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STATE ELECTIONS

OCT 11 2016

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Arleen C. Kline,
Farmington

File Nos. 2014-136, 144 & 149

STIPULATED RESOLUTION

This Agreement by and between Patty Stoddard and Robert J. Reeve, of Town of Farmington, County of Hartford, 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 Stoddard was a candidate for state representative from the 21st General Assembly District and opposed Michael Demicco at the November 4, 2014 election. Further, Respondent Stoddard registered the candidate committee "Stoddard for State Representative" (hereinafter "the Committee") and designated Respondent Reeve her treasurer. The Committee applied for and received a grant from the Citizens' Election Program (CEP).
2. Complainant alleged that Respondent Stoddard 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 and supported his opponent Tom Foley. *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 filed three separate complaints pertaining to:

(1) File No. 2014-136:

A double-sided mailer sent out on or about October 22, 2014 by Respondent Stoddard's candidate committee to multiple households in the 21st District that Complainant alleges was "clearly designed to promote the defeat of Governor Malloy, thereby benefiting *Foley for CT.*"

Respondents stress that in this mailer Stoddard attacked her opponent Demicco's support of Governor Malloy's transportation policies. There is a photograph of Stoddard walking her dog across a decrepit bridge, as well as a picture of a traffic jam, both in the 21st District.

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(2) File No. 2014-144:

A double-sided mailer sent out on or about October 28, 2014 by Respondent Stoddard's candidate committee to multiple households in the 21st District that Complainant alleges was "an illegal expenditure ... in support of the candidacy of Tom Foley, the Republican candidate for Governor, in the form of a widely distributed mailer attacking Foley's Democratic opponent, Governor Dan Malloy." There is a photograph of Governor Malloy shaking hands with Stoddard's opponent Mike Demicco in this mailer, as well as a photograph portraying Stoddard in her occupation as a Realtor.

Respondents stress that in this mailer Stoddard attacked her opponent Demicco's support of the Governor's economic policies and their impact on the 21st District, highlighting a business that moved out of the District with the aid of state funding.

(3) File No. 2014-149:

A double-sided mailer sent out on or about October 31, 2014 by Respondent Stoddard's candidate committee to multiple households in the 21st District that Complainant alleges was "[was] clearly intended to discourage readers from voting for Governor Malloy, thereby benefitting Mr. Foley's campaign." There is a photo of Governor Malloy as well as a photograph of Stoddard's opponent Mike Demicco included in this mailer.

Respondent stress that this mailer criticized Demicco's support of the Governor's budget and other fiscal policies.

4. The Commission notes that for purposes of settlement all three complaints have been consolidated and this consent agreement represents full resolution of these matters by and between the Commission and Respondent Stoddard and Respondent Reeve. Respondents have no prior case history with the Commission.
5. Additionally, the Commission's Campaign Disclosure and Audit Unit examined financial disclosure reports and supporting documentation provided by the Committee following its selection for review as part of the post-election random audit process for the 2014 election cycle, which audit reflected no significant problems for the Committee that would require additional investigation by the Commission's Enforcement Unit.
6. By way of background, the Commission at its October 17, 2014 regular monthly meeting voted to issue an Advisory Opinion to respond to requests for clarification regarding the ability of candidates participating in the CEP to make expenditures for communications that refer to – and oppose or feature in a negative light – other candidates who are not their direct opponents.

