

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Kathleen Schurman, et al., Bethany

File No. 2015-027

**FINDINGS AND CONCLUSIONS**

The Complainant alleged that the Bethany Republican Town Committee produced and disseminated a multiple page electioneering communication during the 2014 general election and failed to include a proper attribution.<sup>1</sup>

**ALLEGATIONS**

1. The Complainant alleges that she and others in the Town of Bethany received an electioneering communication that was designed to approximate the look and feel of a local newspaper calling itself the “Bethany Beacon,” but that the communication failed to properly follow the prescriptions for “paid for” attributions in General Statutes § 9-621.

**LAW**

2. General Statutes § 9-621 reads, in pertinent part:
  - (a) No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate’s agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication,

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<sup>1</sup> 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.

or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or promotes or opposes any political party or solicits funds to benefit any political party or committee *unless such communication bears upon its face as a disclaimer* (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its treasurer; (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, and (2) the words "approved by" and the following: (A) In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate. . . . (Emphasis added.)

3. Commission staff reviewed the communication at issue in the Complainant's allegations. The communication does appear in its look and feel to be a local newspaper, including the manner in which it is printed and folded together. Upon close inspection, its content clearly promotes candidates of the Republican Party. The communication is printed and bound together like a single-fold style newspaper, with each page (and side) of the document clearly relating in both look and feel and content to each other page (and side) in the communication. On the bottom of the back side of the "Bethany Beacon" communication, along with electioneering content, it contains the following: "Paid for by the Bethany Republican Town Committee, Janet Finneran, Deputy Treasurer" in approximately 10-point font.

#### **ANALYSIS AND CONCLUSION**

4. As an initial matter, at least the back side of the communication contains an attribution that meets the requirements of General Statutes § 9-621 insofar as it includes the name of the party committee who paid for the communication.
5. The only remaining question is whether the attribution on the back side of the communication suffices as an attribution for the entire communication.

6. As an initial matter, the Commission has generally supported the idea that when an electioneering communication has more than one page (or side), an attribution on one page (or side) of a multiple-page (or two-sided) communication, will suffice if certain criteria are met. In *In the Matter of James P. McGuire*, File No. 97-252 the Commission considered two elements in determining whether multiple pages/pieces constituted a single communication or multiple individual communications. The first is whether the pieces were affixed to each other. The second was whether the pieces referenced each other and were delivered in the same container. In *McGuire*, two pieces were sent in the same envelope, unattached, but one piece referenced the other. The pieces were deemed to constitute a single communication for purposes of the attribution requirement.<sup>2</sup>
7. However, the requirement that the attribution be “upon its face” still controls and the Commission has also found that the attribution cannot be contained within the inner pages of a multi-page communication. *In the Matter of a Complaint by Michael Brown, Milford*, File No. 2009-140 involved a mock-newspaper electioneering communication similar to the one here. The attributions in *Brown* were printed on the inside of page 2 of the 8-page newspaper communication. The Commission held as follows:

The Commission has consistently held that an attribution pursuant to General Statutes § 9-621 (a), should be **on the face** of the communication, as described by the Commission in paragraph 6 above. The Commission finds that in this instance, the attribution was on the inside of the communication on the second page. The Commission concludes therefore that the attribution on the inside of the Communication is not on “the face” of that communication, and therefore does not satisfy the requirements of § 9-621 (a). *Brown* at ¶ 8 (Emphasis in original)

8. However here, unlike in *Brown*, the attribution was printed on the back *outer* page of the multi-page newspaper-like communication. Under these facts, the question narrows to whether the back side of a newspaper-style communication can be considered to be the “face” of the communication for the purposes of General Statutes § 9-621 such that the attribution could have been printed on either the front or the back.
9. The question of what constitutes the “face” of an attribution is one of first impression. “When construing a statute, [the] fundamental objective is to ascertain and give effect to the

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<sup>2</sup> See also, *In the Matter of a Complaint by Janet C. Robertson, et al, Hampton*, File No. 2007-376 and *In the Matter of a Complaint by Kathleen Prudden and Elizabeth A. Rhoades, Stafford Springs*, File No. 2007-405 (communications from multiple committees that were distributed together could not share a single attribution, as they were neither affixed together nor did they reference each other in a way that made it clear to the reader that they were part of the same multiple-page communication).

apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . .” *State v. Tabone*, 292 Conn. 417, 431-32 (2009).

10. Black’s Law Dictionary defines “face” as follows:

**face** n. (13c) 1. The surface of anything, *esp. the front, upper, or outer part* <the face of a clock>. 2. By extension, the apparent or explicit part of a writing or record <the fraud must appear on the face of the record>. 3. The inscribed side of a document, instrument, or judgment <although the contract appeared valid on its face, the buyer did not have the legal capacity to enter into it>. Cf. FOUR (Emphasis added.)

Black's Law Dictionary (10th ed. 2014)

11. Considering the above, as an initial matter, as while any three-dimensional object can have only one side that is considered to be the “front” or “back,” it can contain multiple sides or “faces.” If the legislature meant for an attribution to only be contained on the “front” side of a communication and only the front, it would have written the statute accordingly. By its use of the word “face,” it appears that, absent any clear legislative history, the legislature intended to leave the question up to a factual examination of each individual communication on a case-by-case basis. The Commission recognized this by declining to find that “face” always means “front” in its analysis of *In the Matter of a Complaint by Michael Brown, Milford*, File No. 2009-140, *supra*.
12. Indeed, a strict standard of equating “face” with “front” would prove administratively difficult to implement for the Commission and unnecessary in cases where there were 2-sided electioneering communications for which either side of the communication could reasonably be interpreted as the “front”. In those cases, the attribution is clearly identified insofar as the reasonable person would be equally likely to look at one side versus the other.
13. As such, where a 2-sided communication contains content on both sides and the reader can access the content by merely turning the communication over, either side can be reasonably construed as a “face” of the communication. As such, an attribution on either side of the communication will suffice to meet the “upon its face” requirement.

14. After all, the purpose of § 9-621 is to clearly identify to the reasonable observer the source of funding for the communication, not to strictly place a string of words in a particular place for no reason. But, an important part of doing this is by making the attribution *easy* to find for the reasonable person reading the communication. This much was established by the Commission in *Brown* when we found that it was unreasonable for the reader to be expected to find an attribution tucked in the middle of the communication.
15. Turning to the electioneering communication in question then, here we have a communication that contains *multiple* pages and that is styled to appear like a multi-page folded newspaper periodical. The attribution is contained in 10-point font on the back of the last page of the communication, under a fold.
16. Considering the aforesaid, the Commission first finds that since the communication is in the form of a multi-page newspaper periodical, the reasonable person would most likely look to the cover page first. Secondly the Commission finds that the reasonable person is not only far less likely look to the back page first, but is likely to not even read that far.
17. Finally, this particular communication appears to be clearly designed to draw the observer, at least initially, into believing that it is a newspaper, ostensibly coming from an objective source, and getting people to read the content of the communication. And, while a person reading this communication closely likely would be able to discern that this was a partisan publication, the communication treads very closely to the line between clever marketing and false advertising.<sup>3</sup>
18. With all of the above in mind, the Commission concludes that the cover or front page of this multi-page communication is the “face,” not the back page. Accordingly the Respondent Bethany Republican Party should have placed the attribution on the cover page of the communication instead of placing it on the back.
19. Pursuant to the Commission’s regular practice and based on the Commission’s finding that: the Respondent here did at least include an attribution on some part of the communication, but failed to place it on the “face”; the person issuing the communications was sufficiently clear to the reasonable observer upon close inspection; and, most importantly, the absence of a prior history of violations, and noting the absence of any evidence of any intent to deceive or mislead the public, the Commission declines to investigate the matter further. See *Compliant by Michael Gongler and Victor L. Harpley, Cromwell*, File No. 2009-126; *Complaint of John D. Norris, Southbury*, File No. 2011-108, *Complaint of Arthur*

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<sup>3</sup> If the publication had no attribution at all, the Commission might find that it was closer to the latter than the former.

*Scialabba, Norwalk*, File No. 2011-125, *Complaint of Robert W. Prentice, Wallingford*, File No 2011-134; *Complaint of Arthur Scialabba*, Norwalk, File No. 2012-011. See *Complaint of Jonathan Searles, East Hartford*, File No. 2011-110 citing to the negligible amount of the expenditures for the attribution at issue for a basis for a similar outcome.

20. However, the Commission expects that the Respondent will strictly adhere to the Commission's findings above in the future or face the prospect of potential civil penalties for this type of conduct.

ORDER

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

No further action.

Adopted this 10th day of February, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson  
By Order of the Commission