

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Charles Kelly, Salisbury

File No. 2010-053

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and raised allegations that the candidate committee “Lauretano for the 64th” failed to timely report expenditures for two newspaper advertisements and failed to properly include the required “approved by” language in said advertisements, in violation of General Statutes §§ 9-608 (c) & 9-621.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. The Respondents here are Kathy Lauretano, the 2010 Republican nominee for the state House of Representatives in the 64th General Assembly district and Vivian Nasiatka, treasurer of “Lauretano for the 64th,” the candidate committee formed to support Respondent Lauretano’s candidacy. Respondent Lauretano was a “nonparticipating candidate” with respect to the Citizens’ Election Program as that term is defined in General Statutes § 9-703 (b).
2. Complainant alleges that the committee placed two promotional advertisements for the candidate with the Lakeville Journal, a local newspaper in Lakeville—both of which appeared in the March 25, 2010 edition—but failed to report the expenditure in the April 2010 quarterly Campaign Finance Disclosure Report, which covered the activity of the committee from January 1, 2010 through March 31, 2010. Complainant alleges that it was the policy of the Lakeville Journal to require payment for all advertisements before placing any advertisement in its periodical.
3. Complainant further alleges that both advertisements failed to include the “approved by” language required by General Statutes § 9-621 (a).
4. Turning first to the Complainant’s allegation of failing to report an expenditure, Respondents do not deny the facts alleged. Respondents assert that the candidate, without knowledge of the treasurer, placed an order for the two advertisements costing \$340.34 during the first two weeks of March and secured the order with her personal credit card. Contrary to Complainant’s allegation, Respondents assert that while the Lakeville Journal took the candidate’s credit card information, it did not issue an invoice or charge the card until on or about April 5, 2010, after the April reporting period. Sometime during the July

quarterly reporting period, the Respondent candidate informed the Respondent treasurer of the expenditure out of her own funds for which she was seeking no reimbursement and forwarded the appropriate documentation to her.

5. As an initial matter, the Commission finds that the evidence supports Respondents' assertion concerning the Lakeville Journal's policies and practice regarding credit cards. Lakeville Journal representatives submitted a statement that it was the newspaper's policy and practice to take credit card information for the placement of ads, but to wait to charge the card until the 1st of the month immediately following the placement of the advertisement.
6. Both Respondents assert that although the candidate incurred the expenditure in March 2010, she did not actually *make* the expenditure until her credit card was charged on April 5, 2010. Accordingly, they assert, she was not required to report such expenditure to the treasurer until the July quarterly filing period ending June 30, 2010 and the treasurer was not required to disclose the expenditure until the July 10, 2010 quarterly report. Alternatively, the Respondent treasurer asserts that the candidate's expenditure was incurred without her knowledge and not reported to her until after she had made the April quarterly finding.
7. All *committee* expenditures that are *incurred* during a particular reporting period, must be reported in that period, *whether or not they are actually paid* in the period. Failure to timely and/or accurately report an expenditure or contribution is a violation of General Statutes § 9-608 (c), which reads, in pertinent part:

(a) (1) Each campaign treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603, (A) on the tenth calendar day in the months of January, April, July and October, provided, if such tenth calendar day is a Saturday, Sunday or legal holiday, the statement shall be filed on the next business day, (B) on the seventh day preceding each regular state election. . . .

(c) (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: (A) An itemized accounting of each contribution, if any, including the full name and complete address of each contributor and the amount of the contribution; (B) in the case of anonymous contributions, the total amount received and the denomination of the bills; (C) an itemized accounting of each expenditure, if any, . . . (D) an itemized accounting of each expense incurred but not paid, . . . (Emphasis added.)

8. However, where, as here, a nonparticipating candidate makes expenditures out of her own personal funds, General Statutes § 9-607 allows that she may do so without first seeking approval from the treasurer and does not require her to report such expenditures to the treasurer until, at the latest, the end of the reporting period in which the expenditure is made. Section 9-607 reads, in pertinent part:

(a) No financial obligation shall be incurred by a committee unless authorized by the campaign treasurer, *except that certain expenditures of a candidate's personal funds may be reimbursed as provided in subsection (k) of this section.*

...

