

JAN 27 2010

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Christopher Healy, Wethersfield

File No. 2009-116

AGREEMENT CONTAINING CONSENT ORDER AND
PAYMENT OF A CIVIL PENALTY FOR A VIOLATION
OF CONNECTICUT GENERAL STATUTES § 9-621

This Agreement by and between Thomas DiDio and James Swicklas of Vernon, State of Connecticut, and the 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, Christopher Healy, alleges that on or about October 13, 2009, a full page advertisement that advocated the election of Democratic candidates for municipal office appeared in *The Sports Department*, a monthly newspaper distributed to all homes in the Town of Vernon. According to the Complainant, that advertisement did not bear the words required by General Statutes § 9-621.
2. General Statutes § 9-621 (a) provides in relevant part as follows:

No . . . committee shall make or incur any expenditure . . . for any written, typed or other printed communication . . . which promotes the success or defeat of any candidate's campaign for . . . election . . . unless such communication bears upon its face (1) the words "paid for by" and the following: . . . (C) in the case of a party committee, the name of the committee
3. A full page advertisement did appear in the October 2009 issue of *The Sports Department*, a newspaper serving the towns of Ellington, Tolland and Vernon. That advertisement included, inter alia, the following statements "Elect Michele Arn Mayor of Vernon" and "Please vote for me on November 3rd. . . ." The content www.vernondemocrats.com appears immediately above "Elect Michele Arn Mayor of Vernon." Also included in the advertisement are the names of several individuals listed below the following headings: "Our Town Council Team" and "Our Board of Education Team."
4. The content of that advertisement does not, however, identify who purchased it.
5. All individuals identified in that advertisement were candidates for election to municipal office and, as evinced by the registration forms filed with the Town Clerk of Vernon, the campaign of each of those candidates was solely funded by the Vernon Democratic Town Committee (hereinafter, the "Committee").

6. The treasurer of the Vernon Democratic Town Committee is James Swicklas. He was officially designated as such on December 29, 2006 and, as of this Agreement, remains in that role.
7. Mr. Swicklas admits making an expenditure for the subject advertisement and disclosed as much in the Committee's Itemized Campaign Finance Disclosure Statement (SEEC Form 20) on October 24, 2009.
8. As noted above, General Statutes § 9-621 (a)(1)(C) prohibits a committee from making an expenditure for any written, typed or other printed communication which promotes the success of any candidate's campaign for election unless such communication bears upon its face the words "paid for by" and in the case of a party committee, the name of the committee.
9. As treasurer, Mr. Swicklas was legally responsible for making all expenditures of Committee funds. See, e.g., General Statutes § 9-606 (a) (stating that the campaign treasurer of each committee is responsible for making expenditures). Here, however, he was prohibited from making an expenditure for the subject advertisement because that communication did not state that the advertisement was "Paid for by the Vernon Democratic Town Committee" even though it promoted the success of a candidate's campaign for election by stating, among other things, "Elect Michele Arn Mayor of Vernon." General Statutes § 9-621.
10. The Commission therefore concludes that by making an expenditure for a communication which failed to contain an attribution indicating who paid for it yet promoted the success of a candidate's campaign for election, Mr. Swicklas violated General Statutes § 9-621.
11. Nevertheless, Mr. Swicklas asserts that he was not aware that the requisite attribution was omitted from the advertisement at the time he made the expenditure as he did not create, approve of or deliver the advertisement to *The Sports Department*.
12. Thomas DiDio is the chairperson of the Committee and served in that role when the expenditure for the subject advertisement was made. He also maintains that Mr. Swicklas had no knowledge of the content of the advertisement before the expenditure was made.
13. Mr. DiDio takes full responsibility for the content of the advertisement including the omitted attribution. Mr. DiDio asserts that that omission was not intentional but rather a good faith error and the Commission has not uncovered any evidence to the contrary.
14. Mr. DiDio further agrees to accept liability for any civil penalty associated with Mr. Swicklas' violation of General Statutes § 9-621.

15. Mr. DiDio and Mr. Swicklas admit all jurisdictional facts and agree 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. Mr. DiDio and Mr. Swicklas shall receive a copy hereof as provided in section 9-7b-56 of the Regulations of Connecticut State Agencies.
16. It is understood 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 Mr. DiDio and Mr. Swicklas and may not be used as an admission in any subsequent hearing if the same becomes necessary.
17. Mr. DiDio and Mr. Swicklas 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.
18. Upon the Mr. DiDio's and Mr. Swicklas's 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 Thomas DiDio shall pay a civil penalty of one hundred dollars (\$100.00) made payable to the State of Connecticut on or before January 20, 2010.

IT IS FURTHER ORDERED THAT Thomas DiDio and James Swicklas shall henceforth comply with General Statutes § 9-621.

**For the State Election
Enforcement Commission:**

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Adopted this 20th day of Jan of 2010 at Hartford, Connecticut.

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