7. As a result, Advisory Opinion 2014-04 reiterated longstanding Commission advice that in order to avoid making an impermissible expenditure from a CEP candidate committee, committees of candidates and political parties must pay their proportionate share of the communication's costs as a joint expenditure. *See* Advisory Opinion 2014-04.
8. Respondents disagree that any such longstanding Commission advice governed their conduct herein, and contend that the only prior advice on this topic, Advisory Opinion 2011-03, dealt only with expenditures that portrayed other candidates in a positive light, not expenditures which are alleged to portray other candidates who are not direct opponents in a negative light.
9. General Statutes § 9-601b, provides in pertinent part:
 - (a) As used in this chapter and chapter 157, the term "expenditure" means:
 - (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;
10. General Statutes § 9-607, provides in pertinent part:
 - (g) (1) As used in this subsection, (A) "the lawful purposes of the committee" means: (i) For a candidate committee or exploratory committee, the promoting of the nomination or election of the candidate who established the committee, except that after a political party nominates candidates for election to the offices of Governor and Lieutenant Governor, whose names shall be so placed on the ballot in the election that an elector will cast a single vote for both candidates, as prescribed in section 9-181, a candidate committee established by either such candidate may also promote the election of the other such candidate; ...
 - (2) Unless otherwise provided by this chapter, any treasurer, in accomplishing the lawful purposes of the committee, may pay the expenses of: (A) Advertising in electronic and print media; (B) any other form of printed advertising or communications including "thank you" advertising after the election; (C) campaign items, including, but not limited to, brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, ... and (Z) any other necessary campaign or political expense.

11. General Statutes § 9-610, provides in pertinent part:

(b) A candidate committee may pay or reimburse another candidate committee for its pro rata share of the expenses of operating a campaign headquarters and of preparing, printing and disseminating any political communication on behalf of that candidate and any other candidate or candidates, including any shared expenses for which only the committee being paid or reimbursed was under a contractual obligation to pay.

Notwithstanding the provisions of subdivision (1) of subsection (a) of section 9-616, a candidate committee may reimburse a party committee for any expenditure such party committee has incurred for the benefit of such candidate committee.

12. General Statutes § 9-706, provides in pertinent part:

(a) (1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, ... The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of subsections (d) to (g), inclusive, of this section.

...

(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive.

13. 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.

14. 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; ...

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(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.]

15. 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 ... [a] 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.

16. The Commission finds that the campaign mailers that are the subjects of these complaints are in the form of postcards that provide disclaimers from the Committee pursuant to General Statutes §9-621. Further, the Commission finds that the all three postcards include references to Governor Malloy, and two of them contain his image as well as the image of Stoddard's opponent Mike Demicco. The postcards are excerpted as follows:

File No. 2014-136

Malloy's budget – A budget Mike Demicco voted for! – cuts \$109.M from the state's dedicated transportation revenues in 2014 and 2015.

Why are Mike Demicco and Dan Malloy taking money you paid in gas taxes and not spending it on roads and bridges?

File No. 2014-144

Dan Malloy and Mike Demicco making deals good for Hartford and bad for Farmington.

Dan Malloy gave the accounting firm CohnResnick a \$1.2 million sweetheart loan with a \$600,000 forgiveness clause to move out of Farmington and into Hartford. Where was Mike Demicco's voice for us then?

We need a state representative who will do what's best for Farmington, not Dan Malloy.

File No. 2014-149

The Demicco/Malloy Record – Passed 2014/2015 state budget that relies on almost \$600 Million in borrowing just to pay state's operating expenses – Cut grants for mental healthcare – Made it more difficult for seniors and the elderly to apply for rental assistance – Removed \$76 million dollars from the special transportation fund to be spent elsewhere – Voted to give drivers licenses to illegal aliens

[Original Emphasis.]

17. The Commission determines that the postcards were an expenditure pursuant to General Statutes § 9-706 and Regs. Conn. State. Agencies § 9-706-1 and believes that said expenditures 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, the Commission believes that these expenditures by the Committee were also 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.

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18. The Commission believes that 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 mailers with the Thomas Foley campaign or the Party Committee because the communications opposed Governor Malloy, and while not identifying him as a candidate portrayed his policies in a negative light, and Governor Malloy was *not* a direct opponent to Respondent Stoddard in her campaign for state representative from the 21st General Assembly District.
19. The Respondents contend that nowhere in the subject mailers was Governor Malloy identified as a candidate during the current election cycle, and that his policies were portrayed in a negative light for the purposes of demonstrating the Stoddard's opponent, Demicco, consistently supported those policies.
20. The Respondents contend that publishing these materials was consistent with the law and regulations concerning campaign expenditures and were at all times directed at the opponent Demicco's campaign and not in support of gubernatorial candidate Tom Foley or in opposition to Governor Dannel Malloy's re-election. Further, that the materials made no mention of Foley, contained no endorsement of Foley, and no mention of the gubernatorial election. Further, that they were in full compliance with Advisory Opinion 2014-04, notwithstanding that it was issued after the campaign expenditures at issue had been made, inasmuch as the expenditures were "...directly related to the candidate's own race..." Further, Respondent Treasurer Reeve contends that he had no part in the design, production and mailing of the materials.
21. After investigation, it was determined that the Committee's payment to the vendors for design, production and dissemination by mail of the campaign postcards that are subject of this complaint were all made prior to the publication of Advisory Opinion 2014-04. The investigation did not reveal any coordination between the Respondents and Thomas Foley, his candidate committee or its agents or the Republican Party.
22. Under these circumstances there is no allegation or facts discovered to show that the Respondents coordinated the mailers at issue with Thomas Foley's candidate committee.
23. The Commission believes, for the reasons detailed herein, that Respondent Stoddard and Respondent Reeve 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.

24. The respondents contend that publishing these materials was consistent with the law and regulations concerning campaign expenditures and were at all times were directed at the opponent's campaign and not in support of gubernatorial candidate Tom Foley or in opposition to Governor Dannel Malloy's re-election. Further, Respondent Treasurer Reeve contends that he had no part in the design, production and mailing of the materials.
25. The Commission finds the levying of a civil penalty pursuant to General Statutes § 9-7b (a) (2), under these narrow and specific circumstances, is unwarranted because (1) Respondents did correctly disclose and report the Committee's expenditures for the postcards 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 payment by the Committee to the vendors for the design, production and distribution of the double-sided postcards by mail.
26. 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.
27. 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 is 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. Respondents take no position on the Commission's intent, but claim that the Commission's interpretation of the law as applied to their conduct in this campaign does impermissibly regulate their speech. Respondents deny that this is the correct interpretation of the law, but recognize that the Commission's interpretation has the force of law unless and until it is changed or overturned by legislative or judicial action.
28. 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. Respondents contend that their actions were meant to support their own candidacy. Therefore, the Respondents sign this agreement solely to avoid further costs of litigation regarding this matter, and by so agreeing do not admit to any willful or intentional violation of any statute or regulation governing their conduct.

29. Further, the Commission finds that there is no evidence that the Respondents intended to violate any campaign finance law, and makes no finding of any such intentional violations. Finally, this agreement serves only to secure voluntary compliance with Respondents and to close this matter between the parties pursuant to General Statutes § 9-7b (a) (6).
30. 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.
31. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her concerning this matter.
32. 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:

For the State of Connecticut
By:

Patty Stoddard
87 Lido Road
Farmington, Connecticut

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: _____

By:



Robert J. Reeve
147 Oakridge
Unionville, Connecticut

Dated: 10/5/16

Adopted this __ day of _____, 2016 at Hartford, Connecticut by vote of the Commission.

Anthony J. Castagno, Chairman
By Order of the Commission

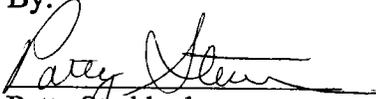
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ORDER

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:

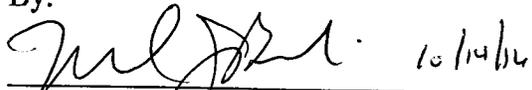


Patty Stoddard
87 Lido Road
Farmington, Connecticut

Dated: 10/5/2016

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

By:



Robert J. Reeve
147 Oakridge
Unionville, Connecticut

Dated: 10/5/16

Adopted this 16th day of November, 2016 at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman
By Order of the Commission