

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Kenneth Korsu, Southbury

File No. 2009-129

FINDINGS AND CONCLUSIONS

Complainant Kenneth Korsu brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Southbury Republican Town Committee (“SRTC”) made expenditures for a sign which measured greater than 32 square feet, but which did not contain those attributions required by General Statutes § 9-621 (a). Additionally, Complainant alleges that the SRTC violated General Statutes § 9-610 (d) by placing automated telephone calls (“robocalls”) to electors using the Town of Southbury’s municipal early warning message system.

After the investigation, the Commission makes the following findings and conclusions:

1. During the election season preceding the November 3, 2009 municipal election, the SRTC rented out an office space for its headquarters.
2. The SRTC made an expenditure for the production of three panels made of a synthetic cloth-like fabric, which it connected together by twine or rope threaded through a series of corresponding grommets on each panel and which it hung on the outer side of the building that housed the aforementioned office space, facing the street.
3. The middle panel consisted of a blue stretch of synthetic cloth-like fabric upon which were written the words “REPUBLICAN HEADQUARTERS” in large block letters. Above the words appeared a series of white stars of varying sizes.
4. The left panel consisted of a similar blue stretch of the synthetic cloth-like fabric of the same height as the middle panel, but approximately one third the width. Written upon the left panel in a font one quarter the size of the middle panel were the words “THE DAVIS TEAM/*Board of Selectman/J. Turk/C. Landmon/J. Santonocito/Putting Southbury First.*” Above the words appeared a series of white stars of varying sizes identical to those which appeared on the middle panel.
5. The right panel consisted of a similar blue stretch of synthetic cloth-like fabric of the same height as the middle panel, but approximately one third the width. Written upon the right panel in a font one quarter the size of the middle panel were the words “THE DAVIS TEAM/*Board of Education/P. Perry/J. Bucciarelli/J. Butkus.*” Above the words appeared a series of white stars of varying sizes identical to those which appeared on the middle panel.
6. Because the panels were aligned and attached to each other, were of an identical height and shared the same colors, fonts and design elements, they appeared to a reasonably prudent person to be one communication rather than three separate communications.

7. The communication in question did not contain an attribution indicating who paid for it.
8. Complainant alleges that the aforementioned communication was a sign with a surface area of more than thirty-two square feet and as such, required such an attribution.
9. General Statutes § 9-621 (a) provides, in pertinent part:

(a) 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.*

...

(d) *The provisions of subsections (a), (b) and (c) of this section do not apply to (1) any editorial, news story, or commentary published in any newspaper, magazine or journal on its own behalf and upon its own responsibility and for which it does not charge or receive any compensation whatsoever, (2) any banner, (3) political paraphernalia including pins, buttons, badges, emblems, hats, bumper stickers or other similar materials, or (4) signs with a surface area of not more than thirty-two square feet. (Emphasis added). . . . [Emphasis added.]*

10. Respondent, Treasurer Vincent Toscano, argues that the communication at issue was a banner, and was therefore exempt from the attribution requirement pursuant to § 9-621 (d) (2). Alternately, Respondent argues that even if the communication was a sign and not a banner, it was exempt from the attribution requirement pursuant to § 9-621 (d) (4) because its surface area measured no more than thirty-two square feet.

11. The question of what classifies a communication as a “banner” versus a “sign” within the meaning of § 9-621 is one of first impression for the Commission.
12. “When construing a statute, [o]ur 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. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . .” (Internal quotation marks omitted.) *Vincent v. City of New Haven*, 285 Conn. 778, 784-785 (2008).
13. No definition of “banner” exists in General Statutes § 9-621 and since the term is capable of more than one meaning, the Commission looks first to the relationship of the term to surrounding terms in the campaign finance statutes. However, while it is clear from the use of the term “banner” in § 9-621 (d) (2) that it differs from the term “sign,” which appears in § 9-621 (d) (4), the manner in which it differs is not clear by examining the surrounding statutes.
14. Accordingly, the Commission looks next to the legislative history of the statute. The “banner” exception to the attribution requirement was inserted as an amendment to then General Statutes § 9-333w in No. 91-159 of the 1991 Public Acts. The only description of the term in the record of the Public Act appears in Senator Herbst’s introduction of House Bill No. 6481 on the floor of the Senate on May 15, 1991, just prior to its enactment. No amendments were made to the bill subsequent to this statement:

SENATOR HERBST:

Thank you, Madam President. This bill exempts from attribution requirements with the political campaign material banner. The reason for that is there has been *a number of problems relative to political headquarters who do use banners, usually of fabric material, not necessarily poster board, and/or poster, plywood board*, (Emphasis added.)

