

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaints of Phil Sherwood, New Britain

File Nos. 2013-010, 011, 012

FINDINGS AND CONCLUSIONS

The Complainant filed this complaint with the Commission pursuant to General Statutes § 9-7b alleging that various communications critical of the Tim O'Brien's service as Mayor of New Britain lacked attributions required by General Statutes § 9-621.

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

1. The communications at issue were critical of then Mayor of New Britain Tim O'Brien and made in advertisements in the *New Britain Herald* and a separate website paid for by the Guardian News Corp. (the "Website").
2. The expenditures for such communications were made prior to Mr. O'Brien becoming a candidate, as that term is defined by General Statutes § 9-601 (11), for reelection to that office.
3. As all such communications were critical rather than supportive of the O'Brien administration, none of the communications are likely to have been produced with Mr. O'Brien's consent or coordination.
4. Upon receipt of the complaint, the sponsor of the Website, the Guardian News Corp., operating under the trade name *Westchester Guardian*, promptly and voluntarily added the following attribution:

This site is owned and paid for by the Guardian News Corp. Its Chief Executive Officer is Sam Sherka, Located at 240 North Ave, New Rochelle, NY, 10801. Tel #914-567-1481. This site and its messages are independent of any candidate or political party. This site is set for the dissemination of first amendment protected news and commentary only.

5. Shortly after the above attribution was included on the Website, the Website was taken out of operation due to an apparent contractual dispute between the vendor and the Guardian News Corp. or its agents.

6. Although Axim Design, LLC and its owner, Karol Steczkowski, are named as potential violators, the investigation has concluded that such persons are merely vendors used by the Guardian News Corp. in the development of the Website.
7. The identified advertisements in the *New Britain Herald*, also critical of the O'Brien administration, were also published prior to Mr. O'Brien becoming a candidate.
8. General Statutes § 9-621 (h) (1), governing attributions on certain written political communications, provides:

No entity shall make or incur an independent expenditure for any written, typed or other printed communication, or any web-based, written communication, that promotes the success or defeat of any candidate for nomination 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 the words "Paid for by" and the name of the entity, the name of its chief executive officer or equivalent, and its principal business address and the words "This message was made independent of any candidate or political party.". In the case of an entity making or incurring such an independent expenditure, which entity is a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or an incorporated tax-exempt political organization organized under Section 527 of said code, such communication shall also bear upon its face the words "Top Five Contributors" followed by a list of the five persons or entities making the largest contributions to such organization during the twelve-month period before the date of such communication.

9. General Statutes § 9-601b (b) (5), provides that the term "expenditure" does not mean:

Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate.

10. To the extent that editorials issued by and appearing in the *New Britain Herald* were contained in material provided by the complainant, any costs for issuing such

newspaper editorial are exempt from the definition of “expenditure” under § 9-601b (b) (5).

11. Although the Complainant makes some reference to the absence of potentially relevant filings with the New Britain City Clerk, even if such payments represented expenditures under the Commission’s jurisdiction, there is no allegation or evidence to suggest that any relevant payments exceeded the applicable \$1,000.00 filing threshold under General Statutes § 9-612 (e) (1).
12. Following a complete and thorough investigation, the Commission makes no finding of an elections violation in these matters.
13. As the investigation has been resolved on other grounds, the Commission reserves any consideration of the Guardian News Corp.’s claims of exemption under General Statutes § 9-601b (b) (5).

ORDER

The following is ordered on the basis of the aforementioned findings:

That the matters be dismissed.

Adopted this 19th day of February of 2014 at Hartford, Connecticut.



Anthony J. Castagno, Chair
By Order of the Commission