

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Jeffrey Shorts, Coventry

File No. 2012-055

FINDINGS AND CONCLUSIONS

The Complainant filed this Complaint pursuant to Connecticut General Statutes § 9-7b. The Complainant alleges that the John Murphy 2012 campaign held a meeting to announce John Murphy's candidacy for State Representative. At this meeting, the Complainant alleges that agents of the campaign handed out a biography of John Murphy, which failed to properly include the required "paid for by" and "approved by" language on the face of the communication in violation of General Statutes § 9-621 (a).

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

1. At all times relevant hereto, John Murphy was a candidate for State Representative (the "Candidate") and registered as such with the Commission by filing a SEEC Form 1 and 1A. As reflected in such registration, Mr. Murphy's candidate committee was named "John Murphy 2012" (the "Committee"), with Marie Gallo-Hall serving as Committee treasurer (the "Treasurer").
2. The Treasurer acknowledges that on April 28, 2012, the Candidate announced his candidacy at a meeting held for that purpose. In preparation for the official announcement, the Candidate prepared a short biography intended to provide some information about his background and qualifications for any press who might be in attendance at the official announcement (the "Communication"). The Treasurer further reports that the Communication was prepared by the Candidate on his home computer and that any costs for the Communication were borne by the Candidate himself.
3. The Treasurer states that no funds of the Committee were authorized or used to prepare or distribute the communication and that she was completely unaware of the Communication prior to the receipt of the instant complaint.
4. The Treasurer further states that any costs associated with preparing and distributing the Communication (e.g., paper and ink) were *de minimis*.
5. There is no evidence indicating that any such expenditure was in excess of fifty dollars nor does a reasonable inference based on the allegations lead to such a conclusion.

6. The Communication uses phrases clearly intended to support and promote the Candidate's election, such as: "He will be a steadfast advocate for the people of the 8th General Assembly District" and "He'll not only give the 8th Assembly District a new voice in Hartford, he'll make sure our voice is heard."
7. The Communication did not include any language stating who paid for or approved the Communication.
8. General Statutes § 9-621 (a), governing attributions on political advertising, provides:

No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and *no candidate or committee shall make or incur any expenditure* including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, 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 promotes or opposes any political party 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: (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; (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, and (2) the words "approved by" and the following: (A) In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate.* [Emphasis added.]

9. General Statutes §§ 9-601 and 9-601b set forth certain definitions for purposes of Chapter 155 (Campaign Financing). Unlike certain other sections of the General Statutes, which limit the applicability of definitions with phrases such as “unless the context indicates otherwise,” General Statutes §§ 9-601 and 9-601b contain no such conditional or qualifying language. For comparison, see General Statutes § 9-463, setting forth definitions for Chapter 154.

10. General Statutes § 9-601 (11), defining “candidate” 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 this chapter 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. “Candidate” also means a slate of candidates which is to appear on the ballot in a primary for the office of justice of the peace. For the purposes of sections 9-600 to 9-610, inclusive, and section 9-621, “candidate” also means an individual who is a candidate in a primary for town committee members.

11. General Statutes § 9-601 (10), defining “person” for purposes of Chapter 155 (Campaign Financing) provides:

“Person” means an individual, *committee*, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company or any other legal entity of any kind but does not mean the state or any political or administrative subdivision of the state. [Emphasis added.]

12. General Statutes § 9-601 (12), defining “campaign treasurer” for purposes of Chapter 155 (Campaign Financing) provides:

[T]he individual appointed by a candidate or by the chairperson of a party committee or a political committee to receive and disburse funds on behalf of the candidate or committee. [Emphasis added.]

13. General Statutes § 9-601b (a), defining “expenditure” for purposes of Chapter 155 (Campaign Financing), provides in pertinent part:

(a) As used in this chapter and chapter 157, the term “expenditure” means:

(1) Any purchase, payment, distribution, loan, advance, deposit or *gift of money or anything of value*, when made for the purpose of influencing the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or on behalf of any political party; [Emphasis added.]

14. General Statutes § 9-601b (c), defining “expense incurred but not paid” for purposes of Chapter 155 (Campaign Financing), provides:

[A]ny receipt of goods or services for which payment is required but not made or a written contract, promise or agreement to make an expenditure.

15. General Statutes § 9-602 (c) provides, in pertinent part:

An individual who is designated as campaign treasurer of a committee shall be responsible for all duties required of him under this chapter until the committee is terminated....

