

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Arnold Skreta, Hartford

File No. 2014-114A

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Larry J. Lawrence (the "Respondent") and the undersigned authorized representative of the State Elections Enforcement Commission (the "Commission"), enter into this agreement (the "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:

BACKGROUND

1. On March 2, 2011 the Connecticut Policy Institute ("CPI") filed its articles of incorporation with Connecticut's Secretary of the State.
2. At all times relevant hereto, CPI was a domestic, non-stock corporation organized for a charitable purpose under § 501(c)(3) of the Internal Revenue Code.
3. On its advertising, CPI describes itself as "A non-partisan, not-for-profit research organization dedicated to developing responsible, research-driven public policy in Connecticut."
4. At the time the Complaint was filed, CPI's website contained the following statement: "The Connecticut Policy Institute was founded in February of 2011 by Tom Foley Tom founded the CPI to be an independent voice for good policy in the state, and he no longer has any formal connection to the Institute."
5. At all times relevant hereto, Thomas Foley's spouse, Leslie Fahrenkopf Foley, was a director of CPI.
6. On February 1, 2013, Thomas Foley registered an exploratory committee with the Commission to explore a run for statewide office in the State of Connecticut. Respondent Lawrence was the treasurer of the Foley exploratory committee.
7. On February 6, 2014, Thomas Foley dissolved his exploratory committee and formed a candidate committee to fund his campaign for the office of Governor of Connecticut. Respondent Lawrence was the treasurer of the Foley campaign committee.

8. On March 7, 2014, CPI published a report entitled “Connecticut’s Urban Housing Policy: A New Approach Focused on Sustainable Neighborhood Revitalization” (hereinafter the “CPI Report”).
9. On March 7, 2014, CPI held a press conference to announce the release of the CPI Report.
10. On March 7, 2014, Thomas Foley was present and made remarks at the CPI press conference.

COUNT I

Allegations

11. Complainant alleges that CPI prepared the CPI Report, in order to support Tom Foley’s campaign and thus Respondent Lawrence accepted an improper contribution CPI.

Law

12. Those entities that are permitted to make contributions to candidate committees are detailed in chapter 155 of the General Statutes. See e.g., General Statutes §§ 9-611, 9-612, 9-616.
13. Not-for-profit corporations are not among the groups that are permitted to make contributions to candidate committees. *Id.*
14. Accordingly, charitable organizations are prohibited from making contributions to candidate committees.¹
15. An expenditure made in coordination with a candidate committee is defined to be a contribution to that candidate committee. General Statutes § 9-601a (a) (4).
16. Accordingly, if a charity makes an expenditure in coordination with a candidate committee, such charity has made an improper contribution to the candidate committee.
17. Certain payments of money by charities are exempted from the definition of expenditure. General Statutes § 9-601b (b) (13) provides that “[a] lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended” shall be exempted from the definition of

¹ Public charities are also prohibited from making political contributions under the federal tax laws. Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007).

expenditure. Testimonial affairs organized by charities are also exempted from the limitations on such events detailed in General Statutes § 9-609 (b).

18. It is an illegal practice for a treasurer to accept prohibited contributions. General Statutes § 9-622 provides, in pertinent part:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

....

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter;

Discussion

19. It is undisputed that CPI was formed by Thomas Foley to research and develop public policy recommendations in 2011. Moreover, it is undisputed that CPI is a public charity.

20. In order for the Commission to find a violation of General Statutes § 9-613 by the Respondents in this case, the evidence must support a finding that the creation of the CPI Report was and expenditure by CPI and that such expenditure was coordinated with Thomas Foley or his campaign.

21. General Statutes § 9-601b (a) defines an expenditure to be

(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made to promote the success or defeat of any candidate seeking 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 the success or defeat of any political party;

(2) Any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail; or

(3) The transfer of funds by a committee to another committee.

22. General Statutes § 9-601b (b) (13) also exempts from the definition of expenditure “[a] lawful communication by any charitable organization which is a tax-exempt organization

under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.”

23. CPI is not and does not have a committee as defined by General Statutes § 9-601 and, even if it did, it did not transfer any funds to Thomas Foley’s candidate committee. Moreover, the CPI Report did not refer to Thomas Foley. Thus, in order for the Commission to find that the generation of the CPI Report was an expenditure, it must determine that the generation of the CPI Report was a “purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value . . . made to promote the success” of Thomas Foley’s candidacy for Governor of Connecticut.
24. Alternatively, the Commission could find that such communication was a lawful communication by a charitable organization.
25. There is no question that CPI Report was an item of value. The research and information and recommendations contained in the report were the result of hours of work by an experienced professional planner.
26. However, the investigation revealed no evidence that CPI Report was generated in order to promote the success of Thomas Foley’s candidacy.
27. One way the Commission could show that the CPI Report was generated in order to promote Thomas Foley’s candidacy would be to show that it was generated at Thomas Foley or his campaign’s request. However, in a review of all of the evidence gathered in this investigation, there was nothing discovered indicating that Thomas Foley was specifically seeking policy research concerning urban housing policy or that Thomas Foley or any agent of him or the Foley campaign requested that the CPI prepare a report on that issue.
28. Absent such evidence the Commission could still find that the generation of the CPI Report was an expenditure if it could prove that CPI intended the generation of the CPI Report to aid Thomas Foley. It is clear that once the CPI Report had been completed, Thomas Foley believed it would be useful for his campaign. That, however, is not the standard by which the Commission must evaluate this allegation. Rather, the Commission must determine that the creation of the Report was intended, at least in part, to aid Thomas Foley’s campaign.
29. While the deep ties between CPI and Thomas Foley raised significant concerns for the Commission, the investigation revealed no evidence that the creation of the CPI Report was intended to benefit Thomas Foley. Rather, the only evidence the Commission was able to discover in the course of this investigation was that once the contents of the report became known to Thomas Foley and his campaign, he actively used that information as part of his

campaign. Absent intent to support a candidate in the creation of the content, such use is not, in and of itself, a violation of Connecticut's campaign finance law.

30. As there is insufficient evidence that the generation of the CPI Report was intended to aid Thomas Foley's campaign, the commission need not determine whether such communication was a lawful communication of a charitable organization.
31. Moreover, as there is insufficient evidence to determine that the generation of the CPI Report was an expenditure, it need not determine if such expenditure was coordinated or independent.
32. The Commission determines that this allegation should be dismissed.
33. However, the Commission cautions that allegations concerning coordination with outside "think tanks" and other organizations that provide information that campaigns find useful will be closely scrutinized in the future, and the Commission discourages this conduct in the strongest possible terms.

COUNT II

Allegations

34. Complainant alleges that the press conference announcing the CPI Report was a campaign event and thus Respondent Lawrence accepted an improper contribution from a public charity.

Law

1. Those entities that are permitted to make contributions to candidate committees are detailed in chapter 155 of the General Statutes. See e.g., General Statutes §§ 9-611, 9-612, 9-616.
2. Not-for-profit corporations are not among the groups that are permitted to make contributions to candidate committees. *Id.*
3. Accordingly, charitable organizations are prohibited from making contributions to candidate committees.²
4. An expenditure made in coordination with a candidate committee is defined to be a contribution to that candidate committee. General Statutes § 9-601a (a) (4).

² Public charities are also prohibited from making political contributions under the federal tax laws. Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007).

5. Accordingly, if a charity makes an expenditure in coordination with a candidate committee, such charity has made an improper contribution to the candidate committee.
6. Certain payments of money by charities are exempted from the definition of expenditure. General Statutes § 9-601b (b) (13) provides that “[a] lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended” shall be exempted from the definition of expenditure. Testimonial affairs organized by charities are also exempted from the limitations on such events detailed in General Statutes § 9-609 (b).
7. It is an illegal practice for a treasurer to accept prohibited contributions. General Statutes § 9-622 provides, in pertinent part:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

....

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter;

Discussion

8. As was the case in Count I, in order to determine that the press conference announcing the CPI Report was an impermissible in-kind contribution from a charity to Thomas Foley’s campaign committee, the Commission must determine both that the press conference was an expenditure and that it was coordinated.
9. To determine whether the press conference announcing the CPI Report was an expenditure the Commission uses the frame work laid out in Advisory Opinion 2010-08 used for determining whether an event is a campaign event.
 - Whether the invitations for the event tout the candidate's presence and/or the chance to hear her message;
 - Whether the media was alerted as to the candidate's presence at the event;
 - Whether the candidate notified his supporters that he would be present at the event;
 - Whether the candidate is distributing her campaign literature at the event or in connection with the event;
 - Whether the candidate is fundraising at the event;

- The extent to which the event targets the voters or in-district donors of the candidate; and
- The extent to which the candidate is speaking at the event regarding his campaign.

Advisory Opinion 2010-08

10. A “News Advisory” available on the Foley campaign’s website announced, among other things that “On Friday, Tom Foley will make remarks at the announcement of the Connecticut Policy Institute (CPI) urban policy project at the Legislative Office Building. Tom will be available for comment at the conclusion of the announcement.”
11. This “News Advisory” alone fulfills items one, two, and three of the indicia. Moreover, as Thomas Foley was a statewide gubernatorial candidate and this was an event held in Connecticut, concerning Connecticut policy, it was clearly targeting potential voters for Thomas Foley.
12. There was no evidence collected in the investigation that Thomas Foley distributed campaign literature at the event or fundraised at the event.
13. While the investigation into this matter discovered no concrete evidence showing Thomas Foley directly discussed his campaign at the CPI Report Press Conference, the “News Advisory” published by the Foley campaign did mention that Thomas Foley would be available for interviews after the event.
14. Based upon the forgoing, the Commission concludes that there is evidence to support a finding that the press conference announcing the CPI Report was, at least in part, a campaign event, and thus an expenditure by CPI to support the candidacy of Thomas Foley.³
15. Moreover, the Commission concludes that there is evidence to support a finding that as the actual expenditure was made with the knowledge and participation of the candidate, the press conference was a coordinated expenditure made to support Thomas Foley’s campaign.
16. Accordingly, the Commission concludes that there is evidence to support a finding that Respondent Lawrence, as treasurer of the Foley candidate committee was in violation of General Statutes § 9-622 for accepting the impermissible in-kind contribution from a charity.

³ Hosting a campaign event for the benefit of a candidate for public office is not, in and of itself, a communication. Thus, the Commission need not address if such activity was a “lawful communication” by a charity, and thus exempt from the definition of expenditure as detailed in General Statutes § 9-601b (b) (13).

17. The Commission considers accepting impermissible contributions a serious violation. See *In the Matter of a Complaint by Nancy Conaway-Raczka, Middletown*, File No. 2015-125; *In the Matter of a Complaint by Christopher Suggs, West Haven*, File No. 2015-107.
18. In this case the press conference announcing the CPI Report had few costs beyond the cost of the space in the legislative office building and only a portion of the event would be properly attributable to Thomas Foley's candidate committee.
19. The Commission does note that Respondent Lawrence has been cooperative with this investigation and there is no evidence of bad faith on Respondent Lawrence's behalf.

TERMS OF GENERAL APPLICATION

20. The Respondent admits to 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.
21. By entering into this Agreement and paying a civil penalty, Respondent Lawrence seeks simply to settle a contested matter and avoid the costs of continued litigation. Respondent maintains that he did not violate the statutory provisions contained in this Agreement and disagrees with the Commission's findings.
22. 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 to contest the validity of the Order entered into pursuant to this Agreement.
23. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
24. 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

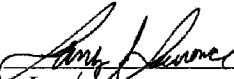
Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

ORDER

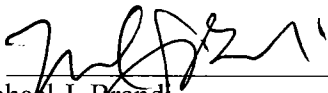
It is hereby ordered that Respondent Lawrence shall henceforth comply with General Statutes § 9-622.

It is further ordered that Respondent Lawrence shall pay a civil penalty of \$750.

The Respondent:

By: 
Larry Lawrence
40 Brookridge Drive
Greenwich, CT 06830

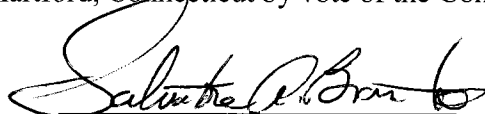
For the State of Connecticut:

By: 
Michael J. Brandl
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106

Dated: October 15, 2018

Dated: 10/15/18

Adopted this 17 day of October, 2018 at Hartford, Connecticut by vote of the Commission.


Vice - Salvatore A. BRAMANTE
By Order of the Commission