

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Edward R. Whitbread, Milford

File No. 2012-156

AGREEMENT CONTAINING A CONSENT ORDER

The parties, the Stamford Professional Fire Fighters Association, International Association of Firefighters, Local 786, hereinafter referred to as the Respondent, and the undersigned authorized representative of the State Elections Enforcement Commission enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

1. The Respondent is a labor union receiving its funds from membership dues. Specifically, the Respondent is an “organization” as defined by General Statutes § 9-601 (25).¹
2. In the fall of 2012, the Respondent advocated for passage of a Stamford referendum question concerning the creation of a single combined fire department (the “Referendum Question”). The Respondent expended \$79,200 directly from its treasury funds to promote the adoption of the Referendum Question.
3. On or about October 20, 2012, the Respondent learned that its expenditures to promote the referendum question may have triggered reporting requirements under Connecticut’s campaign finance statutes. On Monday, October 22, 2012, a representative of the Respondent contacted and received the advice of the Commission’s Compliance Unit regarding reporting and expenditures. However, at this point, it already spent \$70,053.00 of the total \$79,200.00 spent over the course of the campaign. Additionally, at this point, most of the communications the Respondent used in the campaign had already been produced, printed, and distributed without any required attribution. The communications appeared only with

¹General Statutes § 9-601 (25) defines “Organization” to mean:

[A]ll labor organizations, (A) as defined in the Labor-Management Reporting and Disclosure Act of 1959, as from time to time amended, or (B) as defined in subdivision (9) of section 31-101, employee organizations as defined in subsection (d) of section 5-270 and subdivision (6) of section 7-467, bargaining representative organizations for teachers, any Respondent, state or national organization, to which a labor organization pays membership or per capita fees, based upon its affiliation or membership, and trade or professional associations which receive their funds exclusively from membership dues, whether organized in or outside of this state, but does not mean a candidate committee, party committee or a political committee[.]

the general title or theme of “Yes 2 Safety,” with no reference to who paid for the communications.

4. Based on a review of the evidence of expenditures in the Respondent’s filings as well as the relevant contracts and invoices provided by the Respondent, approximately \$59,289.00 of expenditures were made by the Respondent for written, typed or other printed communications that lacked the attribution required under General Statutes § 9-621 (c). The Respondent made no less than five distinct expenditures to vendors for such communications.
5. The Respondent exceeded the \$1,000.00 reporting threshold on or about September 28, 2012. No filing for that period was submitted by the applicable October 10, 2012 filing deadline. Given the proximity of the next October 30, 2012 filing date to the Respondent’s reported discovery of the error, the Respondent decided to compile and submit all outstanding information on a combined single report by the October 30, 2012 filing date.
6. On or about October 27, 2012, the Respondent mailed an *Independent Expenditure Statement for an Entity* “SEEC Form 26” to the Commission’s address in Hartford. The Commission staff discovered the SEEC Form 26 was erroneously sent to the Commission rather than the Stamford Town Clerk. Advised of this error, the Respondent promptly corrected the filing repository and filed the Form 26 with the Stamford Town Clerk’s Office on December 6, 2012. Nevertheless, even when calculating from the filing with the Commission, at least \$25,171.00 of the expenditures included in the October 30, 2012 report were disclosed approximately seventeen days late.
7. Having learned of its legal obligation and the correct filing repository, the Respondent timely filed a subsequent SEEC Form 26 with the Stamford Town Clerk on January 9, 2013, which reported the Respondent’s remaining expenditures for the subsequent period.
8. The Respondent has cooperated fully with the instant investigation.
9. All statutes cited herein are revised to January 1, 2011 unless otherwise noted.
10. General Statutes § 9-601 (19) defines “entity” as “the following, whether organized in this or any other state: An organization, corporation, cooperative association, limited partnership, professional association, limited liability company, and limited liability partnership....”

11. General Statutes § 9-601c (a) defines “independent expenditure”, in relevant part, as “an expenditure, as defined in section 9-601b, that is made without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee...”
12. General Statutes § 9-601b defines “expenditure”, in relevant part, as “[a]ny purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made for ... the purpose of aiding or promoting the success or defeat of any referendum question....”
13. General Statutes § 9-612 (e) (1), requires “entities”, which are defined to include “organizations” (i.e., a labor organization), to file independent expenditure reports and provides, in relevant part:

Any individual, entity or committee acting alone may make unlimited independent expenditures ... [A]ny such individual, entity or committee that makes or obligates to make an independent expenditure or expenditures in excess of one thousand dollars, in the aggregate, 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....

14. The Parties agree that, for purposes of General Statutes § 9-612 (e) (1), “obligates to make an independent expenditure or expenditure” shall be construed as to impose reporting obligations in the same manner as an “expense incurred but not paid” as defined by General Statutes § 9-601b (c). Accordingly, any such obligation must be reported as an “expense incurred but not paid” in the manner required under General Statutes § 9-608.
15. General Statutes § 9-608 (a) (1) sets forth the schedule and manner for candidate committee and most other committee filings and provides, in relevant part:

Each treasurer of a 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*, except that (i) in the case of a candidate or exploratory committee established for an office to be elected at a municipal election, the statement shall be filed on the seventh day

preceding a regular municipal election in lieu of such date, ... (C) *if the committee has made or received a contribution or expenditure in connection with any other election, a primary or a referendum, on the seventh day preceding the election, primary or referendum ...* The statement shall be complete as of eleven fifty-nine o'clock p.m. of the last day of the month preceding the month in which the statement is required to be filed, except that for the statement required to be filed on the seventh day preceding the election, primary or referendum, the statement shall be complete as of eleven fifty-nine o'clock p.m. of the second day immediately preceding the required filing day. The statement shall cover a period to begin with the first day not included in the last filed statement. In the case of a candidate committee, the statement required to be filed in January shall be in lieu of the statement formerly required to be filed within forty-five days following an election.[Emphasis added.]

16. General Statutes § 9-608 (c) (1) (C) prescribes the content of the applicable disclosure forms and requires that forms submitted under General Statutes § 9-608 include, but not be limited to, “[A]n itemized accounting of each expense incurred but not paid...”

17. As incorporated by reference in General Statutes § 9-608, General Statutes § 9-603 defines the filing repository for campaign finance filings and 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.

....

(c) A certification of a candidate who is exempt from the requirement of subsection (a) of section 9-604 to form a candidate committee shall be filed with the State Elections Enforcement Commission if the candidate seeks an office enumerated in subsection (a) of this section,

or with the town clerk of the municipality in which the election is to be held if the candidate seeks an office other than those enumerated. A certification of a group of individuals who have joined solely to aid or promote a referendum question and who are exempt from the requirement to form a political committee under section 9-605 shall be filed with the town clerk of each municipality in which the referendum is to be held.

18. Filing with one repository, such as the Commission, is not an acceptable legal substitute for filing with the appropriate repository such as a Town Clerk. See SEEC Advisory Opinion No. 1980-1, *Sufficiency of Filings of Campaign Finance Statements With Inappropriate Repository*.
19. General Statutes § 9-612 (e) (1) requires entities to file “in the same manner” as “candidate committees” under § 9-608, but does not clarify what type of candidate committee. For purposes of this Consent Order, the parties agree that, under General Statutes § 9-612 (e) (1), reports for independent expenditures in municipal referenda shall be filed with the appropriate municipal clerk as if the filing were made for an election by a candidate to municipal office in that municipality.
20. General Statutes § 9-621 (c) requires certain attributions for advocacy communications concerning the adoption of referendum questions and provides:

No business entity, organization, association, committee, or group of two or more individuals who have joined solely to promote the success or defeat of a referendum question shall make or incur any expenditure for any written, typed or other printed communication which promotes the success or defeat of any referendum question unless such communication bears upon its face the words “paid for by” and the following: (1) In the case of a business entity, organization or association, the name of the business entity, organization or association and the name of its chief executive officer or equivalent....
21. General Statutes § 9-621 (c) requires that such attributions appear on written advocacy communications even when those written communications are included in and distributed through other media such as video or television. See *Complaint of Arthur Scialabba*, File No. 2013-005.

Penalties

22. General Statutes § 9-7b (a) (2) (D) authorizes the Commission to impose a penalty not to exceed “two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater, against any person the commission finds to be in violation of any provision of chapter 155 or 157.”
23. The Parties agree that, for purposes of General Statutes § 9-7b (a) (2) (D), the payments for the written communications lacking attributions were improper in that they were made in violation of General Statutes § 9-621 (c).
24. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
 - (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.
25. In consideration of the above factors, the Commission takes into consideration the following aggravating and mitigating factors in resolving the matter with the penalty amount specified in the Order. The matter contains at least three aggravating factors in relation to the attribution violations: (1) the significant amount of the expenditures made in violation of § 9-621 (c), approximately \$59,289.00; (2) the pattern of multiple violations through distinct expenditures ranging from on or about September 28, 2012 through November 6, 2012; and (3) the Respondent was also in violation of § 9-612 (e) (1) while the unattributed communications were issued. These combined violations ensured that no elector, such as the Complainant, could use any of the prescribed disclosure mechanisms to determine who was making those communications. During a key period, the Respondent’s funding of the communications were not revealed through any required form of disclosure.
26. The attribution violations also contain mitigating elements: (1) the Respondent has no identified history of violating the campaign finance statutes; (2) the Respondent took

corrective measures in that, prior to the filing of the complaint, the Respondent appears to have raised the question internally, sought and complied with the Commission's advice, including the limited available remedy of providing an attribution on the "Yes2Safety" website; (3) ultimately the Respondent filed all necessary reports; and (4) the matter concerns the adoption of a referendum question rather than the election of a candidate.

27. In examining the late filing of the independent expenditure reports, in violation of § 9-612 (e), the aggravating and mitigating factors are substantially similar to those described above. No less than \$25,171.00 of the Respondent's expenditures were disclosed about seventeen days late. The Respondent's self-corrected and good faith error in identifying the correct filing repository will be treated generously. However, since the report due by October 10, 2012 was not filed with any filing repository until on or about October 27, 2012, this mitigating factor will not be applied to the lack of disclosure from October 10, 2012 to October 27, 2012.

Jurisdiction

28. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.
29. The Respondent waives:
- a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
30. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondent concerning this matter.
31. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement

will be withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if one becomes necessary.

ORDER

It is hereby ordered that:

- 1) The Respondent shall pay a civil penalty in the amount of \$5,928.90 for the Respondent's violation of the applicable attribution statute, General Statutes § 9-621 (c), a figure representing ten percent of the amount spent by the Respondent on such improper communications.
- 2) The Respondent shall pay a civil penalty in the amount of \$1,000.00 for the Respondent's violation of the applicable independent expenditure reporting statute, General Statutes § 9-612 (e) (1), for the report due by October 10, 2012 and not filed with any filing repository until on or about October 27, 2012. The Commission declines to impose a civil penalty for the Respondent's subsequent late filing violation for an independent expenditure report due on October 30, 2012 and erroneously filed with the Commission rather than the Stamford Town Clerk by such date.
- 3) Under this Order, the Respondent owes a total of \$6,928.90 in civil penalties.
- 4) Henceforth, the Respondent agrees to strictly comply with the requirements of General Statutes §§ 9-612 and 9-621.

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The Respondent

By:

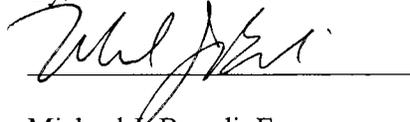


Brendan Keatley, President
Local 786, IAFF
Stamford, CT

Dated: 10/25/13

For the State of Connecticut

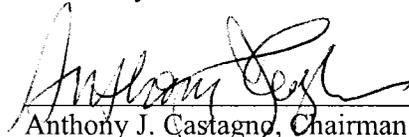
By:



Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT 06106

Dated: 10/28/13

Adopted this 20th day of Nov, 2013 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission