

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by Ann Marie Logan, Somers Town Clerk

File No. 2014-116
2015-023MNF

AGREEMENT CONTAINING A CONSENT ORDER

The Agreement, by and between David McCaffrey of the Town of Somers, State of Connecticut and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

ALLEGATIONS

1. These cases collectively concern Respondent David P. McCaffrey's 2014 campaign for Registrar of Voters in the Town of Somers. The Town Clerk for the Town of Somers referred these matters to the Commission noting two separate categories of potential violations. First, the Referring Official alleged that the Respondent's candidate committee had failed to file the required July 10, 2014 financial disclosure statements and the August 5, 2014 financial disclosure statements. Second, the Referring Official alleged that the Respondent had listed himself as the treasurer of his own candidate committee in violation of General Statutes § 9-606.

COUNT I

2. The Referring Official alleges that the Respondent served as the treasurer of his own candidate committee.
3. General Statutes § 9-606 prohibits candidates from serving as the treasurer of their own candidate committees, and provides in pertinent part:

No person shall act as a treasurer or deputy treasurer (1) unless the person is an elector of this state, the person has paid any civil penalties or forfeitures assessed pursuant to chapters 155 to 157, inclusive, and a statement, signed by the chairman in the case of a party committee or political committee or by the candidate in the case of a candidate committee, designating the person as treasurer or deputy treasurer, has been filed in accordance with section 9-603, and (2) if such person has been convicted of or pled guilty or nolo contendere to, in a court of competent jurisdiction, any (A) felony involving fraud, forgery, larceny, embezzlement or bribery, or (B) criminal offense under this title, unless at least eight years have elapsed from the date of the conviction or plea or the completion of any sentence, whichever date is later, without a subsequent conviction of or

plea to another such felony or offense. In the case of a political committee, the filing of a statement of organization by the chairman of the committee, in accordance with the provisions of section 9-605, shall constitute compliance with the filing requirements of this section. ... *A candidate shall not serve as the candidate's own treasurer or deputy treasurer, except that a candidate who is exempt from forming a candidate committee under subsection (b) of section 9-604 and has filed a certification that the candidate is financing the candidate's campaign from the candidate's own personal funds or is not receiving or expending in excess of one thousand dollars may perform the duties of a treasurer for the candidate's own campaign.*

(Emphasis added).

4. Upon investigation, the SEEC Form 1 and Form 1A registration statement on file with the Town Clerk in the shows the name David P. McCaffrey as the Treasurer. The address on the form is the same as that listed for the candidate. Moreover, the signatures of the candidate and treasurer appear to match.
5. Accordingly, the Commission concludes that David P. McCaffrey was serving as the treasurer of his own candidate committee.
6. The Commission considers a candidate serving as the treasurer of his own candidate committee a serious matter. *See e.g., In the Matter of a Complaint by Leo Canty, Windsor, File 2012-007; In the Matter of Audit Report for Keeley 2011, File 2012-069.*
7. Nevertheless, evidence in this matter shows that the Respondent neither spent nor raised any funds in support of his campaign. As such, the Respondent was not required to form a candidate committee, but could have filed an exemption to forming a candidate committee pursuant to General Statutes § 9-604 (b).
8. Accordingly, while the Respondent was in violation of General Statutes § 9-606, the facts in this case support a smaller civil penalty than the Commission would otherwise assess.

COUNT II

9. The Referring Official alleges that the Respondent failed to file a financial disclosure statement which was due on July 10, 2014.

10. Pursuant to §§ 9-603, 9-604 and 9-608, candidates and treasurers must file registrations and campaign finance disclosure statements on or by certain. Specifically, General Statutes § 9-608 (a) provides, in relevant part, as follows:

Each campaign treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603 (A) on the tenth calendar day in the months of January, April, July and October[.]

(Emphasis added).

11. General Statutes § 9-623 (b) further provides as follows:

(1) If any campaign treasurer fails to file any statement required by section 9-608, or if any candidate fails to file either (A) a statement for the formation of a candidate committee as required by section 9-604, or (B) a certification pursuant to section 9-603 that the candidate is exempt from forming a candidate committee as required by section 9-604, within the time required, the campaign treasurer or candidate, as the case maybe, shall pay a late filing fee of one hundred dollars. . . . (3) In the case of any such statement or certification that is required to be filed with a town clerk, the town clerk shall forthwith after the filing deadline is, or should be, known to have passed, notify by certified mail, return receipt requested, the person required to file that, if such statement or certification is not filed not later than seven days after the town clerk mails such notice, the town clerk shall notify the State Elections Enforcement Commission that the person is in violation of section 9-603, 9-604, or 9-608. (4) The penalty for any violation of section 9-603, 9-604 or 9-608 shall be a fine of not less than two hundred dollars or more than two thousand dollars or imprisonment for not more than one year, or both.

(Emphasis added).

12. While he was legally unqualified to serve as treasurer, it is also clear that the Respondent was serving as the *de facto* treasurer of the instant Committee during the period covered by the financial disclosure statement due by July 10, 2014.
13. The Commission has previously held that *de facto* treasurers may be held liable as if they were the treasurer of the committee. *See In the Matter of a Complaint by Ethan Brook, Bridgeport*, File 2014-002.
14. No financial disclosure statement was filed with the Somers Town Clerk for the period covered by the financial disclosure statement due by July 10, 2014.

15. Moreover, General Statutes § 9-623 (b) provides that, should a municipal candidate committee fail to file a required financial disclosure statement:

the town clerk shall forthwith after the filing deadline is, or should be, known to have passed, notify by certified mail, return receipt requested, the person required to file that, if such statement or certification is not filed not later than seven days after the town clerk mails such notice, the town clerk shall notify the State Elections Enforcement Commission that the person is in violation of section 9-603, 9-604, or 9-608.

16. Evidence provided by the Town Clerk shows that she did send the required notice, via certified mail, to the Respondent, advising him that he was a late filer and that if he did not file the outstanding report by August 29, 2014, the matter would be referred to the State Elections Enforcement Commission for enforcement.
17. Despite such notice, Respondent has not filed a financial disclosure statement for the period in question.
18. Accordingly, the Commission concludes that David P. McCaffrey was serving as *the de facto* treasurer of the instant Committee during the period covered by the financial disclosure statement due by July 10, 2014, but failed to file a financial disclosure statement in violation of General Statutes § 9-608.
19. Nevertheless, evidence in this matter shows that the Respondent neither spent nor raised any funds in support of his campaign. As such, the Respondent was not required to form a candidate committee, but could have filed an exemption to forming a candidate committee pursuant to General Statutes § 9-604 (b). If he so filed, he would not have been required to file financial disclosure statements.
20. Accordingly, while the Respondent was in violation of General Statutes § 9-608, the facts in this case support a smaller civil penalty than the Commission would otherwise assess.

COUNT III

21. The Referring Official alleges that the Respondent failed to file a financial disclosure statement which was due on August 5, 2014.
22. Pursuant to §§ 9-603, 9-604 and 9-608, candidates and treasurers must file registrations and campaign finance disclosure statements on or by certain. Specifically, General Statutes § 9-608 (a) provides, in relevant part, as follows:

Each campaign treasurer of a committee, other than a state central committee, shall file a statement, sworn under penalty of false statement with the proper authority in accordance with the provisions of section 9-603 . . . (C) if the committee has made or received a contribution or expenditure in connection with any other election, a primary or a referendum, on the seventh day preceding the election, primary or referendum[.]

(Emphasis added).

23. General Statutes § 9-623 (b) further provides as follows:

(1) If any campaign treasurer fails to file any statement required by section 9-608, or if any candidate fails to file either (A) a statement for the formation of a candidate committee as required by section 9-604, or (B) a certification pursuant to section 9-603 that the candidate is exempt from forming a candidate committee as required by section 9-604, within the time required, the campaign treasurer or candidate, as the case maybe, shall pay a late filing fee of one hundred dollars. . . . (3) In the case of any such statement or certification that is required to be filed with a town clerk, the town clerk shall forthwith after the filing deadline is, or should be, known to have passed, notify by certified mail, return receipt requested, the person required to file that, if such statement or certification is not filed not later than seven days after the town clerk mails such notice, the town clerk shall notify the State Elections Enforcement Commission that the person is in violation of section 9-603, 9-604, or 9-608. (4) The penalty for any violation of section 9-603, 9-604 or 9-608 shall be a fine of not less than two hundred dollars or more than two thousand dollars or imprisonment for not more than one year, or both.

(Emphasis added).

24. As noted in Count II, the Respondent may be held liable as the *de facto* treasurer for failure to file a financial disclosure statement.

25. Moreover, General Statutes § 9-623 (b) provides that, should a municipal candidate committee fail to file a required financial disclosure statement:

the town clerk shall forthwith after the filing deadline is, or should be, known to have passed, notify by certified mail, return receipt requested, the person required to file that, if such statement or certification is not filed not later than seven days after the town clerk mails such notice, the town clerk shall notify the State Elections Enforcement Commission that the person is in violation of section 9-603, 9-604, or 9-608.

26. Evidence provided by the Town Clerk shows that she did send the required notice, via certified mail, to the Respondent, advising him that he was a late filer and that if he did not

file the outstanding report by August 29, 2014, the matter would be referred to the State Elections Enforcement Commission for enforcement.

27. As detailed in General Statutes § 9-608 (a) (1) (C) treasurer of a candidate committee is only required to file a financial disclosure statement seven days prior to a primary “if the committee has made or received a contribution or expenditure” related to that or any other election primary or referendum.
28. In this instance, despite the diligent efforts of the Referring Official and an investigation by Commission staff that reviewed all of the campaign activity of the Respondent, there is no evidence to substantiate a claim that Respondent received any contributions or made any expenditures during the period covered by the financial disclosure statement due seven days preceding the primary. In fact, evidence supports a finding that no funds were raised or spend in that period of time by the campaign.
29. Accordingly, this Count should be dismissed.

TERMS OF GENERAL APPLICATION

30. The 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.
31. 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 contest the validity of the Order entered into pursuant to this Agreement.
32. Upon the Respondent’s agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her concerning this matter.
33. 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 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 shall henceforth strictly comply with the requirements of General Statutes §§ 9-606 and 9-608.

IT IS FURTHER ORDERED THAT the Respondent shall pay a one hundred dollar penalty (\$100) for the violation of General Statutes § 9-606.

IT IS FURTHER ORDERED THAT the Respondent shall pay a one hundred dollar penalty (\$100) for the violation of General Statutes § 9-608.

IT IS FURTHER ORDERED THAT Count III is dismissed.

The Respondent

For the State of Connecticut

By:

By:


David P. McCaffrey
249 Ninth Dist. Rd.
Somers, CT 06071


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: 3/24/2017

Dated: 3/27/17

Adopted this 19 day of April, 2017 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission


7 Salvatore A. Bramante Vice

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STATE ELECTIONS

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ENFORCEMENT COMMISSION