

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by the Bethel Town Clerk,
Bethel

File No. 2011-124NF

FINDINGS AND CONCLUSIONS

The Town Clerk of Bethel, Connecticut referred this matter to the Commission pursuant to General Statutes § 9-623. The Town Clerk referred the Chairperson and Treasurer of the Burke Tea Party Team slate committee for the alleged failure to file their SEEC Form 3, registering the formation of a political slate committee, prior to certain candidates filing their candidate registrations, SEEC Forms 1 and 1B, which stated such candidates would be funded exclusively under the Burke Tea Party Team slate committee (the "BTPT").

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

1. In a letter dated August 26, 2011, the Secretary of the State informed eight candidates, running under the reserved party name, CT TEA PARTY, (the "candidates") that they had successfully petitioned to be placed on the ballot for the November 8, 2011 municipal election.
2. Such letter was copied to the Bethel Town Clerk (the "Town Clerk") and marked received by that office on August 31, 2011.
3. Seven of the eight candidates filed their candidate registrations, SEEC Form 1 and 1Bs, designating their funding sources, with the Town Clerk on September 2, 2011, seven days after successfully petitioning to be placed on the ballot. The eighth candidate, George Gaylord, filed his SEEC Form 1 and 1B on September 6, eleven days after successfully petitioning to be placed on the ballot.
4. Each of the candidate's SEEC Form 1B filings claimed an exemption from forming a candidate committee. The exemption claimed, "I am one of slate of candidates whose campaigns are being funded solely by a town committee or a political committee formed for a single election or primary and expenditures made on my behalf will be reported by the committee sponsoring my candidacy. The name of the sponsoring committee is: Burke Tea Party Team."

5. The Town Clerk did not send any warning letters, by certified mail or otherwise, to either the candidates or the eventual BTPT chairperson and treasurer regarding the timeliness or other issues with their filings.
6. According to an uncontested statement by Robert E. Burke, the members of the slate committee met on September 13, 2011 and elected Mr. Burke as BTPT's chairman and Mr. Burke appointed Tom Peters as the slate committee's treasurer on the same day.
7. On September 14, 2011, Mr. Peters, the designated treasurer of the BTPT, filed a SEEC Form 3 with the Town Clerk, registering the existence of a slate committee, within one day of the selection of Mr. Burke as chair and his designation of Mr. Peters as treasurer.
8. According to a SEEC Form 20 filing, sworn to and filed with the Town Clerk on September 15, 2011, the BTPT did not receive or expend any funds prior to September 14, 2011 and listed the amount of contributions on such date as \$25.00. This representation has been corroborated by the written representations of chairman and candidate Burke and candidate Robert Crnic.
9. Based on the above representations, the evidence suggests that, even in the absence of such a slate committee, the candidates who declared the slate committee as the exclusive source of funding would have otherwise been exempt from forming candidate committees, pursuant to § 9-604(b)(3), as candidates that did not receive or expend funds in excess of one thousand dollars.
10. General Statutes § 9-601(12) provides:

"Candidate" means an individual who seeks nomination for election or election to public office whether or not such individual is elected, and for the purposes of [Chapter 155) and chapter 157, an individual shall be deemed to seek nomination for election or election if such individual has (A) been endorsed by a party or become *eligible for a position on the ballot at an election* or primary, or (B) solicited or received contributions, made expenditures or given such individual's consent to any other person to solicit or receive contributions or make expenditures with the intent to bring about such individual's nomination for election or election to any such office....[Emphasis Added.]

11. General Statutes § 9-604, governing the registration of candidate committees and exceptions to the requirements thereto, provides, in relevant part:

(a) Each candidate for a particular public office or the position of town committee member shall form a single candidate committee for which he shall designate a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds and shall file a committee statement containing such designations, not later than ten days after becoming a candidate, with the proper authority as required by section 9-603....

(b) *The formation of a candidate committee by a candidate and the filing of statements pursuant to section 9-608 shall not be required if the candidate files a certification with the proper authority required by section 9-603, not later than ten days after becoming a candidate, and any of the following conditions exist for the campaign: (1) The candidate is one of a slate of candidates whose campaigns are funded solely by a party committee or a political committee formed for a single election or primary and expenditures made on behalf of the candidate's campaign are reported by the committee sponsoring the candidate's candidacy; (2) the candidate finances the candidate's campaign entirely from personal funds and does not solicit or receive contributions, provided if said candidate personally makes an expenditure or expenditures in excess of one thousand dollars to, or for the benefit of, said candidate's campaign for nomination at a primary or election to an office or position, said candidate shall file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a candidate committee under section 9-608; (3) the candidate does not receive or expend funds in excess of one thousand dollars; or (4) the candidate does not receive or expend any funds, including personal funds, for the candidate's campaign. If the candidate no longer qualifies for the exemption under any of these conditions, the candidate shall comply with the provisions of subsection (a) of this section, not later than three business days thereafter and shall provide the candidate's designated campaign treasurer with all information required for completion of the treasurer's*

statements and filings as required by section 9-608. If the candidate no longer qualifies for the exemption due to the condition stated in the candidate's certification but so qualifies due to a different condition specified in this subsection, the candidate shall file an amended certification with the proper authority and provide the new condition for the candidate's qualification not later than three business days following the change in circumstances of the financing of the candidate's campaign. The filing of a certification under this subsection shall not relieve the candidate from compliance with the provisions of this chapter. [Emphasis Added.]

