

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Robert Kalechman, Simsbury

File No. 2016-089B

AGREEMENT CONTAINING A CONSENT ORDER

The parties, the Connecticut Business & Industry Association (the “CBIA” or “Respondent”) and the undersigned authorized representative of the State Elections Enforcement Commission (the “Commission”), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

PARTIES

1. At all times relevant hereto, the CBIA was a trade association that received income from member organization dues, investment income, programs and services, and earnings from a wholly owned subsidiary.

ALLEGATIONS

2. The Complainant alleges that the CBIA failed to include proper attributions for an independent expenditure in the form of an automated telephone call or “robo call” in support of state representative candidate John Hampton.¹

LAW

3. General Statutes § 9-601 (29) defines covered transfer to be:
 - (A) “Covered transfer” means any donation, transfer or payment of funds by a person to another person if the person receiving the donation, transfer or payment makes independent expenditures or transfers funds to another person who makes independent expenditures.
 - (B) The term “covered transfer” does not include:
 - (i) A donation, transfer or payment made by a person in the ordinary course of any trade or business;

¹ The Complaint included additional allegations that shall be addressed in a separate document under File Number 2016-089A.

- (ii) A donation, transfer or payment made by a person, if the person making the donation, transfer or payment prohibited the use of such donation, transfer or payment for an independent expenditure or a covered transfer and the recipient of the donation, transfer or payment agreed to follow the prohibition and deposited the donation, transfer or payment in an account which is segregated from any account used to make independent expenditures or covered transfers;
- (iii) Dues, fees or assessments that are transferred between affiliated entities and paid by individuals on a regular, periodic basis in accordance with a per-individual calculation that is made on a regular basis;
- (iv) For purposes of this subdivision, “affiliated” means (I) the governing instrument of the entity requires it to be bound by decisions of the other entity; (II) the governing board of the entity includes persons who are specifically designated representatives of the other entity or who are members of the governing board, officers, or paid executive staff members of the other entity, or whose service on the governing board is contingent upon the approval of the other entity; or (III) the entity is chartered by the other entity. “Affiliated” includes entities that are an affiliate of the other entity or where both of the entities are an affiliate of the same entity.
4. General Statutes § 9-601 (9) further provides that, for the purposes of chapters 155 and 157, “Individual’ means a human being, a sole proprietorship, or a professional service corporation organized under chapter 594a and owned by a single human being.”
 5. On the other hand, General Statutes § 9-601 (10) defines person to mean “an individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company or any other legal entity of any kind but does not mean the state or any political or administrative subdivision of the state.”
 6. General Statutes § 9-621 (h) provides, in pertinent part:
 - (1) No person shall make or incur an independent expenditure for any written, typed or other printed communication, including on a billboard, or any web-based, written communication, unless such communication bears upon its face, as a disclaimer, the words “Paid for by” and the name of such person and the following statement: “This message was made independent of any candidate or political party.”. In the case of a person making or incurring such an independent expenditure during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall also bear upon its face the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission’s Internet web site.

....

(4) In addition to the requirements of subdivision (1) of this subsection, no person shall make or incur an independent expenditure for telephone calls, unless the narrative of the telephone call identifies the person making the expenditure and during the ninety-day period immediately prior to the primary or election for which the independent expenditure is made, such communication shall state the names of the five persons who made the five largest aggregate covered transfers to the person making such communication during the twelve-month period immediately prior to such primary or election, as applicable. The communication shall also state that additional information about the person making such communication may be found on the State Elections Enforcement Commission's Internet web site.

7. General Statutes § 9-621 (l) provides:

Notwithstanding the provisions of this section, no person making an independent expenditure for a communication shall be required to list as part of any disclaimer pursuant to this section any person whose covered transfers to the maker of the communication are not in an aggregate amount of five thousand dollars or more during the twelve-month period immediately prior to the primary or election, as applicable, for which such independent expenditure is made.

DISCUSSION

8. The investigation into this matter confirmed that in October of 2016 the CBIA made an independent expenditure to support state representative candidate John Hampton in the form of a robo call.²
9. The script of the call was as follows:

Hi, my name is Bill and I am working with the Connecticut Business & Industry Association to remind you that local elections really matter this year.

Connecticut is a great place to live, but it's getting tougher for long-time residents to keep up with rising taxes and the cost of living. Higher taxes make it harder to live and work here, and it bothers me that lawmakers who are supposed to represent us at the State Capitol haven't fixed our problems. Instead, they're making matters worse by raising taxes and spending our money wastefully.

I don't plan on sending anyone back to Hartford who doesn't understand how important it is to make Connecticut affordable.

² As detailed in File Number 2016-089A, there was no evidence to support an allegation that there was any coordination between the CBIA and Representative Hampton's campaign. Accordingly, this expenditure is properly categorized as an independent expenditure.

That's why I support sending John Hampton back to Hartford to continue fighting for us on Tuesday, November 8th, and I hope you'll join me and do the same.

Thanks for your time.

Call paid for by CBIA, 860.244.1900

10. Commission records show that, prior to authorizing the calls, the CBIA contacted Commission staff multiple times, including both in-person meetings and conference calls, to ensure they were in compliance with Connecticut's campaign finance laws when making independent expenditures.
11. With regard to the substance of the call, while the CBIA clearly identified who was responsible for the call, as required by General Statutes § 9-621 (h) (4), the robo call failed to "state that additional information about the person making such communication may be found on the State Elections Enforcement Commission's Internet web site" which is also required by the same statute.
12. Moreover, the CBIA failed to include the "names of the five persons who made the five largest covered transfers" to the CBIA as required by that General Statutes § 9-621 (h) (4).
13. The investigation reveals that, in the course of the communications between the CBIA and Commission staff there was likely a misunderstanding of whether the dues paid by CBIA members would be considered a "covered transfer."
14. General Statutes § 9-601 (29) exempts from the definition of covered transfer "Dues, fees or assessments that are transferred between affiliated entities and paid by individuals on a regular, periodic basis in accordance with a per-individual calculation that is made on a regular basis."
15. After conversations with Commission staff, it appears that the CBIA was under a good faith, but mistaken impression, that the dues paid by the CBIA member organizations would not qualify as a covered transfer. If that were the case, the CBIA would have no covered transfers to report.
16. However, dues payments are only exempted from the definition of covered transfer if they are "transferred between entities and paid by individuals on a regular periodic basis in accordance with a per-individual calculation that is made on a regular basis." With regard to chapters 155 and 157, "individual" is defined to mean "a human being, a sole proprietorship, or a professional service corporation organized under chapter 594a and owned by a single human being." The CBIA dues are paid by corporate entities.

Accordingly, the exemption from the definition of covered transfer for dues payments would not apply to the dues paid by corporate entities to the CBIA. Moreover, at least some corporate entities pay dues to the CBIA in excess of five thousand dollars, thus exceeding the threshold for disclosure detailed in General Statutes § 9-621 (l).

17. Wherefore, as the CBIA received covered transfers in excess of five thousand dollars from at least one entity, it was required to list the names of the five entities making the five largest covered transfers to the CBIA in the call it made.
18. While the failure to include necessary information in an attribution is a matter important to the Commission, when the identity of the person making the expenditure is clear and there is no evidence of bad faith, the Commission has a history of exercising its discretion not to pursue civil penalties. *See Complaint 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 Scialabba, Norwalk*, File 2011-125; *Complaint of Robert W Prentice, Wallingford*, File No 2011 -134; *Complaint of Arthur Scialabba, Norwalk*, File 2012-011; *Complaints of Pete Bass, New Milford*, File 2012-158 & 162; *Complaint of Michael J. Flint, Lakeville*, File No. 2013-135.
19. In this case, not only was the identity of the person making the expenditure clear, but the CBIA actually sought advice from the Commission on this expenditure, just not on the form of the attribution required. Moreover, the failure to list the persons that made the top five covered transfers in the past year appears to be the result of a miscommunication between the CBIA and Commission staff.
20. As this is the first such violation by the CBIA, and in light of the CBIA's good faith efforts to achieve compliance with the applicable laws, the Commission elects not to pursue a civil penalty in this case.

TERMS OF GENERAL APPLICATION

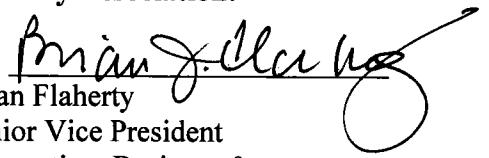
21. The Respondent admits to all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.
22. The Respondent waives:
 - a. Any further procedural 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 to contest the validity of the Order entered into pursuant to this Agreement.
- 23. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
- 24. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

ORDER

It is hereby ordered that the Respondents shall henceforth strictly adhere to the requirements of General Statutes § 9-621.

**For the Office of the
Connecticut Business &
Industry Association:**

By: 
Brian Flaherty
Senior Vice President
Connecticut Business &
Industry Association
350 Church Street,
Hartford, CT 06103

Dated: 5/8/2017

For the State of Connecticut:

By: 
Michael J. Brandi
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106

Dated: 5/10/17

Adopted this 17th day of MAY, 2017 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission
Salvatore A. Bramante, Vice-Chair

RECEIVED
STATE ELECTIONS

MAY 09 2017

ENFORCEMENT COMMISSION