

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Christopher Healy, Wethersfield

File No. 2010-120

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that State of Connecticut State Treasurer Denise Nappier authorized the use of public funds to promote her re-election at the November 2, 2010 statewide election.

After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. The Connecticut Higher Education Trust (hereinafter "CHET"), is a college savings program, administered through the State of Connecticut Office of the Treasurer, which publishes an annual information brochure, and has done so annually since its establishment by the Connecticut legislature in 1998.
2. Complainant alleged that the inclusion of Denise L. Nappier's name and picture in the annual brochure prior to the November 2, 2010 election, in which she was seeking re-election to the Office of State Treasurer, was a violation of General Statutes § 9-610 (d). Specifically, the brochure that is subject of this complaint includes a picture of Ms. Nappier with the following caption: "*Many children dream of going to college and CHET Advisor can help make that dream a reality – Denise L. Nappier, Connecticut State Treasurer.*"
3. Additionally, Complainant raises the issue that the brochure, described in paragraphs 1 and 2 above, was issued at a press conference held by Ms. Nappier as State Treasurer at the Capitol Rotunda on October 6, 2010.
4. By way of background, CHET was established by the legislature, and its enabling statute prohibits the use of public funds in its funding. General Statutes § 3-22g. The commingling of CHET assets with state funds is specifically prohibited by the aforementioned statute.

5. While the administrative obligations of CHET are overseen by the Office of State Treasurer that office enters into long-term management agreements with financial services firms, that oversees CHET, while individual account owners in CHET maintain the services of such firms through fees paid for their college savings accounts. The firms in return maintain and develop the CHET program to increase the long-term financial strength and returns on savings that the program offers to individual account holders.
6. The payment of fees by individual CHET account owners to maintain the contracts of financial services providers to administer the program, as detailed in paragraph 4 above, are used by the financial services firms as plan administrators,, and within such administration includes the marketing and promotion of the program, in such materials as the annual brochure with is the subject of this current complaint.
7. The Commission must determine whether the inclusion of Ms. Nappier in the brochure which is the subject of this complaint, and detailed in paragraphs 1 and 2 above, was an “expenditure” for purposes of determining whether it was a *coordinated* expenditure and therefore was an in-kind contribution by CHET to Ms. Nappier’s 2010 candidate committee for state treasurer.
8. The Commission notes that Ms. Nappier was the incumbent State Treasurer and candidate at the time of the release of the brochure that is subject to the complaint and was seeking reelection to that office at all times relevant to this complaint.
9. General Statutes § 9-601b, provides in pertinent part:
 - (a) As used in this chapter and chapter 157, the term "expenditure" means:
...
(2) ***Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard, and (C) is broadcast or appears during the ninety-day period preceding the date of a primary or an election, other than a commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate;...***
[Emphasis added.]

10. Pursuant to General Statutes § 9-601b (a) (2), “expenditure” means an advertisement that refers to an identified candidate and is “broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard.” In this instance, the inclusion of Ms. Nappier in the advertisement by CHET for its programs was not included in a radio or television broadcast and did not appear in a newspaper magazine or on a billboard. The Commission concludes therefore that for purposes of § 9-601b (a) (2) the advertisement in question was not an expenditure, and therefore the analysis of whether it was a coordinated expenditure is therefore unnecessary under these specific facts.
11. The Commission having determined, for reasons detailed in paragraphs 9 and 10 above, the absence of a “coordinated expenditure” under these specific facts, must nevertheless decide whether the CHET brochure was the use of public funds to promote Ms. Nappier’s re-election to the Office of State Treasurer and therefore subject to the prohibitions in General Statutes §9-610 (d).
12. General Statutes § 9-610, provides in pertinent part:
 - (d)(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.
[Emphasis added.]
13. The Commission finds that based on the specified media delineated in General Statutes § 9-610 (d) (2) above, that the brochure as detailed in paragraphs 1 through 3 above, does not fit within these types of media and therefore the Commission concludes that § 9-610(d) (2) does not apply.

