

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Sharlene A. McEvoy, Derby

File No. 2017-045A

AGREEMENT CONTAINING A CONSENT ORDER

The parties, The United Illuminating Company 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, United Illuminating Company ("UI"), was a utility company in the State of Connecticut.
2. At all times relevant hereto, Anita Dugatto was the incumbent Mayor of the Town of Derby and a candidate for reelection.
3. At all times relevant hereto, Cheryl Pereiras was the treasurer of the Anita Dugatto's 2017 candidate committee funding her reelection campaign.

FACTUAL BACKGROUND APPLICABLE TO ALL COUNTS

4. Weatherization Month is a UI program designed to "weatherize as many homes as possible between October 1 and October 31, 2017." October was chosen because it immediately precedes the months when weatherization is most necessary. Derby was chosen to participate in the pilot program of Weatherization Month because a previous mayor had signed a commitment with Connecticut Clean Energy Fund to be a "Clean Energy Community."
5. Respondent UI has promoted Weatherization Month in Derby since 2014.
6. In order to promote Weatherization Month, Respondent UI sent out print and social media advertising, participated in door to door canvassing, and held promotional events. The program also involved incentives to those who signed up for weatherization services including reimbursement for some services and LED lightbulb giveaways.

7. As part of the promotion of Weatherization Month, Respondent UI held an event on August 26, 2017 where residents of Derby were invited to trade in two incandescent lightbulbs for 4 free LED lightbulbs.
8. Anita Dugatto attended and participated in this event in her capacity as Mayor.
9. The lightbulb exchange event was an annual event and Anita Dugatto had participated in such event annually since 2014.
10. Prior to the lightbulb exchange event, Respondent UI sent advertising to Derby residents advertising Weatherization Month and the lightbulb exchange event. Two physical mailings noted that Respondent UI and Anita Dugatto were “partnering” to promote Weatherization Month.
11. The first mailing stated that, “In celebration of Weatherization Month, we are partnering with the City of Derby and Mayor Anita Dugatto to help you save energy, reduce monthly bills, and improve the comfort of your home.” The second mailing stated that “Mayor Anita Dugatto invites residents of Derby to take control of their energy future by trading in your old incandescent lightbulbs for a four (4) pack of 60 watt-equivalent ENERTY STAR® certified high-efficiency LED lightbulbs.” The remaining portions of the mailers were generally promotional of Weatherization Month programs and did not mention Respondent Dugatto.
12. Both mailings were transmitted in August of 2017. The total cost of the mailings, including postage, was \$3,041.
13. At the time of the communications, Mayor Dugatto was a candidate in a contested primary for the Democratic nomination for Mayor of Derby. The primary was held on September 12, 2017.

COUNT I

ALLEGATION

14. The Complainant alleged that UI sent two letters to Derby residents referencing Anita Dugatto, the mayor of Derby who was also a candidate for reelection. The Complainant alleged that the letters amounted to “covert support” for Anita Dugatto.

LAW

15. General Statutes § 9-613 (a) prohibits business entities from making contributions to or coordinated expenditures to benefit candidates for public office in Connecticut and provides that:

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

16. General Statutes § 9-601b (a) (2) provides that, among other things, an expenditure is defined to be:

Any communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by mail[.]

DISCUSSION

17. Respondent UI is a business entity as defined by General Statutes § 9-601 (8). Accordingly, Respondent UI is prohibited from making coordinated expenditures for the benefit of or contributions to candidates for public office in Connecticut. General Statutes § 9-613 (a).
18. Prior to August 2017, the Anita Dugatto had registered as a candidate with the Derby Town Clerk as a candidate for Mayor of Derby.
19. Respondent UI admits that it sent two mailings promoting the lightbulb exchange event. The two mailings in question clearly identify "Mayor Anita Dugatto" who, as noted above, was a candidate for the office of Mayor of Derby at the time of the mailings.
20. All parties admit that Respondent UI and Anita Dugatto generally coordinated with each other concerning Weatherization Month programs and advertising.

21. The mailings were sent out within five weeks of the Derby mayoral primary and within 90 days of the general election.
22. Accordingly, the Commission finds that Respondent UI violated General Statutes § 9-613 by making two expenditures that benefitted Anita Dugatto while she was a candidate for Mayor.
23. The making of expenditures by business entities for the benefit of a clearly identified candidate is a matter the Commission takes seriously. See *In the Matter of a Complaint by Ryan A. Mulachy and Frank A. Burgio, Waterbury*, File No. 2015-093.
24. However, while Respondent UI ran afoul of the requirements of General Statutes § 9-613 (a), all evidence suggests that Respondent UI was simply attempting to promote an energy conservation program. There is no evidence to suggest that UI was intentionally trying to make an expenditure for the benefit of Anita Dugatto.

COUNT II

ALLEGATION

25. The Complainant alleged that Respondent UI held an event with Anita Dugatto where it distributed free lightbulbs. The Complainant alleged that this event amounted to “covert support” for Anita Dugatto.

LAW

26. General Statutes § 9-613 (a) prohibits business entities from making contributions to or coordinated expenditures to benefit candidates for public office in Connecticut and provides that:

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

27. General Statutes § 9-601a (a) (4) defines “an expenditure that is not an independent expenditure” to be a contribution.

DISCUSSION

28. As detailed in Count I, Respondent UI is a business entity that is prohibited from making expenditures for the benefit of a candidate. If the event were an expenditure for the benefit of Respondent Dugatto’s candidacy, it would be a violation of General Statutes § 9-613.

29. The Commission stated in Advisory Opinion 2010-08 that:

30. The Commission will consider several indicia in determining whether an event is a campaign event for a candidate, including:

- 1) Whether the invitations for the event tout the candidate's presence and/or the chance to hear her message;
- 2) Whether the media was alerted as to the candidate's presence at the event;
- 3) Whether the candidate notified his supporters that he would be present at the event;
- 4) Whether the candidate is distributing her 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 his campaign.

31. In this case, the invitations to the event did mention Anita Dugatto’s presence, the news media was alerted to the event and Anita Dugatto’s presence at the event, and the event was targeted to Derby residents who would also be the voters for Mayor of Derby.

32. However, there was no evidence to show that Anita Dugatto independently notified her supporters that she would be at the event. There is also no allegation nor is there any evidence to suggest that Anita Dugatto handed out any campaign literature or fundraised at the event. Moreover, all parties deny that Anita Dugatto discussed her campaign at the event and there is no evidence to contradict that claim.

33. While the Commission has not previously addressed a case with this precise set of facts, the Commission has previously dismissed complaints concerning events attended by a candidate when the facts do not substantiate a finding that such event was held “for the purpose of influencing the nomination for election, or election of” the candidate. See *In the Matter of a Complaint by Roberta Clapper, Norwich*, File No. 2015-153; *In the Matter of a Complaint by Joseph Romano, Jr., Hartford*, File No. 2015-149.

34. While the facts in this case make it a close call, the Commission concludes that the Anita Dugato's attendance at UI's Weatherization Month lightbulb exchange event did not amount to a violation of General Statutes §§ 9-613.

35. Accordingly Count II should be dismissed.

TERMS OF GENERAL APPLICATION

36. 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.

37. 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.

38. 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.

39. 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

With regard to Count I:

It is hereby ordered that the Respondent shall henceforth strictly adhere to the requirements of General Statutes § 9-613.

The Respondent shall pay a civil penalty of two hundred dollars (\$200).

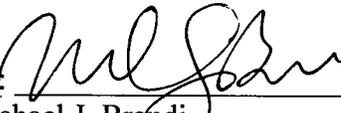
With regard to Count II:

Count II is hereby dismissed.

For the Respondent:

By: 
United Illuminating Company
By Leonard Rodriguez
General Counsel
180 marsh Hill Rd.
Orange, CT 06477

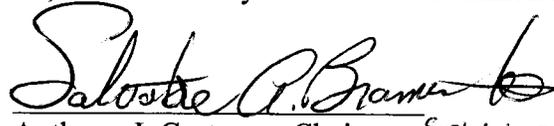
For the State of Connecticut:

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: 7 May 2018

Dated: 5/14/18

Adopted this 16th day of MAY, 2018 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman ^{Salvatore}
By Order of the Commission ^{Bramante}

RECEIVED
STATE ELECTIONS

MAY 14 2018

ENFORCEMENT COMMISSION