

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by James Millington, Fairfield

File No. 2017-024

FINDINGS AND CONCLUSIONS

The Complainant, James Millington, brought this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Respondent, 338 Commerce Drive, LLC made an impermissible in kind contribution to the Fairfield Democratic Town Committee in violation of General Statutes § 9-613¹ As the facts do not support the allegations, the Commission has determined that it will take no further action concerning this matter. The following are the Commission's findings of fact and conclusions of law:

1. 338 Commerce Drive, LLC (the "Company") is a business entity that owns real property, including and office building, located at 338 Commerce Drive, Fairfield, CT (the "Building").
2. Prior to April of 2016, the Company had entered negotiations with a third party for the sale of the Building. The expected closing date for the sale of the building was January 1, 2017.
3. As part of the sale agreement, the Company agreed to execute no leases that would encumber the Building on or after January 1, 2017.
4. In April of 2016, the Fairfield Democratic Town Committee ("FDTC") approached Peter Penczer, the manager of the Company, to inquire about using space in the Building as a headquarters through the election in November of 2016.
5. In April of 2016, the Company agreed to allow the FDTC to use an area of the Building (the "Space") through the November election.
6. This use and occupancy agreement allowed the FDTC to make use of the Space through the end of 2017, subject to the extraordinary limitations detailed hereinafter.

¹ Any allegation not specifically addressed herein is hereby dismissed as such allegations, even if true, would not have amounted to violation of Connecticut's election laws.

7. The Space was approximately 4,500 square feet of mixed use space comprising both office and warehouse areas.
8. Three other entities were also allowed to use this same area during this period of time. One entity used it as extra storage, rendering most of the warehouse areas inaccessible for the other occupants of the Space. Another used it for conference room space.
9. All four entities had the ability, under their agreements to use the space at any time, and no entity, including the FDTC had the right to exclude another party from the premises.
10. The FDTC agreed that it would not alter the space in any way.
11. In exchange for the use of the space between April and November of 2016, the FDTC paid the Company \$2,450.00.
12. The other entities that had permission to use the space did so free of charge.
13. As of April 2016, due to the sale agreement for the Building, the Company was not able to obtain a long-term tenant for the Space.
14. General Statutes § 9-613(a) provides:

No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party, except as provided in subsection (b) of this section. No business entity shall establish more than one political committee. A political committee shall be deemed to have been established by a business entity if the initial disbursement or contribution to the committee is made under subsection (b) of this section or by an officer, director, owner, limited or general partner or holder of stock constituting five per cent or more of the total outstanding stock of any class of the business entity.

15. The Company is a business entity as defined by General Statutes § 9-601 (8).
16. The Commission has been clear that "Business entities are prohibited from making contributions that promote the success of any political party." *In the Matter of a Complaint by William Holden, Trumbull*, File No. 2007-369.

17. The Commission has further determined that a business is not permitted to allow a committee to use its office or event space without charging fair market value. *See In the Matter of a Complaint by Lisa Carver, New Britain*, File No. 2008-032.
18. However, when the business entity has a documented history of providing the space to entities other than political committees at less than they otherwise charge, and there are legitimate business reasons for this activity, the Commission will consider those facts as relevant. *See In the Matter of a Complaint by Aaron Charney, West Haven*, File No. 2015-094.
19. Moreover, the Commission has determined that the condition and limitations on use of a building are relevant to the determination of its fair market value. *In the Matter of a Complaint by Victor Harply, Cromwell*, File No. 2010-014.
20. In this case, a typical lease for the space used by the FDTC would have greatly exceeded the amount they were charged.
21. However, the agreement between the Company and the FDTC was in no way typical, and the restrictions on leasing the Space, due to the pending sale agreement, naturally depressed the value of the Space.
22. The Commission finds the following factors relevant in its evaluation of the use of this office space:
 - a. The FDTC was not entitled to exclusive use of the Space;
 - b. A large portion of the Space was inaccessible to the FDTC due to its use as storage by another occupant.
 - c. The FDTC was subject to exclusion from the Space at any time, with no recourse.
 - d. The Company received no compensation from the other entities that utilized the same space in the building;
 - e. The FDTC was not permitted to make any alterations to the space it was permitted to use in the Building;
 - f. The Company was unable to obtain a long term tenant for the space used by the FDTC due to a pending sale.

23. Thus, the question for the Commission is whether \$2450.00 is a fair price for the use of the Space subject to the extraordinary limitations placed on the FDTC by the Company. In consideration of the aforementioned factors, the Commission determines that the price paid by the FDTC was reasonable given that the fair market value was difficult to determine based upon the factors previously identified. However, the Commission emphasizes for the FDTC and all other committees that the facts in this case were highly unusual and the Commission will closely scrutinize any agreement that appears to be circumventing the business entity contribution prohibitions.
24. In order to avoid the risk of a violation for such conduct in the future, the Commission strongly urges all committees to obtain documentation supporting the fair market price, including prices for comparable properties, before entering into any property use agreement.

ORDER

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

That the Commission take no further action concerning this complaint.

Adopted this 18th day of April, 2018 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission