

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Thomas J. Banisch, Madison

File No. 2014-147

FINDINGS AND CONCLUSIONS

The Complainant alleged that during the 2014 General Election campaign, the state party committee "Connecticut Democratic State Central Committee" made organization expenditures for six electioneering mailings benefitting the senate campaign of Ted Kennedy utilizing a nonprofit postal rate not permitted by law, thereby paying less than the correct market rate for the mailers and underreporting the true benefit conferred upon Mr. Kennedy.¹

BACKGROUND

1. The investigation revealed the following pertinent facts, which are not in dispute.
2. From on or about September 30, 2014 through October 28, 2014, the state party committee "Connecticut Democratic State Central Committee" ("DSCC") made organization expenditures to produce at least six electioneering mailers supporting the campaign of Ted Kennedy for the 12th Senatorial District in the Connecticut General Assembly.
3. The production of mailers was coordinated between the DSCC and the "Friends of Ted Kennedy" candidate committee.
4. Approximately 133,674 of the mailers identified in this Complaint were created at a production expense of approximately \$60,320.
5. The mailers were delivered via the United States Postal Service utilizing the DSCC's nonprofit postal rate, for a total cost of approximately \$16,407.
6. In total, the mailers cost approximately \$76,727.

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

7. The "Friends of Ted Kennedy" candidate committee paid approximately \$10,103.25 towards the mailers, with the remainder of the costs borne by the DSCC.
8. The "Friends of Ted Kennedy" candidate committee was at no time the holder of a United States post office nonprofit postal permit.

ALLEGATIONS

9. The Complainant alleged that United States postal regulations did not permit the DSCC to use its nonprofit postal permit to benefit Mr. Kennedy's campaign as Mr. Kennedy's campaign did not itself hold a valid nonprofit postal permit.
10. Although the Complainant does not specifically make this allegation, the above allegation, if true, necessarily implies that the DSCC impermissibly received the benefit of a below market postal rate, which would constitute impermissible income on the part of the DSCC as well as a failure to report said income under the reporting requirements in General Statutes § 9-608.

LAW

11. Under United States Postal Service Domestic Mail Manual (DMM) 703.1.3.1, state committees of a political party are considered "political committees" who are permitted to send mail at nonprofit standard mail prices without regard to their nonprofit status under the United States tax code.

12. However:

Under DMM 703.1.6, a qualified political committee that is authorized to mail at the nonprofit rates may mail only its own matter at these rates. It may not delegate or lend the use of its permit to anyone else, nor may it make cooperative mailings at those rates if any of the cooperating persons or organizations are not themselves authorized to mail at the nonprofit rates. Generally, mailings are considered cooperative when two or more organizations or persons share in the costs of preparing or printing the material or paying postage.

These restrictions do not prohibit a state committee of a political party from endorsing and supporting local candidates, as long as the

campaign materials to be mailed at the nonprofit rates are the committee's own and the committee pays the postage with no reimbursement from the candidates or other committees supporting those candidates.

(United States Postal Service Customer Support Ruling PS-055, January 2006)

13. General Statutes § 9-608 reads, in pertinent part:

...
(c) Content of statements. (1) Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: . . . (B) an itemized accounting of each expenditure, if any, including the full name and complete address of each payee, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be; (C) an itemized accounting of each expense incurred but not paid, provided if the expense is incurred by use of a credit card, the accounting shall include secondary payees, and the amount owed to each such payee;

Analysis and Conclusion

14. As an initial matter, the Commission notes that the issue in this matter is not whether the DSCC impermissibly benefitted the “Friends of Ted Kennedy” candidate committee by utilizing the nonprofit permit. The DSCC was permitted to make unlimited organization expenditures on behalf of the candidate committee.
15. The issue before the Commission, which is one of first impression, is whether the mailings here were “cooperative mailings” under DMM 703.1.6 such that the DSCC and/or “Friends of Ted Kennedy” should have paid and reported the higher rate.
16. Considering the aforesaid, the Commission concludes that the mailers, which were coordinated between the DSCC and the “Friends of Ted Kennedy” candidate committee,

were “cooperative mailings” under DMM 703.1.6 insofar as the committees shared in the expense of the mailers.

17. Accordingly, the Commission concludes that the DSCC should not have utilized the nonprofit rate for the six mailers that are the subject of this Complaint.
18. Had the DSCC paid for the mailers entirely out of its own funds, then it could have utilized the nonprofit rate. However, since the expenses were shared, only the standard rates could be used.
19. The SEEC cooperated with the vendor and the United States Postal Service to determine that the difference in cost between the nonprofit rate and the standard rate for the six mailers was approximately \$10,833.
20. The Commission notes that on or about January 6, 2015, shortly after filing of the instant Complaint, the DSCC reimbursed the United States Postal Service in the amount of \$9,288, which was its initial calculation of the difference between the nonprofit and standard rates for the mailers, and reported the expenditure on its next quarterly campaign finance report.
21. Upon conclusion of the instant investigation, the DSCC promptly reimbursed the United States Postal Service an additional \$1,545 upon notice of SEEC staff of its calculations.
22. Considering that the instant matter was one of first impression and also considering the parties’ prompt cooperation and reconciliation of the issue in this matter, the Commission will take no further action.

ORDER

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

No further action.

Adopted this 11th day of May, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission