

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Robert Berriault
New Britain

File No. 2017-049

FINDINGS & CONCLUSIONS

Complainant Robert Berriault of New Britain filed this complaint on August 31, 2017, per Connecticut General Statutes § 9-7b, alleging that Erin Stewart, the incumbent mayor of the City of New Britain, had used city resources to promote her candidacy in the 2017 municipal election. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. Respondent Stewart served as mayor of the City of New Britain in 2017 and sought reelection to that office in the 2017 municipal election cycle.¹
2. According to the complaint, Stewart “used taxpayer funded resources for campaign purposes while failing to report any of the illegal in kind contributions by the City of New Britain to the Re-elect Erin Stewart campaign committee.”² The complaint leveled four specific allegations against Stewart:
 - Stewart posted links from the city’s website to videos associated with her re-election campaign;
 - Stewart posted videos to her Facebook account in which she “asked members of the public to vote for her, to donate to her campaign, to attend campaign events . . . while using city taxpayer funded videos . . .;”³
 - Stewart used her “city issued vehicle to travel to and from campaign events including speaking engagements and fundraisers and her campaign had failed to reimburse the city of New Britain for those expenses . . .;”⁴ and,
 - Stewart failed to report any of these in-kind contributions to her candidate committee in her campaign finance disclosure reports.⁵

¹ See <http://ctempublic.pctg.net/#/races> (Connecticut Sec’y of the State) (reflecting Stewart’s candidacy as Republican candidate for mayor).

² See Complaint of Robert Berriault, New Britain, File No. 2017-049 (State Elections Enforcement Comm’n., August 31, 2017).

³ *Id.*

⁴ *Id.*

⁵ See *id.*, (showing post to “Mayor’s Office Bristol CT” page at Facebook) (retrieved August 27, 2015).

3. Stewart responded to the allegations in a letter dated October 13, 2017.⁶
4. In her letter, Stewart addressed each of the complainant's allegations. Stewart wrote that although there was a link from the city's website to a program called "Around New Britain with Mayor Stewart," which was produced by Nutmeg TV and also made available online. Stewart stated that the programs were available through Stewart's personal YouTube channel in a dedicated folder. Also available through her channel were videos that were political, however, those were housed in a separate folder, she wrote.⁷
5. Similarly, Stewart also responded to the allegations regarding the Facebook videos that sought contributions and support for her candidacy. Stewart wrote that she used her personal phone to record brief videos, which she then uploaded to her personal Facebook account. According to her letter, those videos, which she said were recorded after business hours using her personal equipment, utilized no public resources, noting: "The content of my public page includes posts both in my capacity as mayor as well as my capacity as a candidate. It is simply my public page."⁸
6. Stewart also stated that her use of the city-issued vehicle for transportation to and from campaign-related events as well as other personal and professional activities. Stewart said that her job as mayor requires her to "mobile and accessible" to the residents of the city, thus necessitating her use of a public vehicle.⁹
7. Finally, Stewart denied the allegation that she had failed to report "in-kind contributions" noting that, in keeping with her other responses, there were no contributions to report.¹⁰
8. The allegations against Stewart focus on the potential use of public funds to promote her candidacy.
9. Two prohibitions on the use of public funds to promote the candidacy of an incumbent comprise General Statutes § 9-610 (d). The first, codified at § 9-610 (d) (1), prevents an incumbent from using public funds "to mail or print flyers or other promotional materials" that are intended to promote the candidacy of that incumbent within the three months preceding an election.¹¹ The second, found in the General Statutes at § 9-610 (d) (2), bans any individual from authorizing the use of public funds during the 12-months preceding an

⁶ See Letter from Erin Stewart to Gilberto Oyola (Oct. 13, 2017) (responding to allegations raised in complaint).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See General Statutes § 9-610 (d)(1).

election for any promotional campaign or advertisement that features the name, face or voice of a candidate for public office or promotes the nomination or election of a candidate.¹²

10. Neither of the prohibitions outlined above would apply in the situations identified by the complainant.
11. The complainant alleged that Stewart had used public resources to record and or link to videos that were promotional of her as a candidate. The first allegation focuses on the placement of links to Stewart's personal videos from the city website. The second points to videos posted on her Facebook page. According to the complaint, the links from the city website went directly to promotional videos. Stewart has denied this allegation stating that the link went to her public access videos made in her role as mayor.
12. The Commission was unable to find independent evidence to support the complainant's allegations. The links to the videos in question were removed from the city's website before the Commission's investigation began and attempts to recover those links via Internet resources proved fruitless. Without additional verification, the Commission has no evidence to prove the substance of the links and whether they linked directly to promotional material.¹³
13. Even with that evidence, however, the statutory provisions would likely not reach the conduct here. General Statutes § 9-610 (d) (1) prohibits the use of public funds to print or publish materials, neither of which were alleged here. The statute prohibits only paying to "mail or print flyers or other promotional material;" it does not prohibit links placed on the city's website or posts to Facebook pages that carry no cost for mailing or printing, even if they occur within that three-month window.
14. Second, General Statutes § 9-610 (d) (2) includes a prohibition on any public official using state resources for a promotional or advertising campaign that features the face, name, or likeness of a candidate within one year of an election.
15. In order to meet the standards of General Statutes § 9-610 (d) (2) the videos made by Stewart would have to be funded by state resources and be part of a broader promotional campaign and would also have to be made within a year of the election.
16. According to Stewart, the videos made by Nutmeg TV were created free of any charge to the City of New Britain. The videos were posted to Stewart's personal YouTube page, which, according to documents provided by Stewart, was last updated on December 6, 2016.

¹² See General Statutes § 9-610 (d)(2).

¹³ Stewart provided copies of her Facebook pages as well as screen shots showing her YouTube channel and Nutmeg TV videos.

17. As for the Facebook posts and videos, the second provision under General Statutes § 9-610 (d) would likely not apply. First, the statutory provision specifically prohibits the use of public funds for “promotional campaigns or advertisements” which would not include general posts to a Facebook timeline. But the videos posted to that timeline, which were recorded in the mayor’s office using some – albeit negligible – amounts of publicly-funded power and office space could potentially violate the prohibitions of (d)(2), if these videos were deemed to be part of a promotional or advertising campaign.¹⁴
18. Instead of being part of a promotional or advertising campaign, the videos were more akin to “virtual office hours,” where Stewart used Facebook Live to interact with residents about municipal issues, according to her statements.
19. This allegation shows a clear disconnect between the current state of communications and the statutory provisions that the Commission must utilize to regulate expenditures by incumbent candidates. In the past, production of a video or Internet campaign required the use of professionals with expensive equipment and facilities. Today, an individual can use her telephone to broadcast live from her office to anyone who wants to watch on Facebook. The statutes were not designed to reach this behavior.
20. The Commission has also used General Statutes §9-622 (5) for instances where public funds were used to defray costs that should have been borne by a candidate committee. General Statutes § 9-622 (5) defines an "illegal practice" as "defraying costs" from a candidate's candidate committee to another entity without notifying the candidate committee's treasurer of the defrayal.¹⁵
21. Likewise, as to the use of a public vehicle, General Statutes § 9-610 (d) does not reach this conduct. The Commission has long noted the absence of any broader prohibition on the use of public resources by incumbent candidates, including the use of public vehicles by elected officials.¹⁶ The General Assembly has not addressed this area of campaign finance law.
22. But the Commission has applied this provision to scenarios where the labor of public employees was used to reduce costs that should have been apportioned to and paid for by a

¹⁴ See General Statutes § 9-610 (d) (2).

¹⁵ See General Statutes § 9-622 (5) (prohibiting persons from defraying costs of campaign by paying for items without making those payments to committee treasurer).

¹⁶ See, e.g., Advisory Opinion 94-1 “Application of Chapter 150 of the General Statutes to the Use of a State Vehicle by an Elected Official who is also a Candidate during a Campaign,” (State Elections Enforcement Comm’n., Feb. 2, 1994) (offering advice to incumbent lieutenant governor candidate who sought to reimburse state for use of official vehicle).

candidate committee.¹⁷ In this case, however, the Commission's investigation did not identify costs related to the links to the respondent's YouTube channel or the posting of Facebook items that should have been paid for by the candidate committee. While the use of a public vehicle could potentially fall under this provision, the Commission has never taken that course in the past and the facts of this case do not merit expansion of this provision into that conduct.


23. Even though the Commission will take no further action in this matter, respondent should heed some advice. Candidates must ensure that any statements they make via Facebook or other social media outlets that are promotional of their candidacy bear the appropriate disclaimers. Mixing a personal social media account with one to promote one's candidacy or to do constituent communication as a public official may invite complaints. The best practice would be to create separate social media accounts for the candidate committee and use those accounts as the candidate's sole promotional outlet via social media.

ORDER

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

That the Commission will take no further action in this matter.

Adopted this 15th day of August, 2018 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission

¹⁷ Applying this defrayal-of-costs theory, the Commission has found that a state-employed university professor violated General Statutes § 9-622 (5) when he used state-employed graduate students to review polling data for a candidate committee. The professor had a private contract with the candidate committee and conducted the polling under the auspices of that contract. The professor, however, utilized state-university graduate students to perform tasks under the contract, without including the costs for their labor in the contract. The Commission reasoned that by using the labor of the students to fulfill his private contract with the candidate committee the professor improperly defrayed costs that should have been assigned to the candidate committee and paid for through the contract. *See* In the Matter of a Complaint by Jonathan Pelto, Storrs, File No. 2009-104 (State Elections Enforcement Comm'n, Jan. 26, 2011) (imposing civil penalty of \$2,000 against university professor who defrayed costs from candidate committee by using students to analyze polling data to fulfill private contract).