: (A) Not later than three business days after receiving the contribution, send a request for the certification to the contributor by certified mail, return receipt requested; (B) not deposit the contribution until the campaign treasurer obtains the certification from the contributor, notwithstanding the provisions of section 9-606; and (C) return the contribution to the contributor if the contributor does not provide the certification not later than fourteen days after the treasurer's written request or at the end of the reporting period in which the contribution was received, whichever is later. ***If a campaign treasurer deposits a contribution based on a certification that is later determined to be false, the treasurer shall not be in violation of this subdivision.***

[Emphasis added.]

15. David Baxter exercised managerial and discretionary responsibilities with respect to the June 2008 Series B agreement between Hopkins and CHIFA by negotiating and signing the agreement, which is still in effect. Consequently, he is a principal of a state contractor. His wife, Marci Baxter, is also a principal of a state contractor within the meaning of General Statutes § 9-612(g), as the spouse of a principal of a state contractor.
16. Both Respondents were principals of a state contractor at the time of their February 2009 contributions to *Friends of Susan 2010*, and consequently were prohibited from making such contributions by General Statutes § 9-612(g)(2)(A).
17. The Commission therefore concludes that by making the contributions identified in paragraph 1, above, the Respondents violated General Statutes § 9-612(g)(2)(A).
18. The Commission concludes that by operation of General Statutes § 9-612(g)(2)(C), CHIFA cannot award Hopkins School any contracts, or amend any existing contracts, for one year after the election for which the unlawful contributions were made. The contributions were made in connection with the November 2010 election, and absent a finding of mitigating circumstances concerning such violation, Hopkins could not amend an existing state contract or be awarded a new state contract until November 2011.

19. The Commission has been apprised that CHEFA is not proceeding with the negotiations or awarding of the Series C agreement with Hopkins, pending the Commission's resolution of this matter. The Commission's findings of violations by Respondents in paragraph 17, above, of the state contractor contribution ban allow the Commission to determine whether mitigating circumstances exist concerning such violations pursuant to General Statutes § 9-612(g)(2)(C).
20. General Statutes § 9-612(g)(2)(C) provides possible relief from the mandatory contract penalty, and allows the Commission to determine whether "mitigating circumstances" exist concerning the violation. If mitigating circumstances concerning the violation are found by the Commission, the contractual penalty is not automatic, but the awarding agency retains discretion to amend a contract or award a new contract. The agency may still void a contract in its discretion if a violation of the state contractor contribution or solicitation ban occurs, even if mitigating circumstances are found.
21. In determining whether circumstances are "mitigating," the Commission deems it necessary to consider any circumstances pertaining to the solicitation and contribution by Respondent, as well as contracts and agreements between his employer Hopkins and CHEFA, that would, although not excusing the conduct, tend to reduce the harm the state contractor contribution and solicitation ban is designed to prevent. The ban is designed to eliminate the undue influence over the awarding of contracts that principals of state contractors who make contributions to exploratory committees for statewide office could wield over those state actors awarding such contracts and prevent awarding of contracts in exchange for campaign contributions.
22. Respondents maintain that at the time of their February 2009 contributions to *Friends of Susan 2010* neither David Baxter, nor Marci Baxter believed that they were principals of state contractor, and did not believe their contributions were banned. Furthermore, Respondents claim that at no time did they have any conversation with Susan Bysiewicz or representatives of the exploratory committee regarding loan agreements or proposed loan agreements between Hopkins and CHEFA. In addition, Secretary of State Bysiewicz is not a member of the CHEFA Board of Directors, or the Hopkins Committee of Trustees. Respondents assert therefore, that their contributions did not and were not intended to influence state action on any the Series C agreement between Hopkins and CHEFA.
23. Pursuant to General Statutes § 9-612(g)(2) the Commission maintains and posts on its website "*List Two State Contractors prohibited from Contributing to Statewide Office Candidates.*" A review of this list as it appeared at the time of Respondents' February 2009 contributions indicates that Hopkins was *not* listed as a state contractor at the time of their contributions.

24. CHEFA had submitted an *Agency Certification of Names of State Contractors and Prospective State Contractors* (SEEC Form 14) to the Commission that included Hopkins, but the Commission's filing system relating to the state contractor list, which processes over 75,000 such records monthly, failed to properly process the submission because it was not submitted in the form requested, with nine digit Federal Employee Identification Numbers (FEIN) for each contractor. There is no indication, however, that the Baxters consulted such list or relied on the absence of Hopkins on the published state contractor list.
25. Pertaining to Respondents, and their prohibited contributions to *Friends of Susan 2010*, the Commission determines that the following mitigating circumstances exist:
- (a) At the time of the contribution, David Baxter did not believe himself to be a principal of a state contractor and neither did his wife, Marci Baxter;
 - (b) In the June 2008 Series B bond issuance between CHEFA and Hopkins, CHEFA did not provide the SEEC Form 11 that might have alerted Baxter to his status as a principal of a state contractor and did so alert him when provided in July 2009;
 - (c) Hopkins did not appear on the list of state contractors in February 2009;
 - (d) Upon learning that he might be a principal of a state contractor in August 2009, Baxter quickly sought return of the contributions from Friends of Susan 2010, which was effectuated;
 - (e) The Baxters self reported their potential violation to the Commission;
 - (f) The candidate to whom the Baxters contributed, incumbent Secretary of the State Susan Bysiewicz, has no official responsibilities relating to and was not in a position to effect the loan refinancing between Hopkins and CHEFA;
 - (g) Hopkins School will be harmed by a lost savings of \$680,000, impairing its non profit educational mission; and
 - (h) CHEFA will be harmed in that its purpose and mission to provide access to the bond markets in the areas of bond financing and financial advisory services to nonprofit and public stakeholders could be delayed or thwarted absent a finding of mitigating circumstances.
26. The Commission concludes pursuant to General Statutes § 9-612(g)(2)(C) that mitigating circumstances existed pertaining to the violations found with respect to the February 2009 contributions by Respondent to the exploratory committee *Friends of Susan 2010* and the negotiation of the Series C contract between the Hopkins and CHEFA.
27. The Commission further concludes that the policy behind General Statutes § 9-612(g) and its ban to avoid "pay-to-play" was not circumvented under the facts and circumstances of this case, and therefore allowing the process to move forward, despite the prohibited contributions and violations by Respondents, does not compromise the state's interests to insure integrity in its campaign financing system.

28. Accordingly, the Commission concludes that these mitigating circumstances concerning the violation by Respondents do not bar CHEFA pursuant to General Statutes §9-612 from negotiating the Series C contract with Hopkins.
29. 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
30. 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 Respondents and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
31. Respondents waive:
 - (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.
32. Upon Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT the Respondents shall henceforth strictly comply with the requirements of Conn. Gen. Stats. § 9-612(g).

IT IS HEREBY FURTHER ORDERED THAT the Respondents shall each pay a civil penalty of two hundred and fifty dollars (\$250.00) to the Commission on or before November 18, 2009.

For the State of Connecticut

DATED: 11/18/09

BY:

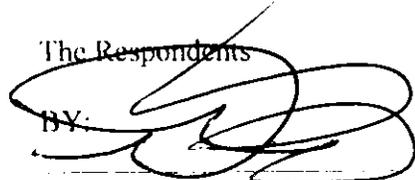


Joan M. Andrews, Esq.
Director of Legal Affairs &
Enforcement and
Authorized Representative of
the Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

DATED: 11-16-09

The Respondents

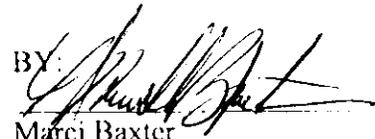
BY:



David Baxter
6 Clearview Drive
Wallingford, Connecticut

DATED: 11-16-09

BY:



Marci Baxter
6 Clearview Drive
Wallingford, Connecticut

Adopted this _____ day of _____, 2009 at Hartford, Connecticut by a vote of the Commission.



Stephen F. Cashman, Chairperson
By Order of the Commission