(k) *A candidate shall report to his campaign treasurer each campaign expenditure of more than fifty dollars which he has made directly from his own personal funds . . . by the close of the reporting period in which the expenditures were made.* The candidate shall indicate whether or not he expects reimbursement by the committee. The campaign treasurer shall report all such reimbursed and nonreimbursed expenditures as "campaign expenses paid by the candidate" on the sworn financial statements he is required to file in accordance with section 9-608 and in the same manner as committee expenditures. . . . (Emphasis added.)

9. Reading General Statutes §§ 9-607 (k) and 9-608 (c) together then, the Commission concludes that a candidate is *not* required to report to her treasurer expenditures *incurred* by the candidate, but not yet paid out of the candidate's personal funds whether or not such candidate expects reimbursement from the committee.
10. Accordingly, the time at which the candidate actually *makes* the payment dictates the reporting period in which she must she report the expenditure to her treasurer pursuant to General Statutes § 9-607 (k).
11. Considering the aforesaid, the Commission concludes that the Respondent candidate timely reported to her treasurer the expenditure made from her personal funds at the time her credit card was charged on or about April 5, 2010.
12. Turning to the treasurer's responsibility, the Commission notes that if any individual, including but not limited to a candidate, incurs an expenditure and such individual expects reimbursement from the committee, the committee incurs the expenditure at the same time as such individual. See *Complaint of Wesley Lube, Wallingford*, File No. 2009-103 (expenditure for the lawn signs found to have been incurred by the committee on September

22, 2009, the date on which campaign volunteer obligated to pay for the signs, even though the volunteer's credit card was not charged until the following reporting period). In such a case, the committee treasurer must generally report the expenditure incurred in the period in which such expenditure is incurred, whether or not such expenditure is actually paid in the same reporting period.

13. However, where, as here, the treasurer had no knowledge of the expenditure of the candidate's personal funds, nor did the candidate have either an expectation of reimbursement or an obligation to report such expenditure until the end of the reporting period in which the expenditure was actually made, there can be no obligation for the treasurer to report the expenditure in the period in which it was incurred.
14. The Commission finds that the expenditure here was incurred by the candidate without the knowledge of the treasurer and without the expectation of reimbursement. As such, the Commission concludes that the Respondent treasurer timely reported the candidate's expenditure from her personal funds in the July 2010 quarterly filing.
15. Turning to the second allegation in the Complaint, the evidence submitted by the Complainant included copies of the aforesaid advertisements. No party disputes that the advertisements promote the candidacy of Respondent Lauretano, including, but not limited to a photograph of the candidate. Included at the bottom of the advertisement are the words "Paid for by 'Lauretano for the 64th,' Vivian Nasiatka, Treasurer." Complainant alleges that the advertisement fails to include the attribution indicating the candidate's approval of the advertisement.
16. At all times relevant hereto, General Statutes § 9-621 (a), provided, in relevant part:

... [N]o candidate or 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 nomination at a primary or election ... 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 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

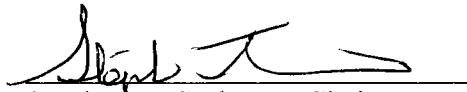
17. The Commission concludes that, pursuant to § 9-621 (a), the flyer's attribution should have included the words "approved by Kathy Lauretano."
18. The Commission concludes that the authorship of the flyer was clear to the reasonable observer and notes that Respondent Lauretano has no history of violations of the election laws. As such, the Commission should take no further action as to this allegation.

ORDER

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

- 1) As to the allegation that the expenditure for the advertisements was untimely reported: Dismissed.
- 2) As to the allegation that the advertisements failed to include the "approved by" language in the attribution: No further action.

Adopted this 14th day of December, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission