

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Richard M. Smith,
Milford

File No. 2014-133

AGREEMENT CONTAINING CONSENT ORDER

This Agreement by and between Pamela Staneski and Paula Smith, of the City of Milford, County of New Haven, State of Connecticut (hereinafter "Respondents"), and the undersigned authorized representative of the State Elections Enforcement 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, the parties agree that:

1. Respondent Staneski was a candidate for state representative from the 119th General Assembly District at the November 4, 2014 election. Further, Respondent Staneski registered the candidate committee "Pam for the 119th" (hereinafter "the Committee") and designated Respondent Smith her treasurer. The Committee applied for and received a grant from the Citizens' Election Program (CEP). The Committee was *not* selected for the CEP random audit process conducted by the Commission for the 2014 election cycle.
2. Complainant alleged that Respondent Staneski violated General Statutes § 9-601b, § 9-616, § 9-706, et al, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2, by making expenditures as a CEP candidate that attacked Governor Malloy's record. *See* Advisory Opinion 2014-04, *Negative Communications Featuring Candidates for Different Offices* (pertaining to its application of General Statutes § 9-601b, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2).
3. More specifically, Complainant alleged that the Committee, on or about October 13, 2014, mailed a double-sided post card to multiple households in the 119th District that "provide[d] the Foley campaign with free advertising by attacking Governor Malloy" and thereby violating Connecticut campaign finance law because Governor Malloy was not Respondent's direct opponent. *See* General Statutes § 9-601b, § 9-616, § 9-706, et al; Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2; and Advisory Opinion 2014-04.
4. The Commission notes that Respondent Staneski and Respondent Smith have no prior cases with the Commission. Furthermore, Respondent Staneski and Respondent Smith cooperated fully with this investigation and provided comprehensive financial records from their committee, including checks, invoices and receipts, for the expenditures pertaining to this complaint and investigation.

11. Regulations of Connecticut State Agencies § 9-706-1, provides:

(a) All funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.

(b) The absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate's nomination for election or election shall mean that the expenditure was not made to directly further the participating candidate's nomination for election or election, and thus was an impermissible expenditure. Contemporaneous detailed documentation shall mean documentation which was created at the time of the transaction demonstrating that the expenditure of the qualified candidate committee was a campaign-related expenditure made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements. Contemporaneous detailed documentation shall include but not be limited to the documentation described in section 9-607(f) of the Connecticut General Statutes.

12. Regulations of Connecticut State Agencies § 9-706-2, provides in pertinent part:

(a) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of participating candidates shall comply with the following citizens' election program requirements. Permissible campaign-related expenditures shall include but are not limited to expenditures for the following:

1. Purchase of political campaign advertising services from any communications medium, including but not limited to newspaper, television, radio, billboard or internet;

2. Political campaign advertising expenses, including but not limited to printing, photography, or graphic arts related to flyers, brochures, palm cards, stationery, signs, stickers, shirts, hats, buttons, or other similar campaign communication materials;
3. Postage and other commercial delivery services for political campaign advertising; ...

(b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following citizens' election program requirements. Participating candidates and the treasurers of such participating candidates ***shall not spend funds in the participating candidate's depository account for the following:***

- ...
8. Contributions, loans or expenditures to or for the benefit of another candidate, political committee or party committee;

- ...
10. Any expenditure made in conjunction with another candidate for which the participating candidate does not pay his or her proportionate share of the cost of the joint expenditure; ...

13. Independent expenditures to benefit another candidate;
14. Expenditures in violation of any federal, state or local law;

[Emphasis added.]

13. On October 17, 2014, the Commission issued Advisory Opinion 2014-04 instructing and cautioning candidates regarding negative communications that feature candidates other than their opponents or for different office. The Commission directed that:

[W]hen a CEP candidate makes a communication that is not directly related to the candidate's own race and that also promotes the defeat of or attacks a candidate that is not opponent direct opponent of the candidate sponsoring the communication, but is in a different race, then the cost of that communication must be properly allocated. ... [T]he candidate committee of a CEP

participant may not attack candidates opposing other members of such candidate's party.

14. The Commission finds that the campaign mailer that is the subject of this complaint and investigation is in the form of a postcard and provides a disclaimer from the Committee pursuant to General Statutes §9-621. Further, the Commission finds that the postcard references Respondent Staneski's opponent James J. Maroney and the post card includes the following excerpts:

Malloy & Maroney keep raising taxes. Have you seen a difference in your pockets? -- We Deserve Better!