14. The Commission finds, upon investigation, that the CHET brochure constitutes printed materials, other than those carved out by General Statutes § 9-610 (d) (2), and therefore concludes that § 9-610(d) (1) applies for purposes of its analysis under the circumstances of this complaint. Furthermore the Commission concludes that § 9-610 (d) (1) applies to promotional materials for an incumbent seeking re-election within three months of an election where *public funds* are used for their production and dissemination.
15. The threshold question the Commission must answer under § 9-610(d) is whether *public funds* were used by Ms. Nappier for the CHET brochure, described in paragraphs 1 through 3 above.
16. Upon investigation, the Commission finds that the funds used for the production and dissemination of the CHET annual brochure that includes the name and picture of State Treasurer Denise Nappier, were public funds. Specifically, the Commission finds that Ms. Nappier in her administration of CHET as well as her conducting an October 6, 2010 press conference, detailed in paragraph 3 above, releasing the aforementioned brochure necessarily entailed the use of public funds for any time spent by her or her staff in such administration and conduct, to the extent that she or her staff were compensated for their time spent in such activities.
17. Because the Commission finds that public funds were used to produce the brochure which is the subject of this complaint, the Commission must next determine whether the brochure was “promotional” and therefore was prohibited by General Statutes § 9-610 (d) based on the release within 27 days of the November 2, 2010 election which was within the prohibited window of three months preceding the election.
18. The Commission employs a well-established criteria for determining whether certain printed materials qualify as "promotional materials intended to bring about the election or reelection” pursuant to General Statutes § 9-610 (d) (1). *See* Opinion of Counsel 2010-01, (January 15, 2010). When applying the aforementioned test a communication is deemed to fall within the purview if it 1) expressly advocates the candidate’s reelection or (2) is so laudatory as to implicitly advocate such reelection. *Complaint of Ann Piscottano*, New Haven, File No. 97-221; *Complaint of Joseph Travagliano*, East Haven, File No. 91-170.

19. In determining whether the first prong of the test is met, the Commission considers indicia of advocacy of the candidate's reelection including, but not limited to, the following references:
 - (a) The candidacy or party affiliation of the elected official;
 - (b) The record of the elected official; or
 - (c) A solicitation for contributions or other support for any official's campaign or reelection, or promoting the support of any other candidate, political committee or political party.
20. If the first prong is not met, the Commission would analyze whether the second prong is met, and review whether the materials are so laudatory as to implicitly advocate reelection. The Commission considers the ostensible governmental purpose, as well as the consistency of the language of the communication in relationship to that purpose. Complaint of Roger J Roche, Old Lyme, File No. 2007-390. Additionally, the "tenor and timing" of the communication is taken into account by the Commission. Complaint of *Peter L. Germano*, Thompson, File No. 91-171.
21. After applying this test, the Commission concludes that the CHET brochure does *not* constitute promotion intended to bring about nomination, election or reelection pursuant to § 9-610 (d) (1). Because none of the three categories of information indicated by the first prong of the test (or any other information directly relevant to the incumbent's candidacy) is present in the CHET brochure, it does not expressly advocate Ms. Nappier's reelection as the incumbent.
22. The Commission must determine whether pursuant to prong 2, as detailed in paragraph 17 above, whether the CHET brochure "is so laudatory as to implicitly advocate [the incumbent's] reelection." In determining whether a communication is so self-laudatory as to implicitly advocate an incumbent's reelection, the Commission considers the consistency of the language of the communication in relationship to its governmental purpose. The CHET brochure is effectively the roll-out of specific and new programmatic offerings of CHET, which is administered through Ms. Nappier's office as State Treasurer. It expounds upon the benefits of saving for college through a program specifically offered to Connecticut residents and provides for details of the offered plan as well as additional general information regarding CHET. While the CHET brochure does include the name of Ms. Nappier as State Treasurer, it is concluded that the mere appearance of the name of an elected official in a communication does not, without more, constitute a violation of §9-610 (d).

23. The Commission finds for the reasons detailed in paragraph 21 above, that the CHET brochure is consistent in its language of supporting the roll-out of CHET's new program and provision of informational details, which clearly relates to the purpose of CHET as a provider of college savings investment programs. The Commission concludes therefore that the CHET brochure is *not* so laudatory as to implicitly advocate Ms. Nappier's reelection to the Office of State Treasurer.
24. Upon complaint and investigation, and consistent with the Commission's public advice and prior cases pertaining to the application of General Statutes § 9-610 (d) as applied to the specific facts detailed herein, the Commission determines that the CHET brochure and ancillary October 6, 2010 press conference releasing the same, did not constitute a violation of § 9-610 (d) (1), and for the reasons so state therefore dismisses this complaint.

ORDER

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

That the complaint be dismissed.

Adopted this 25th day of April of 2012 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission