

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Richard D. Ireland, Plainville.

File No. 2018-020A

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Valerie Marino and Erin Stewart (hereinafter "Respondents") 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 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Complainant in this matter alleges that the Respondents coordinated with a not-for-profit newspaper to make an improper expenditure to benefit Respondent Stewart's exploration of candidacy for statewide office.
2. Specifically, it is alleged that representatives of Plainville's Hometown Connection, a local newspaper owned by the Plainville Community News, included contribution certification cards as an insert in the March edition of their newspaper along with print item explaining how to complete such form and encouraging them to contribute and supply such form. It is further alleged that such conduct was coordinated with Respondent Stewart.

Factual Background

3. On January 29, 2018, Respondent Stewart registered *Erin for CT*, a Connecticut political committee formed to finance Respondent Stewart's exploration of candidacy for statewide office.
4. At the time Respondent Stewart registered *Erin for CT*, Respondent Marino was appointed as the treasurer of that committee.
5. At all times relevant hereto, Helen Bergenty was the president of the Plainville Community News (hereinafter "PCN").¹
6. At all times relevant hereto, PCN was a non-stock corporation organized for a charitable purpose.
7. At all times relevant hereto, PCN was the publisher of Plainville's Hometown Connection, a newspaper distributed in the town of Plainville.
8. On February 23, 2018, Respondent Stewart was the guest speaker at the annual Lincoln Day Dinner, a dinner sponsored by the New Britain, Plainville, and Farmington Republican Town Committees.
9. Respondent Stewart provided the following account of the February 23, 2018 Lincoln Day Dinner in a sworn affidavit:

¹ Allegations concerning the conduct of PCN and Helen Bergenty shall be addressed in a separate document.

In the course of casual conversation during the Dinner, Ms. Bergenty told me that she would be publishing pictures and an article about the Dinner in the next issue of the Plainville Hometown Connection.

I told her that I did not have any problem with her doing so and that I would look forward to seeing the pictures.

Ms. Bergenty then asked me how someone could donate to my exploratory campaign and said that she wanted to include in the newspaper a smaller article about how to donate to the Erin for CT Exploratory Campaign.

In response, I told her that it was her newspaper and that she could write what she wanted but that she would be doing so completely on her own and without any collaboration from me or my campaign staff.

I further advised her that anyone who wished to contribute needed to submit a completed campaign contribution form.

Ms. Bergenty then asked me for a contribution form, and I directed her to my exploratory campaign website, and told her that she could either obtain a contribution form from the website or she could contact my campaign to obtain one.

I had no further discussions with Ms. Bergenty pertaining to the subject.

Stewart Aff. ¶ 9-15 (September 14, 2018).

10. On August 1, 2018, Helen Bergenty provided the following statement to Commission Investigators:

I told Erin in February that to save money we should put her contribution forms in The Hometown Connection in our March issue. It had to be before February 20th because that is our deadline for the next issue. I believe it was on the phone.

Email from Helen Bergenty, President, Plainville Community News, Inc., to Scott Branfuhr, Legal Investigator, State Elections Enforcement Commission Legal Investigator (August 1, 2018, 12:55 PM EDT).

11. On or about March 6, 2018, PCN published the March edition of the Plainville Hometown Connection. In the March edition of Plainville's Hometown Connection was an item that read as follows:

Mayor Erin Stewart for CT Citizen's Election Form

The Citizens' Election Program Qualifying Contribution Certification Form for Erin Stewart for Governor is an insert in the March issue of the Hometown Connection. Contributions of \$5.00 or more not to exceed \$100.00 per person

will be greatly appreciated.

You may make copies of both sides of the form for friends or other family members. If you need more copies, please call Helen Bergenty at 860-302-3783.

It is important that you read the instruction on the reverse side of the form before mailing it to: Erin Stewart for CT, 432 Lakeside Blvd. West, Waterbury, CT 06708.

Mayor Erin Stewart for CT Citizen's Election Form, PLAINVILLE'S HOMETOWN CONNECTION, March 2018, at 9.

12. Also included in the March issue of Plainville's Hometown Connection was a copy of the Citizen Elections Program Qualifying Contribution Certification Form.
13. Helen Bergenty stated several times during the investigation that no one connected with the Stewart campaign authorized her to place the certification forms in the paper as an insert. Nevertheless, as part of PCN's initial response to the complaint, Ms. Bergenty provided an invoice for the inclusion of the certification forms. Invoice indicates that there were 9000 forms printed. The total charge was \$625. Invoice of Plainville Hometown Connection (Received by SEEC on June 28, 2018).

Law

Contributions and Expenditures by Public Charities

14. Those entities that are permitted to make contributions to candidate committees are detailed in chapter 155 of the General Statutes. See e.g., General Statutes §§ 9-611, 9-612, 9-616.
15. Not-for-profit corporations are not among the groups that are permitted to make contributions to candidate committees. *Id.*
16. Accordingly, charitable organizations are prohibited from making contributions to candidate committees.
17. An expenditure made in coordination with a candidate committee is defined to be a contribution to that candidate committee. General Statutes § 9-601a (a) (4).
18. Accordingly, if a charity makes an expenditure in coordination with a candidate committee, such charity has made an improper contribution to the candidate committee.
19. Certain payments of money by charities are exempted from the definition of expenditure. General Statutes § 9-601b (b) (13) provides that "[a] lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended" shall be exempted from the definition of expenditure.

Testimonial affairs organized by charities are also exempted from the limitations on such events detailed in General Statutes § 9-609 (b).

20. Moreover, General Statutes § 9-601b (b) (5) exempts from the definition of expenditure, “[a]ny news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate[.]”

21. It is an illegal practice for a treasurer to accept prohibited contributions. General Statutes § 9-622 provides, in pertinent part:

The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-623:

....

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter;

22. Pursuant to General Statutes § 9-622, the following persons are also guilty of an illegal practice:

(5) Any person who, directly or indirectly, pays, gives, contributes or promises any money or other valuable thing to defray or towards defraying the cost or expenses of any campaign, primary, referendum or election to any person, committee, company, club, organization or association, other than to a treasurer, except that this subdivision shall not apply to any expenses for postage, telegrams, telephoning, stationery, express charges, traveling, meals, lodging or photocopying incurred by any candidate for office or for nomination to office, so far as may be permitted under the provisions of this chapter;

23. Moreover, General Statutes § 9-601b (b) (5) exempts from the definition of expenditure, “[a]ny news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate[.]”

Independent Expenditures

24. If an expenditure is made “without the consent, coordination, or consultation of, a candidate or agent of the candidate, candidate committee, political committee or party committee[.]” it is not considered a contribution to that candidate, candidate committee, political committee, or party committee. General Statutes § 9-601c. Rather, it is considered to be an independent expenditure. *Id.*

25. However, when the Commission:

evaluates an expenditure to determine whether such expenditure is an independent expenditure, there shall be a rebuttable presumption that the following expenditures are not independent expenditures:

....

(1) An expenditure made by a person in cooperation, consultation or in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (A) a candidate, candidate committee, political committee or party committee, or (B) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

....

(8) An expenditure made by a person for a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or such person's agent, has informed the candidate who benefits from the expenditure, that candidate's candidate committee, a political committee or a party committee, or a consultant or other agent acting on behalf of the benefiting candidate or candidate committee, political committee, or party committee, concerning the communication's contents, or of the intended audience, timing, location or mode or frequency of dissemination. As used in this subdivision, a communication clearly identifies a candidate when that communication contains the name, nickname, initials, photograph or drawing of the candidate or an unambiguous reference to that candidate, which includes, but is not limited to, a reference that can only mean that candidate[.]

General Statutes § 9-601c (b).

26. General Statutes § 9-601e further provides that

If the State Elections Enforcement Commission finds that an expenditure, as defined in section 9-601b, is coordinated with a candidate committee or candidate or an agent of the candidate, in a manner not permissible under the provisions of this chapter, the candidate, agent of the candidate, if applicable, or treasurer of such committee who participated in or had knowledge of such coordination, shall be jointly and severally liable for paying any penalty levied by the commission under section 9-7b.

Discussion

The Item Produced by PCN and the Inclusion of the Certification Forms were Expenditures.

27. In this case, Helen Bergenty informed Respondent Stewart of her specific intentions to publish an article about her in Plainville's Hometown Connection. In response to hearing this information, Respondent Stewart further advised her that contributions to her campaign required a contribution certification form. Based upon this information, PCN included Respondent Stewart's contribution certification form as an insert in their newspaper.

28. General Statutes § 9-601b (a) defines an expenditure as:

(1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made to promote the success or defeat of any candidate seeking the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or the success or defeat of any political party;

(2) 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; or

(3) The transfer of funds by a committee to another committee.

29. There is no doubt that both the publishing of the item about the certification form and the distribution of 9000 certification forms was something of value. Moreover, it is without question that it was made to promote the success of Respondent Stewart's campaign.

30. Therefore, unless an exception applies, these payments would be considered expenditures by PCN for the benefit of Respondent Stewart.

The Item Produce by PCN and the Inclusion of the Certification Forms were Not Lawful Communications by a Charity.

31. As a public charity, PCN is permitted to make any "lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended." General Statutes § 9-601b (b) (13).

32. However, the Internal Revenue Service has made clear that:

Organizations that are exempt from income tax under section 501(a) of the Internal Revenue Code as organizations described in section 501(c)(3) may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007). This ruling further provides:

Key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;

- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Id. at 8-9.

33. While the Commission is not charged with the enforcement of federal tax law, when determining whether a communication was “lawful communication by any charitable organization which is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986” it may be guided by the advice of the Internal Revenue Service.
34. In this case, not only was the item an explicit statement of support for Respondent Stewart, but it was a solicitation on her behalf. Moreover, the inclusion of the certification form for Respondent Stewart’s exploratory committee was provided for the explicit and exclusive reason of enabling subscribers to Plainville’s Hometown Connection to contribute to Respondent Stewart. Based upon these facts, the Commission concludes that the item in Plainville’s Hometown Connection concerning Respondent Stewart and the insert of the certification form were not lawful communications by a public charity.

The Item Produced by PCN and the Inclusion of the Certification Forms were Not Lawful Communications by a Press Entity.

35. Under Connecticut’s campaign finance law, the publication of “any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical, unless such facilities are owned or controlled by any political party, committee or candidate” is exempt from the definition of expenditure. General Statutes § 9-601b (b) (5).
36. Following the guidance of the Federal Election Commission, this Commission adopted a three-prong test to determine if an entity is a “press entity.” See Complaint of Christopher Healy, File No. 2009-075 (adopting FEC test in analyzing “press entity exception” to campaign finance laws.).

The test follows three steps in which the Commission must find:

1. That the entity engaging in the activity is a press or media entity;
2. That the entity is not owned or controlled by a political party, political committee, or candidate; and
3. That the entity is acting as a press entity in conducting the activity at issue.

See *Complaint of Christopher Healy*, File No. 2009-075, at ¶ 16 citing FEC Advisory Opinion 2008-14.

37. As a preliminary matter, the Commission finds that Plainville's Hometown Connection is a press entity. It regularly produces and publishes stories, editorials and commentary both in print and online.
38. Secondly, the Commission finds no evidence that Plainville's Hometown Connection is owned or controlled by a political party, political committee, or candidate.
39. Finally, in determining whether a press entity was acting as a press entity within its "legitimate press function" the Commission must determine:
 - 1) Was the content produced through the facilities regularly used to produce content for this entity?
 - 2) Was the content distributed to the news entity's regular audience?
 - 3) Was the particular edition comparable in form to that ordinarily issued by the entity?
40. *Heeley* at 4.
41. In this case, while the content was produced through Plainville's Hometown Connection's facilities and distributed to its usual audience, the content was not comparably in form to that ordinarily issued by the entity. Rather than simply providing an endorsement of a candidate or reporting on the state of a race, PCN, through Plainville's Hometown Connection explicitly solicited contributions on behalf of the Respondent Stewart's committee. Then PCN billed the committee though she admitted there was no agreement to do so.
42. Accordingly, the Commission concludes that neither the item published in the paper, nor the inclusion of the certification forms were exempted from the definition of expenditure pursuant to General Statute § 9-602b (b) (5).

The Item Produced by PCN and the Inclusion of the Certification Forms were Coordinated Expenditures.

