

FEB 25 2011

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
ENFORCEMENT
COMMISSION

Complaint of Jonathan Best, Stratford

File No. 2009-081

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between John A. Harkins of Stratford, Connecticut, hereinafter referred to as the Respondent, and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. The Complainant alleged that John Harkins distributed 1000 unsolicited absentee ballot applications via mail without the written information required by General Statutes § 9-140.
2. General Statutes § 9-140 (l) provides as follows in relevant part:

(l) **No candidate, party or political committee, or agent of such candidate or committee shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector or applicant to potential civil and criminal penalties.** As used in this subsection, "agent" means any person authorized to act on behalf of another person.
3. Respondent Harkins admits that 1000 "Republican households" that did not solicit absentee ballot applications were the target of a mailing by the Harkins campaign. He also admits that that "mailing" consisted of a letter signed by him and a blank absentee ballot application. He maintains that of the 1000 applications mailed, only 36 were returned seeking an absentee ballot.
4. Respondent Harkins asserts, however, that the mailing did in fact contain the requisite information. More specifically, he asserts that neither the General Statutes nor the Secretary of the State's Absentee Ballot Fact Sheet specified how such language must appear in the mailing, only that it must appear within the documents comprising said mailing. The Respondent further posits that because the Application for an Absentee Ballot includes information about the eligibility requirements and relevant criminal and civil penalties, General Statutes § 9-140 (l) was not violated. In addition, he asserts that the mailing at issue was not intended to encourage illegal absentee voting, and the Commission has not been presented with evidence to the contrary.
5. The Respondent argues that the requirements of General Statutes § 9-140 (l) are met when any candidate, committee, or agent of such candidate includes an Application for an Absentee Ballot in a mailing to an individual that did not solicit such application. In

determining if the Respondent is correct, the Commission applies the familiar principles of statutory construction.

6. Our Supreme Court has concluded that “[w]hen construing a statute, [the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . .” *State v. Tabone*, 292 Conn. 417, 431-32 (2009).
7. The plain language of General Statutes § 9-140 (l) provides that “[n]o candidate . . . shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes” Given that language, it is clear that the legislature intended that an unsolicited absentee ballot application mailing include something more than just the application itself to warn individuals about the absentee ballot eligibility requirements and applicable civil and criminal penalties for voting without meeting those requirements.
8. Furthermore, the information provided by the Secretary of the State appears to support that reading of the statute. For example, the Secretary of the State advises that individuals should not mail absentee ballot application unsolicited unless they include a written explanation about the eligibility requirements and warning about the penalties associated with improperly voting by absentee ballot. *See* General Statutes § 9-3 (providing that the secretary’s “instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title”).
9. Finally, if the Commission were to interpret General Statutes § 9-140 (l) in the way suggested by the Respondent, the provision would be rendered superfluous. The Commission will not countenance such a reading. *See Brown and Brown, Inc. v. Blumenthal*, 297 Conn. 710, 726 (2010) (stating that a statute should not be interpreted in a way that would render it superfluous). In addition, it would contradict prior Commission decisions interpreting § 9-140 (l). *See, e.g., In the Matter of a Complaint by Louis DeCilio*, Stratford, File No. 2005-300.
10. The Commission therefore concludes that Respondent Harkins inadvertently violated § 9-140 (l) as 1000 unsolicited mailings were distributed with a letter signed by him and blank absentee ballot application. Those mailings did not contain the written explanation and warning required by General Statutes § 9-140 (l). The Commission notes that the Respondent does not have a history of similar violations of that provision and maintains that the error occurred because of a good faith disagreement over the

interpretation of § 9-140 (l). In the future, the Respondent agrees to comply with the Commission's interpretation of that provision as clarified herein.

11. 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 into after a full hearing and shall become final when adopted by the Commission.

12. The 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.

13. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him concerning this matter.

14. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

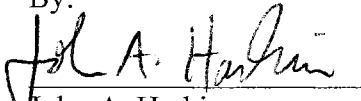
ORDER

IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-140 (1).

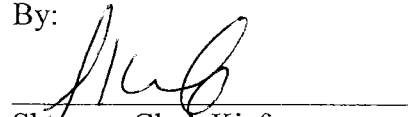
The Respondent

For the State of Connecticut

By:


John A. Harkins
Stratford, Connecticut

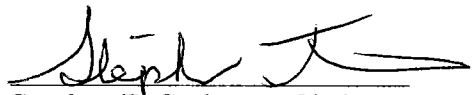
By:


Shannon Clark Kief
Legal Program Director and Authorized
Representative of the State
Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut 06106

Dated: 2/22/11

Dated: 2/25/11

Adopted this 16th day of Feb, 2011 at Hartford, Connecticut by vote of the Commission.


Stephen F. Cashman, Chairman
By Order of the Commission