

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Martin Looney
New Haven

File No. 2016-082

FINDINGS AND CONCLUSIONS

Complainant Martin Looney of New Haven filed this complaint on October 7, 2016, per Connecticut General Statutes § 9-7b, alleging that the Connecticut Business & Industry Association (CBIA) had made impermissibly coordinated expenditures with several candidates it was supporting in the 2016 election for the Connecticut General Assembly. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. Complainant filed this complaint alleging that the CBIA had benefitted candidates that it was supporting in the 2016 election cycle by excluding Democratic Party candidates that the CBIA opposed from a member-business-tour that the association had offered to legislative candidates.
2. In essence, the complainant, who serves as the Democratic Party leader in the Connecticut Senate, argued that by excluding Democratic candidates from participating in the CBIA tours, the CBIA was benefiting their opponents who could imply that given the Democrats' absence from the business tours, the Democrats do not care about the concerns of the business community.
3. According to the complainant's statement as well as documents accompanying the sworn complaint, the first e-mail was sent to all candidates running for a Connecticut senate seat on or about September 30, 2016 at 2:15 p.m. The e-mail invited candidates to tour CBIA-member companies and their employees in their district to hear about business leaders' concerns. The tours, according to the e-mail from Bonnie Stewart, vice-president and general counsel of the CBIA, would be coordinated by the association.
4. On or about September 30, 2016 at 4:23 p.m., some candidates received a follow-up e-mail withdrawing the offer it made to them to participate in the CBIA-sponsored tours. The message, also from Stewart, stated:

Due to a technical error, this afternoon you may have inadvertently received an email inviting you to participate in visits to CBIA member companies.

Unfortunately, State Election Enforcement Commission regulations prohibit CBIA from working with your campaign because of our independent expenditure activities.

We apologize for the error and we look forward to working with you after November 8.¹

According to the complainant, several Democratic Party candidates who had been targeted by the CBIA in earlier independent expenditures were uninvited to the tours. Among those Democratic candidates for the state senate from whom the tour invitation was rescinded were incumbents Dante Bartolomeo, Joe Crisco, Mae Flexer, and candidate Tim Bowles.

5. The complainant averred that the exclusion of the Democrats from the CBIA tours was intended to benefit Republican candidates, and thus was an impermissible coordinated expenditure on behalf of the candidates supported by the CBIA.

By revoking the invitations to the Democratic Senators and candidate, CBIA is clearly benefitting their opponents, whom they have previously supported with independent expenditures. I can foresee political communications and even news stories touting the CBIA backed candidates being involved with local businesses and noting the absence of the sitting Democratic Senators. Does not this also deprive the business from meeting with its elected senator? This is a clear violation of campaign finance laws. CBIA is unquestionably coordinating with the campaigns on which it has spent money. How does CBIA conclude that offering visits to its members to sitting senators and a candidate it opposes somehow violates SEEC regulations, or statutes for that matter?

6. Before the CBIA sent the September 30, 2016 e-mail about the business tours, it had spent a total of \$241,250 on independent expenditures related to Connecticut's legislative elections.² In a disclosure report filed shortly before its member-tour e-mail, CBIA reported spending \$7,500 on polling, which it allocated to four senate candidates in the amount of \$1,764.71 each and to a single state representative candidate in the amount of \$441.16.³ The candidates for senate for whom the CBIA had made independent expenditures as it reported on its September 14, 2016 filing were: Len

¹ Affidavit of Complaint, Martin M. Looney, New Haven – Complainant, October 6, 2016 (laying out allegations against CBIA in sworn statement as well as via attached documents).

² See SEEC Form 26 – Short Form: Independent Expenditure Statement for Persons, Connecticut Business & Industry Association, Inc. (Sept. 13, 2016) (Rec'd Sept. 14, 2016) (reporting expenditures made between September 7 and September 13, 2016, as well as aggregate expenditures during 2016 election cycle of \$241,250).

³ *Id.*

Suzio – running against Bartolomeo; George Logan – running against Crisco; John French – running against Flexer; and Heather Somers – running against Bowles.

7. CBIA spent a total of \$553,342 in independent expenditures during 2016.
8. General Statutes § 9-601c defines an independent expenditure as an expenditure that is made “without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee.” Persons, such as an association like CBIA,⁴ are among those entities that can make independent expenditures.
9. General Statutes § 9-601c excludes from the Commission’s evaluation of an independent expenditure evidence that a candidate attended an event sponsored by an entity unless that event occurred within 45 days of an election. If a candidate attended an event within 45 days of an election, the candidate’s attendance at such an event could be used as evidence by the Commission that the candidate had coordinated or consulted with a spender on an expenditure to promote the candidate.
10. The CBIA sent the e-mail inviting candidates to tour member facilities on September 30, 2016, which was only 39 days before the election on November 8, 2016.
11. Candidates’ attendance at an event hosted by the CBIA after September 30, 2016 could have been used as evidence to show that they were coordinating or consulting with the CBIA about expenditures.
12. According to the CBIA, the e-mail was unintentionally sent to all candidates for legislative and statewide races. The e-mail was actually intended for only those candidates in races that the CBIA had not identified as ones in which it was making independent expenditures. The CBIA stated that the e-mail rescinding the company-tour invitation was sent to Democratic and Republican candidates in the districts that the CBIA was targeting with its independent expenditures.
13. Other than the e-mailed invitations and the e-mail rescinding that invitation, the commission’s investigation revealed no communications between CBIA and the candidates that it supported in the 2014 election cycle before the November 8 election.
14. In a response to this complaint, CBIA’s president, Brian Flaherty, wrote that the CBIA had “made a conscious and concerted effort” to comply with rules and regulations against coordinating expenditures with candidates that it supported. The effort included

⁴ See General Statutes § 9-601 (10) (including “association” within definition of “person” for purposes Chapter 155 of Connecticut’s campaign finance statutes).

speaking with SEEC compliance staff on several occasions to discuss how they could make independent expenditures without violating Connecticut's statutes and regulations.

15. The Commission concludes that the e-mail communication from CBIA to all the candidates running for legislative office in the 2016 election cycle, including those individual candidates CBIA was supporting with independent expenditures, did not destroy the independence of those expenditures. The investigation revealed no further communications between the CBIA and those candidates that would have compromised the CBIA's status as an independent spender on those election contests.
16. The complaint's other allegation implied that by excluding certain candidates from its business tours, the CBIA had benefitted certain candidates whom the association supported by excluding others whom it did not. Specifically, the complainant alleged that candidates who were not able to participate in the CBIA events would be perceived by electors as being anti-business because of their absence from the CBIA events.
17. This expenditure, where a candidate is disadvantaged by not being given opportunities to appear at events to which other candidates have been invited, could result in an in-kind contribution to a candidate committee that received the benefit of a "campaign event" such as a business tour sponsored and promoted by the CBIA.⁵
18. The facts in this case, however, do not show that the Democratic candidates who were uninvited to participate in potential CBIA events were disadvantaged as compared to their opponents.
19. Upon learning that the communication had gone to candidates in districts where the CBIA was making independent expenditures, the CBIA sent a message to candidates running in those elections in which the CBIA was taking an active role and rescinded the invitation. That rescission went to all candidates, both those receiving support from CBIA independent expenditures and those who were not.

⁵ See Findings & Conclusions – In the Matter of a Complaint by Nancy J. Dinardo, Hartford, SEEC File No. 2012-152 (State Elections Enforcement Comm'n, April 17, 2013) (adopting indicia first outlined in SEEC Advisory Opinion 2010-07 to determine whether event qualified as "campaign event" promoting candidate). The Commission has relied upon a rubric to determine if an event were actually a "campaign event" promoting candidates. The indicia considered to evaluate these events includes: (1) Whether the invitations for the event tout the candidate's presence and/or the chance to hear [the candidate's] message; (2) Whether the media was alerted as to the candidate's presence at the event; (3) Whether the candidate notified . . . supporters that [the candidate] would be present at the event; (4) Whether the candidate is distributing . . . campaign literature at the event or in connection with the event; (5) Whether the candidate is fundraising at the event; (6) The extent to which the event targets the voters or in-district donors of the candidate; and, (7) The extent to which the candidate is speaking at the event regarding [the candidate's] campaign. *Id.*

20. Although the theory advanced by complainant could result in an in-kind contribution to a candidate who was featured at a campaign event from which that candidate's opponent was excluded, the facts in this case do not support a finding that the CBIA made a contribution to a candidate here by hosting such an event.

ORDER

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

That the Commission will dismiss this matter.

Adopted this 19th day of September, 2018 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Salvatore A. Bramante". The signature is written in a cursive style with a large initial "S" and a long horizontal stroke at the end.

Salvatore A. Bramante, Co-Chairperson
By Order of the Commission