

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Nicholas Kapoor,
Monroe

File No. 2014-005

FINDINGS AND CONCLUSIONS

The Complainant filed the instant complaint with the Commission pursuant to General Statutes § 9-7b, alleging that the chairman of the Monroe Republican Town Committee, Jeffrey Guttman, hereinafter the Respondent, violated General Statutes § 9-390 (a) by publishing a notice of the caucus only four days prior to such caucus, rather than the required minimum of five days prior to the date of such caucus. The Respondent has acknowledged that such notice was published four days prior to such caucus. After an investigation of the matter, the Commission makes the following findings and conclusions:

1. As alleged by the Complainant, the Respondent has acknowledged in writing that the notice of caucus was published four days prior to such caucus and not five days prior to such caucus, with the notice appearing on January 10, 2014 and the caucus occurring on January 14, 2014.
2. At all times relevant hereto, the Complainant was registered Democrat with no known or identified rights or potential harm in relation to such a Republican Party caucus.
3. At all times relevant hereto and to the present date, the Commission has not received any complaints from any registered Republicans in Monroe or from any other apparatus of the Republican Party concerning such caucus or such notice.
4. General Statutes § 9-390 (a), provides in pertinent part:

Except as provided in subsection (g) of this section, party-endorsed candidates of any party in any municipality for municipal office shall be selected, in accordance with the rules of such party, by: (1) The enrolled members of such party in such municipality in caucus, (2) delegates to a convention chosen in accordance with such rules by such enrolled members, or (3) the town committee of such party. *The town chairman or his designee shall give notice in a newspaper having a general circulation in the town of the date, time, location and purpose of a caucus held pursuant to subdivision (1) of this subsection. Such notice shall be given not less than five days prior to the date set for the caucus; provided, if the rules of the party in any municipality require earlier notice, such party rules shall prevail (emphasis added).*

5. Although the Respondent has cooperated fully with the substance of the investigation, the Respondent disputes the Commission's authority to conduct such an investigation. Specifically, the Respondent argues that the Commission's investigative authority does not include Chapter 153 of the General Statutes, which includes § 9-390 (a).
6. General Statutes § 9-7b (a) (1) empowers the Commission, "To make investigations on its own initiative or with respect to statements filed with the commission by the Secretary of the State, any town clerk or any registrar of voters or upon written complaint under oath by any individual, with respect to alleged violations of any provision of the general statutes relating to any election or referendum."
7. Accordingly, to the extent that relevant provisions of Chapter 153 are "relating to any election or referendum," they are within the Commission's investigative jurisdiction. The Commission acknowledges that, at the present time, it does not have the authority to impose civil penalties for any violation of § 9-390 (a) as such a power has not been enumerated among the Commission's civil penalty authority in General Statutes § 9-7b (a) (2) or other applicable statutes. Nevertheless, the Commission's power to investigate is broader in scope than its authority to impose civil penalties.
8. The Office of the Attorney General spoke to an analogous matter in which the Commission's investigative authority exceeded the scope of its jurisdiction to impose civil penalties and provided the following guidance to the Commission:

Section 2-30a(b) by itself provides no guidance as to which state agency or officer has authority to enforce this provision. Moreover, the statute does not state what remedies, if any, exist with respect to violations of the prohibition on expending public funds to influence voters to vote for or against the question posed by the constitutional referendum. The legislative history of § 2-30a(b) does not illuminate either of these issues.

Thus, a review of other statutes that may bear on this question is necessary. Conn. Gen. Stat. § 9-7b(a)(1) grants the EEC [the Commission] the authority to "make investigations on its own initiative or . . . upon written complaint of any individual, with respect to alleged violations of *any provision of the general statutes relating to any election or referendum . . .*" (emphasis added). Accordingly, under the broad terms of this statute, the EEC has the authority to investigate alleged violations of § 2-30a(b),

which pertains to constitutional referendums. The power to investigate includes the right to hold hearings, receive oral and documentary evidence and to subpoena witnesses and materials. Conn. Gen. Stat. § 9-7b(a)(1). This section does not, by its terms, authorize the Commission to hold a contested case proceeding under the UAPA or make findings as to whether an alleged violation has been proven.

The more difficult question is what authority does the EEC have with respect to alleged violations of § 2-30a(b) beyond its power to conduct an investigation? Subsection (2) of Conn. Gen. Stat. § 9-7b sets forth the Commission's civil penalty powers:

(2) To levy a civil penalty not to exceed (A) two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145, part V of chapter 146, part I of chapter 147, chapter 148, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o, or (B) 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 150. The commission may levy a civil penalty against any person under subparagraph (A) or (B) of this subdivision only after giving the person an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive. . . .

Section 2-30a(b), and Chapter 16 of which § 2-30a(b) is a part, is not among the many chapters and sections over which the EEC has civil penalty authority. Under the doctrine of *inclusio unius est exclusio alterius*, it would appear that the EEC may not impose a civil penalty for violations of § 2-30a(b).

Opinions, Conn. Atty. Gen. 2000-020, (June 30, 2000).

9. As articulated above, the Commission reaffirms the "broad terms" of its investigative powers, which include "the right to hold hearings, receive oral and documentary evidence

and to subpoena witnesses and materials” even when such powers for the applicable statutes do not include imposing civil penalties under the UAPA.

10. The Commission declines to invest further regulatory resources in this matter.

ORDER

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

That no further action be taken.

Adopted this 18th day of June, 2014 at Hartford, Connecticut


Anthony J. Castagno, Chairman
By Order of the Commission