

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Myrna Watanabe, Harwinton

File No. 2010-046

FINDINGS AND CONCLUSIONS

Complainant Myrna Watanabe brings this complaint pursuant to General Statutes § 9-7b alleging that an advertising campaign paid for by the University of Connecticut that featured Kevin Witkos, an incumbent state senator, violated General Statutes § 9-610. Complainant attached a copy of the advertisement that was included in the April 2010 issue of *Connecticut Magazine*. After the investigation of the Complainant's allegations, the Commission makes the following findings and conclusions:

1. Kevin Witkos has represented Connecticut's 8th Senatorial district since 2009. Prior to assuming his post in the Connecticut Senate, Witkos served as state representative for the 17th General Assembly district beginning with the 2003 legislative cycle. In 2010, Witkos retained his senate seat, winning reelection for a second two-year term.
2. In July 2009, a representative of the University of Connecticut contacted Witkos about featuring him in an advertisement promoting the university's Bachelor of General Studies Program, from which he had graduated in 2007.
3. The UConn Center for Continuing Studies is a self-funded unit at the University of Connecticut. The expenses of the Center, including marketing the programs, are paid with monies from revenues generated from the fees which the Center's students pay for their educational programs.
4. While planning the advertising campaign, Maxine A. Marcy, an employee in UConn's Center for Continuing Studies, alerted Witkos that in the past some there were some "ethical issues that popped up" when the general studies program had attempted to use the testimonial of another elected official. E-mail from Maxine A. Marcy to Kevin Witkos (July 14, 2009). Marcy wrote that she worried that any testimonial might be of limited use because of the upcoming election cycle. *Id.*
5. Marcy also informed Witkos that she asked about the permissibility of using his name and face in the promotional campaign, "and Susan Nesbitt [then director of the Center for Continuing Studies] said that it would not be a problem. I would like to be sure. Please let me know your thoughts." *Id.*

6. After receiving this email, Witkos asked Jennifer Macierowski, attorney for the Senate Republican Caucus, if the use of his testimonial to promote the UConn center would violate any ethics rules. Macierowski, in turn, contacted the Office of State Ethics.
7. According to Macierowski, she posed Witkos's question to the Office of State Ethics and discussed the matter with an attorney in that agency's compliance unit. Macierowski was unable to find documentation of her conversation with the ethics official.
8. On July 15, 2009, Witkos informed Marcy that he had "just heard back from the office of ethics and they said that no problem exists with my assistance in promoting the BGS program. There is no 'shelf life' either." E-mail from Sen. Kevin Witkos to Maxine Marcy, July 15, 2009.
9. After receiving this advice, the Center for Continuing Studies began developing the testimonial advertisement campaign featuring Witkos, including taking photographs of him at the UConn Storrs campus in August 2009.
10. The Center for Continuing Studies produced the advertisement, and in April 2010, the ad appeared in several publications published in Connecticut.
11. On April 7, 2010, the Commission received this complaint about the advertisement featuring Witkos.
12. By April 16, 2010, the Center for Continuing Studies had removed all promotional material related to Witkos from circulation and abandoned the campaign.
13. On April 24, 2010, Witkos formed a candidate committee for the 2010 election cycle. *See* SEEC Form 1 (*Witkos for Senate*, April 24, 2010).
14. General Statutes § 9-610 (d) comprises two different prohibitions on the use of public funds to promote the candidacy of a public official. First, § 9-610 (d) (1) prevents an incumbent within the three months preceding an election from using public funds "to mail or print flyers or other promotional materials" that are intended to promote the candidacy of the incumbent. General Statutes § 9-610 (d) (1). Second, § 9-610 (d) (2) bans any individual from authorizing the use of public funds during the 12-months preceding an election for any promotional campaign or advertisement that "features the name, face or voice of a candidate for public office" or promotes the nomination or election of a candidate. *See* General Statutes § 9-610 (d) (2).

15. This case touches upon the second of these restrictions since the Center for Continued Studies used the name and face of Witkos, a candidate for the state senate, in a promotional campaign within the 12 month period before an election.
16. Although the facts of this case lay out a *prima facie* violation, several factors militate against the imposition of a penalty.
17. First, the § 9-610 (d) (2) restriction on the use of Witkos's name and face in a promotional campaign only applied after November 1, 2009. Witkos discussed the use of his photograph and name in July and August 2009. Had the promotional campaign occurred before November 1, 2009, there would have been no campaign finance law violation.
18. Second, Witkos and the University of Connecticut attempted to confirm that using his face and name in the advertisement would not violate any laws or restrictions on the use of an elected official's visage or name in state-funded publications.
19. Through caucus counsel, Witkos consulted with the Office of State Ethics which purportedly found no impediments to continuing with the promotional campaign *under the state's ethics provisions*. Because this conversation occurred more than 16 months before the 2010 election, no one consulted with the Commission about any restrictions that Chapter 9 might impose on the use of his face and name.
20. The parties here attempted in good faith to obtain a ruling on the application of state statute to this promotional campaign and to comply with the ruling they received. Once the potential violation of the campaign finance statutes was alleged through the filing of this complaint, the Center for Continuing Studies immediately ceased the promotional campaign.
21. Given the importance of compliance with Connecticut's campaign finance and ethics statutes, elected officials as well as state actors seeking to use the likenesses or names of incumbent elected officials in promotional campaigns should consult with both the Commission and the Office of State Ethics before engaging in these promotional campaigns to ensure full compliance with both statutory regimes.

ORDER

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

That no further action be taken.

Adopted this 23rd day of May of 2012 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", written over a horizontal line.

Stephen F. Cashman
By Order of the Commission