15. The Commission finds that the above postcard was an expenditure pursuant to Regs. Conn. State. Agencies § 9-706-1 that benefited the gubernatorial campaign of Thomas Foley and opposed the re-election of Governor Malloy. The Committee was limited by both statute and regulation to making expenditures of the Committee's funds for its own benefit. Therefore, this expenditure by the Committee was inconsistent with the advice of Advisory Opinion 2014-04 and contrary to the Commission's advice and directives therein. *See* Advisory Opinion 2014-04, § 9-601b, § 9-616, § 9-706, and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.
16. Respondents should have, pursuant to General Statutes § 9-610 (b) and consistent with Advisory Opinion 2014-04, properly allocated a portion of the cost of the subject mailer with the Thomas Foley campaign or the Party Committee because the communication opposed Governor Malloy, clearly identifies him as a candidate, portrays his policies in a negative light and Governor Malloy was not a direct opponent to Respondent Staneski in her campaign for State Representative from the 119^h General Assembly District.
17. After investigation, it was determined that the expenditure for the subject mailer was made on October 16, 2014, one day *prior* to the publication of Advisory Opinion 2014-04 by the Commission. The investigation did not reveal any coordination between the Respondents and Thomas Foley, his candidate committee or its agents or the Republican Party.
18. The Commission stresses that in addition to being prohibited from making contributions to benefit other candidates, candidate committees are prohibited from making independent expenditures for the benefit of another candidate because a candidate committee may only make expenditures to promote the nomination or election of the candidate who established the committee. *See* General Statutes § 9-607 (g) (1) (A) (i), Advisory Opinion 2014-04.

19. Under these circumstances there is no allegation or facts discovered to show that the Respondent coordinated the mailers at issue with Thomas Foley's candidate committee. However, the Commission cautions that such an expenditure is still prohibited by Connecticut's campaign finance laws as an expenditure to attack a candidate that is not the candidate's opponent is, by definition, not an expenditure to promote the nomination or election of the candidate.
20. The Commission concludes, for the reasons detailed herein, that Respondent Staneski and Respondent Smith violated General Statutes § 9-607 (g), § 9-706 and Regs. Conn. State Agencies § 9-706-1 and § 9-706-2, by using CEP funds to support another candidate and to oppose, through negative references, a candidate committee other than the direct opponent of the Committee.
21. While the Commission notes that Advisory Opinion 2014-04 reiterated the Commission's longstanding advice regarding joint expenditures and the allocation of costs for the same, nevertheless it finds the levying of a civil penalty, under these narrow and specific circumstances, as unwarranted because (1) Respondents did correctly disclose and report the Committee's expenditures for the postcard in question and (2) the Commission reiteration and clarification pertaining to the rules for negative advertisements that included candidates other than opponents in Advisory Opinion 2014-004 was published *after* the postcard in question was produced and delivered for distribution by mail.
22. The Commission stresses that had the Respondents arranged for organization expenditures from appropriate committees to cover the costs of the communication that is subject of this complaint pursuant to General Statutes § 9-601b (b) (8), it would have been entirely permissible.
23. Moreover, the Commission's intent in regulating such communications is not with regard to regulating speech pursuant to Advisory Opinion 2014-04, but rather, merely to verify the appropriate campaign finance funds for each communication are properly allocated to each committee benefited pursuant to General Statutes § 9-610. This goal is particularly urgent when, as in this instance, a candidate committee is participating in the CEP and therefore using public funds when engaging in *pro rata* expenditures for joint communications.
24. Respondents admit all jurisdictional facts and agree 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.

25. The Respondents waive:
 - 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.
26. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her concerning this matter.
27. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by either party in any subsequent hearing, if one becomes necessary.

ORDER

IT IS HEREBY ORDERED THAT Respondents shall henceforth strictly comply with the requirements of General Statutes § 9-607, § 9-706 and Regs. Conn. State. Agencies § 9-706-1 and § 9-706-2.

Respondents

By:



Pamela S. Staneski
35 Point Lookout
Milford, Connecticut

Dated: 6/17/16

For the State of Connecticut

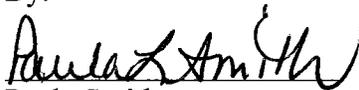
By:



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

Dated: 6/20/16

By:



Paula Smith
62 Hauser Street
Milford, Connecticut

Adopted this 13th day of July, 2016 at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman
By Order of the Commission

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STATE ELECTIONS

JUN 20 2016

ENFORCEMENT COMMISSION