

SEP 07 2018

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re. Audit of Berger 2012

File No. 2014-050

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between James J. Mathews, City of Waterbury, State of Connecticut, hereinafter referred to as Respondent, and the undersigned authorized representative of the State Elections Enforcement Commission, hereinafter referred to as the Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, Respondent and the Commission agree that:

1. The Commission performed an in-depth review of the expenditures of the *Berger 2012* candidate committee (the "Committee") after the Committee's selection in the random audit lottery conducted by the Commission following the 2012 election cycle. Jeffrey J. Berger (the "Candidate") established the Committee in 2012 to support his nomination for election as a candidate in the 73rd General Assembly district.¹ The Committee opted to participate in the Citizens' Elections Program.² The Commission approved a grant from the Citizens' Election Fund totaling \$26,870, which was received by the Committee on July 23, 2012.³
2. According to the review conducted by Commission staff, the Commission found that a portion of the grant money that the Committee received from the Citizens' Election Fund may have been used to make contributions to certain charitable organizations. Specifically, Commission staff identified the following three transactions: \$458.30 paid to Good Life Wine & Spirits on September 9, 2012; \$200 to Club Scholarship Fund on September 16, 2012; and \$176.51 to Western Hills Pro Shop on September 15, 2012. In addition, according to the Committee's records, the Committee also paid for tickets to allow the Candidate to attend events: \$250 to The Little Flower Fund on September 20, 2012; and \$130 to Western Hills Pro Shop on September 28, 2012 .

¹ See SEEC Form 1 – Registration of Candidate Committee (*Berger 2012*, Feb. 4, 2012) (reflecting establishment of candidate committee by Jeffrey J. Berger and appointment of James J. Mathews as treasurer).

² See SEEC Form CEP 10 – Affidavit of Intent to Abide by Expenditure Limits and Other Citizens' Election Program Requirements (*Berger 2012*, July 8, 2012) (Rec'd July 10, 2012) (reflecting intent of candidate and treasurer to participate in Citizens' Election Program and follow voluntary program rules).

³ See SEEC Form 30 – Itemized Campaign Finance Disclosure Statement: October 10 Filing (*Berger 2012*, Oct. 10, 2012) (reporting grant received from Citizens' Election Fund on July 23, 2012).

3. In response to the Commission's findings and related requests, Respondent, the Committee's treasurer, indicated that the payments to the organizations identified in paragraph 2 hereof were made to purchase advertising to promote the Committee and to purchase tickets for the Candidate and his wife, in some instances, to attend events hosted by such organizations. In response to requests made by Commission staff in connection with the review, the Committee supplied invoices, receipts, cancelled checks, copies of advertisements, and other documentation to support its expenditures.
4. Respondent indicated that the payment to Good Life Wine & Spirits on September 9, 2012 was used in part to buy on-course refreshments for participants in the Carozza Scholarship Golf Tournament, where the Committee received advertising for providing the refreshments, and to purchase supplies for the opening of the Committee's headquarters.⁴ Respondent further indicated that \$50 of the \$200 payment to the Club Scholarship Fund on September 16, 2012 was used to purchase tickets to allow the Candidate and his wife to attend the 1900 Club Family Picnic; with the remaining \$150 used to pay for advertising at the event to promote the Committee. According to Respondent, the payments to the Western Hills Pro Shop on September 15, 2012 and September 28, 2012 were affiliated with golf fund-raising events hosted at the Western Hills: the \$176.51 payment was used to purchase prizes for participants in the "Special Olympics Tournament" event⁵ in order to promote the Committee; and the \$130 payment purchased a "tee flag" to promote the Committee, which was placed on the golf course during the "Vaughn Dean Tournament". Lastly, the \$250 payment to The Little Flower Fund on September 20, 2012 was used to purchase tickets to attend the Little Flower cocktail hour.
5. After consultation with, and in connection with guidance received from, Commission staff, the Candidate returned \$150 to the Citizens' Election Fund, and Respondent, in his response to Commission staff requests in connection with the review, stated: "We agree [with] the Audit that the cost of attending the Little Flower event was in excess of the 100 dollar limit. Representative Berger has provided a check in the amount of 150 dollars, made payable to the CEF, to cover the amount in question."
6. Connecticut regulations § 9-706-2 (b) (12) prohibits donations to charitable or community organizations, except for the purchase of tickets to an event attended by the

⁴ See Letter from Respondent to Charles Urso (May 14, 2014) (providing receipt from Uniformed Professional Fire Fighters Association reflecting payment for "on course hospitality").

⁵ See Letter from Respondent to Charles Urso (May 14, 2014) (providing invoice reflecting payment for participant prizes).

candidate for campaign purposes where those tickets do not exceed \$100.⁶ Even with the restriction on contributions to charitable groups, candidate committees, including qualified candidate committees, may purchase advertising to promote the nomination or election of the candidate from any source, even if that advertising is purchased from a not-for-profit or charitable group.⁷

7. The Committee stated that the expenditures identified in paragraph 2 hereof were for advertising on behalf of the Committee and for tickets to allow the Candidate to attend events in order to promote his candidacy. The documentation that the Committee supplied supports this explanation for the expenditures identified in paragraph 2 hereof.
8. The Committee also has acknowledged that the payment that it made to allow the Candidate and his wife to attend an event hosted by a charitable organization exceeded the \$100 limit placed on candidate committees that receive grants through the Citizens' Election Program. As stated previously, based on consultation with, and guidance received from, the Commission, the Candidate returned the excess amount of \$150 to the Citizens' Election Fund, reimbursing the Citizens' Election Fund for the impermissible portion of that expenditure.
9. 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.
10. 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.
11. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is

⁶ See Regulations of Conn. State Agencies § 9-706-2 (b) (12) (prohibiting “[d]onations to a charity or community organization, except as the admission fee of no greater than \$100 to an event attended by the candidate for campaign purposes prior to the applicable primary or election”).

⁷ See Regulations of Conn. State Agencies § 9-706-2 (a) (1) (permitting committee to “purchase . . . political campaign advertising services from any communication medium . . .”); Regulations of Conn. State Agencies § 9-706-2 (a) (2) (permitting candidate committee to make expenditures related to “political campaign advertising expenses”). See also, e.g., In the Matter of a Complaint by Jeffrey Shorts, Coventry, File No. 2010-125 (State Elections Enforcement Comm’n, April 25, 2012).

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

ORDER

IT IS HEREBY ORDERED THAT the Respondent James J. Mathews agrees henceforth that he will strictly adhere to the \$100 limit on contributions to charitable organizations for ticket purchases placed on qualified candidate committees and that he will also provide contemporaneous, detailed documentation to support expenditures that are made for advertising purchased from charitable organizations, including, but not limited to, copies of advertisements, photographs of promotional materials, and dated invoices from charitable groups from which it buys advertising or tickets to support those expenditures.

The Respondent

For the State of Connecticut

By:



James J. Mathews
126 Gaylord Dr
Waterbury, CT 06708

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

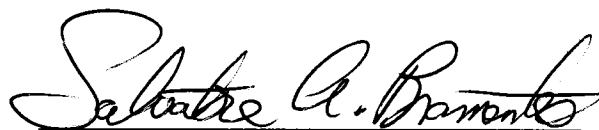
Dated:

9/5/2018

Dated:

9/7/18

Adopted this 19th day of September, 2018 at Hartford, Connecticut by vote of the Commission.



~~Anthony J. Castagno, Chairman~~
By Order of the Commission
Salvatore A. Bramante Co-chair