12. The Commission notes that § 9-604 (a) requires a filing not later than ten days after *becoming* a candidate and not at the point that one has knowledge of their own candidacy (e.g. the date of successfully petitioning on to the ballot and not the date one receives notice of such from the Secretary of the State).¹
13. The Commission notes that the exemption from registration for candidates running under a slate committee, pursuant to § 9-604 (b) (1), does not actually require that slate committee be registered at the time the claim of exemption is filed (i.e., the statute does not read *registered* political committee). As further noted below, the statutes provide time periods by which a slate committee must register and significantly limit what actions a committee may take prior to registering.
14. Nevertheless, the Commission notes that for a candidate to properly claim such an exemption, pursuant to § 9-604 (b) (1), that such slate committee must already be organized. The exemption for members of a slate is written in the present tense (i.e., “is” rather than a future tense such as “shall be”). As a type of political committee, when a slate committee is organized, the chairperson of such committee is required to register the committee within ten days, pursuant to § 9-605 (a). Accordingly, for a slate committee to be organized, pursuant to § 9-605 (a), it must have selected a chairperson capable of executing this duty.
15. General Statutes § 9-601 (28) provides:

¹ While individuals may become candidates by means other than petitioning on to the ballot, such as raising or spending money, these potential methods are not within the scope of the referral. The referral contained no allegations to this effect nor did information obtained during the course of investigation raise reasonable suspicion regarding this possibility.

"Slate committee" means a political committee formed by two or more candidates for nomination or election to any municipal office in the same town, city or borough, or in a primary for the office of justice of the peace or the position of town committee member, whenever such political committee will serve as the sole funding vehicle for the candidates' campaigns.

16. The Commission notes that, according to the above definition, individuals not meeting the definition of "candidate" may not form slate committees.
17. General Statutes § 9-602(a), restricting the campaign financing by groups of individuals without a registered committee, provides:

Except with respect to an individual acting alone, or with respect to a group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate, *no contributions may be made, solicited or received and no expenditures may be made, directly or indirectly, in aid of or in opposition to the candidacy for nomination or election of any individual or any party or referendum question, unless (1) the candidate or chairman of the committee has filed a designation of a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds, or (2) the candidate has filed a certification in accordance with the provisions of section 9-604.* In the case of a political committee, the filing of the statement of organization by the chairman of such committee, in accordance with the provisions of section 9-605, shall constitute compliance with the provisions of this subsection. [Emphasis Added.]

18. General Statutes § 9-623(b)(3)(a), governing the process for referrals from town clerks to the Commission concerning delinquent filings, provides:

In the case of any such statement or certification that is required to be filed with a town clerk, the town clerk shall forthwith after the filing deadline is, or should be, known to have passed, notify by certified mail, return receipt requested, the person required to file that, if such statement or

certification is not filed not later than seven days after the town clerk mails such notice, the town clerk shall notify the State Elections Enforcement Commission that the person is in violation of section 9-603, 9-604 or 9-608.

19. General Statutes § 9-623(b)(1), establishing late filing fees for delinquent filings, provides:

If any campaign treasurer fails to file any statement required by section 9-608, or if any candidate fails to file either (A) a statement for the formation of a candidate committee as required by section 9-604, or (B) *a certification pursuant to section 9-603 that the candidate is exempt from forming a candidate committee as required by section 9-604, within the time required, the campaign treasurer or candidate, as the case may be, shall pay a late filing fee of one hundred dollars.* [Emphasis Added.]

20. General Statutes § 9-603, requiring statements for municipal slate committees to be filed with a town clerk, provides:

(a) Statements filed by party committees, political committees formed to aid or promote the success or defeat of a referendum question proposing a constitutional convention, constitutional amendment or revision of the Constitution, individual lobbyists, and those political committees and candidate committees formed to aid or promote the success or defeat of any candidate for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, judge of probate and members of the General Assembly, shall be filed with the State Elections Enforcement Commission. A political committee formed for a slate of candidates in a primary for the office of justice of the peace shall file statements with the town clerk of the municipality in which the primary is to be held.

(b) Statements filed by political committees formed solely to aid or promote the success or defeat of a referendum question to be voted upon by the electors of a single municipality and *those political committees or candidate*

committees formed to aid or promote the success or defeat of any candidate for public office, other than those enumerated in subsection (a) of this section, or the position of town committee member shall be filed only with the town clerk of the municipality in which the election or referendum is to be held....[Emphasis Added.]