43. It is undisputed that Helen Bergenty advised Respondent Stewart that Plainville's Hometown Connection was going to produce and publish an the item promotional of Respondent Stewart's campaign. It is further undisputed that Respondent Stewart advised Helen Bergenty, in response to this information, that contributors needed to provide contribution certification cards.
44. Accordingly, the Commission concludes that such expenditures were made by a person, PCN, in cooperation, consultation or in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with a Respondent Stewart's exploratory committee and thus there is a rebuttable presumption that such expenditure was coordinated between PCN and Respondent Stewart. See General Statutes § 9-601d
45. The Commission further concludes that that such expenditures were made by a person, PCN, for a communication that clearly identifies Respondent Stewart during her campaign, and PCN informed the Respondent Stewart and her political committee of the intended audience, timing, location or mode or frequency of dissemination.
46. Thus, the Commission concludes that the expenditures detailed herein were coordinated expenditures between PCN and Respondent Stewart.
47. Moreover, as Respondent Stewart personally coordinated these expenditures, the Commission concludes that Respondent Stewart is jointly and severally liable for any penalty assessed regarding these expenditures pursuant to General Statutes § 9-601e.
48. As detailed above, PCN made a coordinated expenditure with Respondent Stewart for the benefit of her exploratory committee. Accordingly, PCN made an impermissible contribution to Respondent Stewart's exploratory committee, in violation of General Statutes § 9-622. Moreover, Respondent Stewart, in coordinating these expenditures, accepted an impermissible contribution. However, as Respondent Valerie Marino was the treasurer of such committee, it is she that bears the responsibility for accepting such impermissible contributions for the campaign. See General Statutes § 9-606.
49. Nevertheless, as Respondent Stewart personally coordinated these expenditures, Respondent Stewart is jointly and severally liable for any penalty assessed regarding these expenditures.
50. Improper coordination of independent expenditures is a matter takes seriously. See *In the Matter of a Complaint by Elissa Voccola, Hartford*, File No. 2014-095 (discussion of the litigation of the presumptions of coordination); *In the Matter of a Complaint by Patrick DeAngelis, Middlebury*, File No. 2009-055.
51. All Respondents have been cooperative with this investigation and volunteered honest responses to inquiries, even when such responses resulted in the admission of a violation.
52. Based upon the forgoing the Commission finds that Respondent Marino was in violation of General Statutes §§9-601b, 9-601c, 9-601e, and 9-622 and assesses a civil penalty of \$100 for which Respondent Stewart is jointly and severally liable.

Terms of General Application

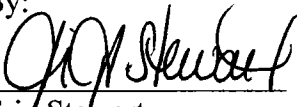
53. Respondents admit all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
54. 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 Respondents and may not be used by either party as an admission in any subsequent hearing, if the same becomes necessary.
55. Respondents 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.
56. Upon Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondents pertaining to this matter, and this agreement and order does not serve as a prospective ban on future contracts between Respondents and state agencies.

ORDER

IT IS HEREBY ORDERED THAT Respondents Marino and Stewart shall henceforth strictly comply with the requirements of General Statutes §§ 9-601b, 9-601c, 9-601e, and 9-622.


IT IS HEREBY FURTHER ORDERED THAT Respondent Marino shall pay a civil penalty of \$100 for which Respondent Stewart shall be jointly and severally liable.

Respondent Erin Stewart:

By: 
Erin Stewart
c/o Gennaro Bizzarro, Esq.
GB Law Group, LLC
51 North Main Street
West Hartford, CT 06107

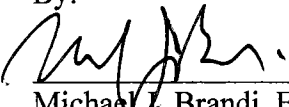
Dated: 2/9/19

Respondent Valerie Marino:

By: 
Valerie Marino
c/o Gennaro Bizzarro, Esq.
GB Law Group, LLC
51 North Main Street
West Hartford, CT 06107

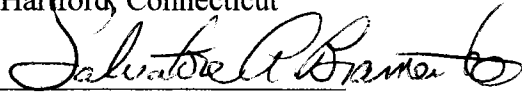
Dated: Feb. 11, 2019

For the State of Connecticut:

By: 
Michael J. Brandi, Esq.,
Executive Director and General
Authorized Representative of the State
Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, CT 06103

Dated: 2/20/19

Adopted this 20th day of February, 2019 at Hartford, Connecticut


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