

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Brien Buckman,
Storrs

File Nos. 2010-115, 2010-137

FINDINGS AND CONCLUSIONS

The Complainant Brien Buckman of Storrs, Connecticut filed these Complaints with the Commission pursuant to General Statutes § 9-7b. Insofar as the allegations relate to the Commission's jurisdiction, the Complaints allege: (1) that the Ortiz for State Representative Committee posted flyers promoting the candidacy of Jason Ortiz, a candidate for State Representative in the 54th district, at locations on the University of Connecticut ("UConn") campus, which lacked the attribution required by General Statutes § 9-621 (a); (2) the same campaign issued online communications, which also lacked the attribution required by General Statutes § 9-621 (a).

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

1. At all times relevant hereto, Jason Ortiz, was a candidate for State Representative in the 54th district (the "Candidate") with a candidate committee registered with the Commission.
2. The Complainant, in a complaint dated as received on September 24, 2010 and docketed as SEEC File No. 2010-115, alleges that the Ortiz campaign was posting flyers at various "inappropriate" locations on the UConn campus.

3. The Complainant included photographs of a stop sign and two bulletin boards where communications were allegedly posted by unknown persons on behalf of the Candidate. The communications on the bulletin boards were unreadable and, as political paraphernalia, the stickers presented in the complaint did not need an attribution. See, General Statutes § 9-621 (d).
4. On October 4, 2010, the Commission, through its staff, informed the Complainant that the allegations contained in File No. 2010-115 did not constitute a sufficient basis to proceed with an investigation and that matter would likely be dismissed by the Commission should additional information, alleging violations within the Commission's jurisdiction, not be provided by the Complainant.
5. The Commission hereby dismisses the SEEC File No. 2010-115 for insufficient evidence to form a basis for a finding of a violation.
6. The Complainant, in a complaint dated as received on November 2, 2010 and docketed as SEEC File No. 2010-137, alleges that online communications from the Candidate's campaign Facebook site, which promoted the candidate, did not contain attributions. The complaint further alleged that an unidentified sign supporting the Candidate, which also lacked an attribution, was being physically distributed by unidentified persons.
7. The Candidate's campaign website, maintained on the Facebook social networking site, solicited funds by including a "Donate Now!" solicitation.
8. The Candidate's campaign website contained no attribution identifying who paid for the communication, as prescribed by § 9-621(a), but the source of the communication, the Candidate or his committee, was clear to the reasonable observer.

9. Based on a review of communications provided by the campaign, the Commission also concludes that this was an isolated omission and that, in general, the campaign complied with the requirement to place attributions on its communications.
10. The investigation has identified the signs referenced by the Complainant as flyers produced and distributed by either Lambda Upsilon Lambda Fraternity, Inc. (“LAL”) and/or Alpha Epsilon Phi Sorority (“AEP”) (the “flyers”) and not by the candidate or his campaign committee.
11. The flyers promoted the Candidate and contained no attribution identifying who paid for the communication as prescribed by § 9-621(a).
12. The investigation has not confirmed the specific cost of the flyers.
13. The flyers promoted a partisan get out the vote drive held on October 11, 2010 and organized by LAL and AEP. The flyers explicitly stated their support for the Candidate and included the Candidate’s campaign logo.
14. Despite LAL’s and AEP’s use of the campaign’s logo, the investigation has not uncovered sufficient evidence to conclude that this was coordinated between the LAL and/or AEP and the candidate’s committee.
15. The investigation has not determined the specific cost of the partisan get out the vote drive nor the possibility of additional costs incurred by LAL or AEP that are beyond the scope of the complaint.
16. General Statutes § 9-621 (a), provides, in relevant part:

[No] candidate or committee shall make or incur any expenditure
... 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: ... 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: ... (B) in the case of a candidate committee, the name of the candidate

17. General Statutes § 9-601b provides, in relevant part, “[T]he term ‘expenditure’ means: anything of value, when made for the purpose of influencing the election, of any person”
18. General Statutes § 9-601b (a) (3) excludes from the definition of expenditure, “*Nonpartisan* voter registration and get-out-the-vote campaigns by any corporation, organization or association aimed at its members, owners, stockholders, executive or administrative personnel, or their families.”[Emphasis Added.]
19. Connecticut has no de minimis threshold when an expenditure results in an attribution requirement. See, *Seymour v. Elections Enforcement Commission*, 255 Conn Sup. 78, at 102, footnote 15.
20. State Elections Enforcement Commission Advisory Opinion No. 2010-05: *Propriety of Hyperlinks on Candidate Committee Website to Other Committee Websites, Certain Media Pieces and Commercial Websites* (May 26, 2010), in explaining candidate committee reporting requirements, identified various expenditures associated with candidate websites:

.... [C]ommittees must report any costs associated with a candidate committee website and hyperlinks - e.g., domain name registry, hosting costs, website maintenance and creation, bandwidth - as it would any other campaign committee expenditures in support of your candidacy. *See, e.g., In the Matter of a Complaint by Frank DeJesus*, Hartford, File No. 2006-193 (civil penalty imposed for failure to report expenditure related to purchase and payment of web hosting services for website that, at various times, contained messages made for the purpose of influencing an election); *In the Matter of a Complaint by Joseph Klett*, Newington, File No. 2004-167 (finding website design services, Internet hosting and support services for candidate committee website were campaign expenditures necessitating reporting); Furthermore, as with any web-based communication promoting the success of your campaign, your candidate committee website must bear upon its face the appropriate attributions pursuant to General Statutes § 9-621 (a).

21. The Commission concludes that the communication solicited funds.
22. Accordingly, in light of the expense inherent in sending the electronic communication (e.g., computer use or internet access), the email communication should have contained an attribution pursuant to § 9-621 (a).
23. Nevertheless, the fair market value of any such expense for the sending of email communication, under these specific facts, is nominal.
24. The Respondent has no record of being found in violation of the state's election laws.

25. The Respondent has been fully cooperative in the course of the investigation.

26. Under these specific facts and circumstances, the Commission has determined to take no further action in this matter. See, e.g.: File No. 2009-039, *Complaint of Arthur Scialabba, Norwalk*, (§ 9-621 matter closed without further action because of the nominal value of the expenditure involved in sending an email communication); and File No. 2009-084, *Complaint of Elizabeth-Ann Edgerton, Monroe* (§ 9-621 matter closed without further action because of nominal value of the expenditure, a hyperlink and the volunteer labor to develop a webpage referred to as a “blogspot”).

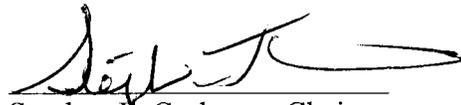
THIS SPACE LEFT INTENTIONALLY BLANK

ORDER

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

That no further action be taken.

Adopted this 24th day of August, 2011 at Hartford, Connecticut

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

Stephen F. Cashman, Chairman
By Order of the Commission