34 S. Proc., Pt. 6, 1991 Sess., p. 1945.

15. Senator’s Herbst’s brief characterization of the term is congruous with the ordinary use of the term. *See State v. Lutters*, 270 Conn. 198, 206, (2004) (“The rule that terms in a statute are to be assigned their ordinary meaning, unless context dictates otherwise . . . also guides our interpretive inquiry.”).

16. “Where a statute does not define a term it is appropriate to look to the common understanding expressed in the law and in dictionaries.” *Caldor, Inc. v. Heffernan*, 183 Conn. 566, 570-571 (1981). “Banner” has been defined as follows:

ban·ner

- 1 a : *a piece of cloth attached* by one edge to a staff and used by a leader (as a monarch or feudal lord) as his standard . . .
- 2 : a headline in large type running across a newspaper page
- 3 : *a strip of cloth on which a sign is painted* <welcome banners stretched across the street>
- 4 : a name, slogan, or goal associated with a particular group or ideology <the new banner is “community control” — F. M. Hechinger> —often used with under <every new administration arrives...under the banner of change — John Cogley>
- 5 : an advertisement graphic that runs usually across the top of a World Wide Web page

(Emphasis added.) “banner.” Merriam-Webster Online Dictionary. 2009. Merriam-Webster Online. 8 December 2009. <<http://www.merriam-webster.com/dictionary/banner>>

17. The issue here is to determine what differentiates a “banner” from a “sign.” From the ordinary use of the term and from Senator Herbst’s brief introduction on the floor of the Senate, two characteristics of a banner emerge that will direct our analysis here. The first characteristic is that the material from which a banner is made is a type of fabric or cloth, including cloth-like synthetic materials from which many modern banners are created. The second characteristic is that a banner cannot stand and/or be propped up on its own, but rather needs to be attached and/or hung to some other object in order to be displayed.
18. Applying the aforementioned characteristics, the Commission concludes that the communication in question here is a banner. The communication is made of a cloth-like synthetic fabric. The communication is displayed by hanging it using a series of grommets along its outer edge; without attaching it to some other object, it cannot stand on its own.
19. Since the communication in question is a banner, it was exempted from the attribution requirement by General Statutes § 9-621 (d) (2). Accordingly, the allegation is dismissed.
20. In light of this finding, it is unnecessary to reach the Respondent’s alternative argument.¹
21. Turning to Complainant’s second allegation, Complainant alleges that the SRTC violated General Statutes § 9-610 (d) (1) and (2) by placing automated telephone calls

¹ However it is worth noting that the sign, as ordered, was no larger than 32 square feet.

("robocalls") to electors on or about October 30, 2009 using the Town of Southbury's municipal early warning message system.

22. According to the Complaint, the recorded telephone message was narrated by incumbent First Selectman Bill Davis in which Mr. Davis names all of the Republican candidates for Board of Selectmen in the upcoming municipal election and explicitly exhorts the listener to vote for the entire slate.

23. General Statutes § 9-610 (d) provides:

(1) No incumbent holding office shall, during the three months preceding an election in which he is a candidate for reelection or election to another office, use public funds to mail or print flyers or other promotional materials intended to bring about his election or reelection.

(2) *No official or employee of the state or a political subdivision of the state shall authorize the use of public funds for a television, radio, movie theater, billboard, bus poster, newspaper or magazine promotional campaign or advertisement, which (A) features the name, face or voice of a candidate for public office, or (B) promotes the nomination or election of a candidate for public office, during the twelve-month period preceding the election being held for the office which the candidate described in this subdivision is seeking.*

24. The investigation revealed that the SRTC received the list of telephone numbers from Republican State Central and paid a vendor to place the automated calls and that the town's early warning system was not used, as alleged.

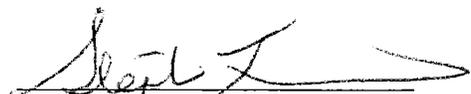
25. No public funds were used for the automated calls; accordingly, that allegation is dismissed.

ORDER

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

That the Complaint be dismissed.

Adopted this 20th day of January of 2010 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission