

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaints by Brian Edward Clark, Middletown,
Thomas J. Daly, North Haven,
and Gino Pulvirenti, Middletown,

File No. 2017-056,
File No. 2017-058,
File No. 2017-064

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Daniel T. Drew (hereinafter "Respondent") and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-1 77(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Each of the three complaints alleged that City of Middletown Mayor Dan Drew violated General Statutes § 9-622 (12) by soliciting contribution from Middletown municipal employees.
2. More specifically, Complainant alleged that Respondent mailed a September 13, 2017 letter to municipal employees which indicated that: *That's why I decided to run for governor, and why I would be so honored if you would make a \$100 contribution to my campaign.* The Complaints by Mr. Clark and Mr. Pulvirenti were identical in language.¹
3. Complainants allege that Respondent violated General Statutes § 9-622 (12) by sending the September 13, 2017 letter.
4. By way of background, Respondent registered "Drew for CT" (hereinafter "Committee") for his gubernatorial campaign at the November 2018 election. The Committee was registered on July 21, 2017 and terminated on March 4, 2018. Dianna J. Kulmacz was the designated treasurer for the Committee.²
5. Pursuant to General Statutes § 9-622: The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:
(12) *Any municipal employee who solicits a contribution on behalf of, or for the benefit of, any candidate for state, district or municipal office, any political committee or any political party, from (A) an individual under the supervision of such employee, or (B) the spouse or a dependent child of such individual;*
[Emphasis added.]

¹ Complaints in File No. 2017-056 and 2017-058 were each received on September 22, 2017 and the Complaint in File No. 2017-064 was received on October 16, 2017.

² SEEC Form 1, Registration by Candidate, "Drew for CT" (Received July 21, 2017).

6. The threshold issue in this instance is to determine whether the Commission should affirm its prior interpretation that an “elected official” does *not* satisfy the “employee” requirement for applying § 9-622 (12) that the Commission has previously made.
7. The Commission has previously considered and applied General Statutes § 9-622 (12). The Commission has determined whether an individual is a “supervisor” and whether an individual is a “subordinate.” See *Complaint by John P. Flanagan*, Hamden, File No. 2012-024 and *Complaint by Susan A. Koneff and Alan Vaglivello*, Monroe, File No. 2013-112, respectively. See *Complaint by John D. Norris*, Southbury, File No. 2011-108.
8. Relying on the Connecticut Superior Court decision in *Stewart v. Town of Watertown*, the Commission has previously determined that “elected officials,” who solicit subordinate municipal employees, are excluded from the reach of the prohibition pursuant to General Statutes § 9-622 (12). See *Complaint by Willie D. Greene*, New Haven, File No. 2007-276. However, more recently, the Connecticut Supreme Court in *Joseph Maturo, Jr. v. State Employees Retirement Commission* confirmed a state agency’s determination that “elected officials” *are* municipal employees for purposes of applying state statute.
9. The Court in *Maturo* did not treat the *Stewart* decision, as relied upon by the Commission in *Greene* or by Respondent in response to this complaint and investigation. However, the *Maturo* Court reaffirmed the state agency’s “more plausible account of how the different provisions” of a statute can be given effect and remain consistent with the standards for judicial review under the Uniform Administrative Procedure Act “UAPA.” The Court indicated that the UAPA which “affords deference to construction of a statute applied by the administrative agency empowered by law to carry out the statute’s purposes.”
10. The Commission finds that *Maturo* provides a clear path by which the Commission can best effect the purpose of and implement General Statutes § 9-622 (12), by prohibiting the highest elected municipal officer from soliciting contributions from subordinates in support of a candidate for office by qualifying them as a municipal employee.
11. The Supreme Court’s 2017 decision in *Maturo*, concluded that a mayor as an “elected officer” was “employed” by a municipality for purposes of the Municipal Employees’ Retirement Act (“MERA”). Consistent with *Maturo*, the Commission abandons its 2007 interpretation in *Greene*, which excluded “elected officials” from the meaning of employees in General Statutes § 9-622 (12).

12. Further, the Commission concludes that, consistent with the Supreme Court in *Maturo* decision, concludes that elected municipal officers and officials may satisfy the requirements for the meaning of “employee” in applying the municipal solicitation ban pursuant to General Statutes § 9-622 (12).
13. More specifically, the Commission stresses that *Maturo* merely provides the *basis* for the Commission to determine that Respondent is a municipal employee for purposes of General Statutes § 9-622 (12). It does not provide the *requirement* that each mayor or chief elected officer of a municipality be considered an employee.
14. The Commission will make a case-by-case determination based on the facts to determine whether the nature and terms of an individual’s employment and office make them an employee for purposes of applying General Statutes §9-622 (12).
15. The Commission, for purposes of its General Statutes § 9-622 (12) analysis, finds the following conditions of employment as illustrative that the individual is an employee: (1) full time nature of work; (2) level of remuneration; (3) whether the individual receives a benefits package; (4) how the individual is classified by the municipality, either by charter or ordinance (or their equivalents), for purposes of receiving workers’ compensation, retirement benefits or other statutorily recognized rights; and, (5) other relevant considerations determining whether and individual is an employee of a municipality.³

³The Commission reviews municipal codes to determine factual indicia, and consistent with its need to make factual determinations, on a case-by-case basis, of how that law applies within its Title 9 jurisdiction. The Commission does not interpret municipal law for purposes of establishing legal precedent.

16. The Commission finds, in this instance, the following elements pertaining to Respondent's employment with the City of Middletown as indicia that, as Mayor, in fact he was an *employee* of that municipality: (1) full time nature of the Mayor's office⁴; (2) mayoral salary of \$90,000⁵; and, (3) the municipal code's characterization of Respondent as an "employee" at Chapter 74, Article IV, §74-34.⁶
17. The Commission concludes specific to Respondent's circumstances of employment as the Mayor of the City of Middletown in their totality, to be indicia that he was a municipal employee at all times relevant to this complaint and investigation for purposes of General Statutes § 9-622 (12).
18. The Commission finds that Respondent, as a Mayor of Middletown and municipal supervisor solicited his subordinate municipal employees for contributions to his gubernatorial candidate committee for the November 6, 2018 statewide election which was prohibited pursuant to General Statutes § 9-622 (12).
19. The Commission concludes therefore that Respondent violated General Statutes § 9-622 (12), by soliciting subordinate municipal employees to support his gubernatorial campaign for the November 6, 2018 statewide election.
20. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies: In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:
 - (1) *the gravity of the act or omission*;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) *whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.*[Emphasis added.]

⁴ See Middletown Municipal Charter, Chapter C, § 2, "Duties and Powers of the Mayor," which indicates that the Mayor "shall be the chief executive officer of the City and shall devote full time to the duties of the office. *Full time shall mean primary occupation.*" [Emphasis added.]

⁵ The Commission notes, for purposes of distinguishing this specific municipal office, that for fiscal year 2019 the Middletown Mayor had a base annual salary of \$90,000. This remuneration is markedly different than those instances where holding municipal office entails a nominal stipend, a *per diem* payment, is restricted to reimbursement for actual costs, or other such part time or restrictive compensation schemes.

⁶ See Middletown Municipal Code, Chapter 74, Article IV, "Retirement System" at § 74-34: "The Members of the Retirement Board shall serve without compensation, except that the City's Director of Finance and the Mayor shall be entitled to the compensation *associated with their positions as city employees.*" [Emphasis added.]

21. The Commission believes under these specific and limited facts and circumstances believes a civil penalty of \$1,000.00 is adequate to deter similar conduct by Respondent in the future and weighs the gravity of the act with Respondent's good faith in this instance.
22. Respondent stresses that any violations concluded herein were unintentional and not willful. Further while Respondent respects the Commission's authority to interpret and apply the law, he genuinely believes there was a question as to the applicability of General Statutes Section 9-622 (12), based on his position as an elected official, at the times relevant to the incidents that gave rise to these complaints. Nevertheless, Respondent accepts the settlement of these matters to avoid further costs of litigation and to reach a public and transparent resolution of this matter, for which he has shown genuine contrition through his immediate attempts to mitigate this matter after the incidents, as detailed herein, occurred.
23. Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
24. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used by either party as an admission in any subsequent hearing, if the same becomes necessary.
25. 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 contest the validity of the Order entered into pursuant to this agreement.
26. Upon Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.


ORDER


IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-622 (12); and,

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in amount of one thousand dollars (\$1,000.00) to the Commission, in full and final resolution of this matter.

The Respondent:

For the State Elections Enforcement Commission:

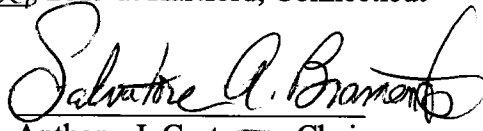
By: 
Daniel T. Drew
86500 Long Hill Road
Middletown, Connecticut

By: 
Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 12/3/19

Dated: 12/4/19

Adopted this 6th day of December, 2019 at Hartford, Connecticut


~~Anthony J. Castagno, Chair~~
By Order of the Commission
Salvatore A. Bramante