16. General Statutes § 9-606 (a), in turn, describes these duties of a committee treasurer, as follows:

The campaign treasurer of each committee shall be responsible for (1) depositing, receiving and reporting all contributions and other funds in the manner specified in section 9-608, (2) *making and reporting expenditures*, (3) reporting expenses incurred but not yet paid, (4) filing the statements required under section 9-608, and (5) keeping internal records of each entry made on such statements.... [Emphasis added.]

17. General Statutes § 9-607, setting forth rules governing a committee’s making of expenditures, provides 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.

(b) No candidate, campaign treasurer, or committee shall be liable for any debt incurred in aid of or in opposition to any political party, referendum question or the candidacy of any person or persons for said offices or positions unless such debt was incurred pursuant to an authorization issued under subsection (a) of this section. 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.*

...

(d) Except as provided in subsections (j) and (k) of this section, no payment in satisfaction of any financial obligation incurred by a committee shall be made by or accepted from any person other than the campaign treasurer and then only according to the tenor of an authorization issued pursuant to subsection (a) of this section.

...

(j) A candidate or his committee worker shall be reimbursed by the campaign treasurer for any permissible expenditure which the candidate or committee worker has paid from his own personal funds *if (1) the campaign treasurer authorized the expenditure, (2) the candidate or worker provides the campaign treasurer with a written receipt or other documentary evidence from the vendor proving his payment of the expenditure, and (3) in the case of a reimbursement to the candidate, a detailed accounting of the expenditure is included in the report of the campaign treasurer....*

(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 [Emphasis added.]

18. General Statutes § 9-610 (c), permitting certain expenditures of a candidate's personal funds provides:

A candidate may make any expenditure permitted by section 9-607 to aid or promote the success of his campaign for nomination or election from his personal funds, or the funds of his immediate family, which for the purposes of this chapter shall consist of the candidate's spouse and issue. Any such expenditure shall not be deemed a contribution to any committee.

19. In determining whether or not an attribution was required on the Communication, we first examine the foundational question of whether the Communication was an expenditure as defined by General Statutes § 9-601b (a).¹
20. Here, the most applicable portion of the definition of expenditure is the phrase “*gift of ... anything of value.*”
21. While “anything of value” is not defined, we may compare the unmodified term “value” in this definition, for example, to General Statutes § 9-608 (e) (1) (E), which uses the more restrictive term “fair market value.” In Advisory Opinion No. 1976-15 the Commission interpreted “anything of value” as inclusive of, at least, the concept of “favors of any kind.” See, for example, *Complaint of Carl J. Strand*, File No. 2008-146 (finding that sending a single fax constituted “anything of value”).
22. Connecticut has no *de minimis* threshold determining whether an expenditure has occurred, which in turn may trigger the attribution requirement. See *Seymour v. Elections Enforcement Com’n*, 255 Conn.78, 102 n. 15 (2000).
23. Further, we examine whether the provision of the printed Communication was “made for the purpose of influencing the nomination for election, or election, of any person.” Intent can be inferred from the factual circumstances surrounding the matter at issue. See, *State v. Turner*, 252 Conn. 714, 748 (2000). See, also, *Complaint by Peter Torrano*, File No. 1999-214, affirmed by *Carol D. Nichols v. State Elections Enforcement Com’n*, No. CV010507694S, 2001 WL 1468891 At * Conn Super. Nov. 7, 2001). “As such, we look to the actual content of the communication as the best measure of the communicator’s intent...” *Id.*; *Complaint of Edward Calandro, et al., West Haven*, File No. 2007-349. In the instant matter, we find the best evidence of intent as the content of the Communication itself.

¹ Note that the second, alternative, definition of “expenditure” in General Statutes § 9-601b (a) (2) is not applicable here as the Communication in question is not an advertisement and was neither broadcast by radio or television nor appeared in a newspaper, magazine or on a billboard.