21. General Statutes § 9-621(a) provides, in relevant part:

[No] candidate ... 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 ... 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 ... and (2) the words "approved by" and the following: (A) In the case of an individual ... making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, ... the name of the candidate....

22. Based on the above, the Commission concludes that seven out of the eight candidates filed their SEEC 1 and IB within the ten days of becoming a candidate as required by § 9-604 (b).

23. The final candidate, one George Gaylord, filed eleven days after becoming a candidate, one day after the statutory deadline.

24. A referral pursuant to § 9-623 (b) (3) (a), such as the instant matter, required that the Town Clerk issue a warning letter to Mr. Gaylord through certified mail providing the candidate with seven days to file the outstanding statement. No such warning letter was sent, through certified mail or otherwise, prior to a referral to the Commission. The Commission notes that the scope of the referral was apparently limited to the alleged failures of Mr. Burke and Mr. Peters and not as to the individual candidates. Additionally, the absence of such a warning letter is understandable as town clerks only are required to issue such letters "forthwith" and not by a specific number of days. Mr. Gaylord's filing arrived only one day after the statutory deadline.

25. Because the Town Clerk did not send a warning letter to Mr. Gaylord, as prescribed by § 9-623 (b) (3) (a), prior to a referral, the Commission declines to investigate the matter further. The Commission notes that the policy underlying this statute ensures an equitable treatment by town clerks prior to their referral to and potential prosecution by the Commission. The Commission notes that this unusual circumstance for a referral was likely caused by the reported existence of a slate committee in filings preceding the registration of such a slate committee. Based on the above, the Commission shall decline to consider any action against the Town Clerk regarding the facts contained in these findings. Accordingly, the purpose of these findings is largely to serve as instruction to future candidates and town clerks presented with similar circumstances.
26. Nevertheless, aside and apart from the imposition of potential civil penalties, pursuant to § 9-7b (2), the statutes set forth a one hundred dollar late filing fee. Based upon the above, such fee, prescribed in § 9-623 (b) (3) (a), should be imposed upon Mr. Gaylord, whose certification pursuant to § 9-603, that the candidate is exempt from forming a candidate committee, as required by § 9-604, was not filed within ten days after becoming a candidate.
27. Although § 9-623 (b) (1) is silent as to the government body responsible for collecting the late filing fees, it has been the consistent position of the Commission that the government body that serves as the filing repository for the delinquent filing is the body responsible for the collection of the late filing fee. See *In the Matter of a Complaint by Bill Michael*, File No. 1997-115. The government bodies serving as filing repositories for specific forms of disclosure are delineated in § 9-603.
28. Based on the above, the evidence supports that Mr. Burke, who started his service as Chairman of the BTPT on September 13, 2011, fulfilled his duty as chairperson, to designate a treasurer within ten days, as prescribed by § 9-605 (a) and by filing this designation with the Town Clerk on September 14, 2011, pursuant to § 9-602 (a).
29. Pursuant to § 9-602 (a), the requirement to register a political committee prior to receiving or expending any contribution of funds does not apply when the group of individuals makes expenditures of less than \$1,000.00 in the aggregate. Based on the information sworn to in the BTPT's SEEC Form 20 filing for the period of September 14, 2011 to September 15, 2011, disclosing initial contributions and disbursements, BTPT's total financial activity as of September 15, 2011 was limited to a \$25.00 contribution. As noted above, the candidates had a duty to register a candidate committee or file claim of exemption, pursuant to § 9-604.

30. Based on the above, the Commission finds that, pursuant to § 9-602 (a), the group of individuals eventually organized into BTPT was not compelled to form and register a committee prior to September 14, 2011, because their campaign finance activity fell well below the \$1,000.00 threshold for registration during this period.
31. The Commission notes that although the BTPT appears not to have been in operation prior to September 14, 2011, the Town Clerk could have had a good faith belief to the contrary based on the reported existence of the BTPT in the candidates' SEEC Form 1 and 1Bs. Accordingly, upon receipt of the BTPT's Form 3, it would have reasonably appeared to the Town Clerk that Mr. Burke was delinquent in designating and registering a treasurer for the BTPT.
32. The Commission notes that this understandable confusion could have been remedied by the following sequential actions: (1) the candidates file their SEEC Form 1B exemptions to the extent permitted by § 9-604(b); (2) the slate committee is organized with the selection of a chairman and his designation of a treasurer; (3) the slate committee is registered; and (4) the candidates amend their SEEC Form 1B exemptions to reflect funding through a slate committee, pursuant to § 9-604(b)(1), as a new category of exemption.

ORDER

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

That no further action be taken.

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



Stephen F. Cashman, Chairman

By Order of the Commission