24. The Commission need not directly address the required legal standards for Constitutional sufficiency as the Commission finds that the Communication contains words that expressly advocate the election or defeat of a candidate or candidates or the functional equivalent of such express advocacy. See *Buckley v. Valeo*, 424 U.S. 1, 44 n. 52, 80 (1976) and *Federal Election Com'n v. Wisconsin Right to Life, Inc.*, 56 U.S. 410, 127 S. Ct. 2652, 2666 (2007)). As the above cited standard is the strictest applicable and generally recognized standard, we need not address whether any less rigorous standard might be applicable. However, even if a less rigorous standard may be applicable, for the Communication to be subject to such a standard we examine how this express advocacy standard has been applied and articulated by the Commission. "In determining whether a communication expressly advocates the election or defeat of a clearly identifiable candidate, the Commission has utilized the criteria enunciated in *F.E.C. v. Furgatch*, 807 F.2d 857 (9th Cir., 1987). These include that the communication (1) is 'unmistakable and unambiguous, suggestive of only one plausible meaning;' (2) 'presents a clear plea for action;' and (3) there can be no reasonable doubt about 'what action is being advocated.'" See Declaratory Ruling 2000-01, *In re Applicability of Public Act 1999-275 and Chapter 150 of the Connecticut General Statutes to Voter Guides, "Scorecards" and Radio Spots Contemplated by the Christian Coalition of Connecticut, Inc.*
25. Based on the above description of the content of the Communication, the Commission finds that: (1) the printed Communication was a gift of a thing of value; and (2) it was made for the purpose of influencing the election of the Candidate.
26. To trigger the requirements of General Statutes § 9-621 (a), the Communication must not merely be an expenditure. As relevant to the instant matter, the expenditure must be an 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" [Emphasis added.] A "communication" subject to the requirements of General Statutes § 9-621 (a) must bear a written attribution on the "face" of the communication. Accordingly, we do not look merely to the intent of the expenditure, but also to the content of the Communication itself. In the instant matter, the applicable question is whether the Communication itself is one "which promotes" the Candidate.
27. As noted above, in examining whether the Communication "promotes the candidate" for purposes of § 9-621 (a) the Commission need not directly address the required legal standards for constitutional sufficiency as the Commission finds the Communication contains words that expressly advocate the election or defeat of a candidate or candidates or the functional equivalent of such express advocacy. See *Buckley v. Valeo*, 424 U.S. 1, 44 n. 52, 80 (1976) and *Federal Election Com'n v. Wisconsin Right to Life, Inc.*, 56 U.S. 410, 127 S. Ct. 2652, 2666 (2007)). As the standard is the strictest applicable and generally

recognized standard encompassing the concept of promoting a candidate, we need not address whether any less rigorous standard might be applicable.

28. As defined in General Statutes §§ 9-601 (10), 9-601 (11) and 9-601 (12) respectively, for purposes of Chapter 155, the Committee, the Candidate, and the Treasurer are each distinct legal persons. In attempting to identify the potential violation and appropriate potential respondent we examine the potential causes of action related to the Complainants allegation.
29. General Statutes § 9-621 (a) requires attributions when certain persons make or incur an expenditure for certain political advertisements. When a prohibited expenditure is made or incurred by a committee, the Commission has generally named such committee treasurers liable as respondents. To examine whether this is the appropriate outcome in this matter we examine whether the expenditure for the Communication was made or incurred by the Committee and, if so, the theory under which the Treasurer would be held personally liable.
30. We first examine whether the evidence supports that the Committee made the expenditure for the Communication. The statutes do not define the term “make.” Accordingly, we look to the common definition of that term. See *Conn. Natural Gas Corp. v. Dep’t of Consumer Protection*, 43 Conn. App. 196, 200 (1996) (stating that when the legislature does not define a term, it is appropriate to look to the common understanding expressed in law and dictionaries”). The term “make” has several definitions including “1. to bring into being; spec., . . . (c) to cause, bring about, produce” [Emphasis added.] See, e.g., *Webster’s New World Dictionary, Second College Edition* (1986). See *Complaint of Edward H. Raff, et al., Hartford*, File No. 2008-141 at ¶¶ 31-32 (the Commission’s identical analysis and application of the term made or make as they appear in Chapter 155). See also, *Complaint of Matthew Knickerbocker, Bethel*, File No. 2008-132. Based on the above analysis, it is clear that the Committee did not cause or bring about the occurrence of the Communication at issue and, thus, did not make the expenditure.
31. Next, we examine whether the Treasurer made the expenditure in question for the Communication. In doing so, we examine the theory upon which treasurers are often held personally liable by the Commission for violations of General Statutes § 9-621 (a) arising from expenditures of committee funds. As noted above, under General Statutes § 9-606 (a), committee treasurers have the duty of “making and reporting expenditures” for a committee. See *Complaints by Mary Werblin, Woodbury*, File No. 1993-188 & 1993-191, *Complaint of Christopher Healy, Wethersfield*, File No. 2009-116 at ¶¶ 9-10. Here, based on the same analysis applied to the Committee above, the facts support a finding that the Treasurer did not make the expenditure for the Communication.
32. Finding that the expenditure was made by neither the Committee nor the Treasurer, we now examine whether the expense was “incurred” by either person. General Statutes § 9-601b

(c), defines an “expense incurred by yet not paid” as, “any receipt of goods or services for which payment is required but not made or a written contract, promise or agreement to make an expenditure.” As noted above, the Treasurer neither authorized the expenditure for the Communication, nor otherwise promised or agreed to make the expenditure at issue. In the absence of such an authorization, pursuant to General Statutes § 9-607 (a), it is clear that a committee does not incur the financial obligation. Further, among other requirements, General Statutes § 9-607 (j), provides that the Treasurer shall authorize reimbursements for permissible campaign expenditures by candidates only if the treasurer authorized the expenditure.

33. Based on the above, the Commission finds that it is the Candidate who made the expenditure for the Communication at issue. The Commission has often held the candidate personally liable for violations of General Statutes § 9-621 (a) where the candidate acted independently from the committee. See *Final Decision in Complaint by Kathryn Lawson, et al, Plainville*, File No. 2001-222C (holding, after a contested hearing, that candidates are individuals, and when they make expenditures for communication subject to General Statutes § 9-621 (a), they must list the individual attribution including their address on the attribution); *Final Decision in the Complaint by Frank DeJesus, Hartford*, File No. 2006-193 (holding, after a contested hearing, a candidate personally liable for failing to place the individual required attribution on communications that she, as an individual, paid for to further her candidacy without reporting the expense to the committee); *Complaint by Brett Hasbrouck, Middletown*, File No. 2007-140 (finding, where a candidate designated a town committee as her sole funding source and then made an expenditure promoting her candidacy without the authority of the committee, that the candidate was personally liable for a violation of General Statutes § 9-621 (a) for failing to include an accurate attribution providing that the candidate both “paid for” and “approved by” the communication and instead attributing the expenditure to the committee); *Complaint of Mary Adams, New London*, File No. 2008-002 (finding, where a candidate designated a town committee as his sole funding source and then made an expenditure promoting his candidacy without seeking or receiving a reimbursement from the committee, that the candidate made the expenditure, and, accordingly, the communication should have been attributed as being “paid for by” and “approved by” the candidate); *Complaint of Gina Philips, New Haven*, File No. 2009-052 (holding a candidate personally liable for failing to include an attribution indicating that the candidate both paid for and approved a communication made using her personal funds, which were not reported to her candidate committee treasurer).
34. In reading General Statutes §§ 9-607 (k) and 9-608 (c) together, the Commission concludes that a candidate is *not* required to report to his treasurer expenditures made by the candidate from personal funds and not exceeding fifty dollars. See *Complaint of Charles Kelly, Salisbury*, File No. 2010-053 at ¶ 9 (holding the same where the candidate made an

expenditure for a communication governed by the General Statutes § 9-621 (a), and did so without the authorization of the treasurer of their campaign committee).

35. For the reasons stated above, the Commission finds that the expenditure here was made by the Candidate without the knowledge or authorization of the Treasurer.
36. The Commission concludes that, pursuant to General Statutes § 9-621 (a), the Communication should have included on its face: the words “paid for by John Murphy,” the candidate’s address, and the words “approved by John Murphy.”
37. The findings and conclusions in *Complaint of Carol Dmytryshak, Salisbury*, File No. 2009-133; *Complaint of Gail Wall, Norwalk*, File No. 2009-121; and *Complaint of Elizabeth-Ann Edgerton, Monroe*, File No. 2009-084 are factually distinguishable as municipal cases and the decision in this matter does not directly impact or address these decisions.
38. Section 9-7b-48 of the Regulations of Connecticut *State Agencies provides that, in the determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:* (1) the gravity of the act or omission; (2) the amount necessary to insure immediate and continued compliance; (3) the previous history of similar acts or omissions; and (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
39. The Commission finds the following mitigating factors: (1) due to that the apparent distribution of the Communication was limited to handouts at a press conference or meeting called by the Candidate to formally announce his own candidacy, the Commission concludes that the authorship of the flyer was clear to the reasonable observer; (2) the relatively low value of the expenditure; and (3) the absence of previous history of similar acts or omissions by the Candidate.

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ORDER

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

That no further action be taken.

Adopted this 24 th day of October, 2012 at Hartford, Connecticut.

A handwritten signature in cursive script, appearing to read "Steph F. Cashman", written over a horizontal line.

Stephen F. Cashman, Chairperson
By Order of the Commission