

JUN 05 2019

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Paul A. Kelley,
Bristol

File No. 2018-065

FINDINGS AND CONCLUSIONS

The Complainant filed this Complaint pursuant to Connecticut General Statutes § 9-7b. The Complainant alleged that William Tong, Candidate for Attorney General, by running advertisements that included references to President Donald Trump, violated various campaign finance laws.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. Complainant alleged that two television advertisements promoting Mr. Tong's candidacy for Attorney General, which appeared from July 1, 2018 to August 13, 2018, were "pretending to run against Donald Trump who was not a candidate for Attorney General," and therefore violated Connecticut Campaign Finance Laws.
2. By way of background, Mr. Tong ran for Attorney General at the November 6, 2018 election. Mr. Tong registered the candidate committee "Team Tong 2018," for this purpose; and designated Timothy Larson as his treasurer. Mr. Tong participated in the Citizens' Election Program and received a grant from the Citizens' Election Fund for the November 6, 2018 election.
3. There is no dispute that advertisements for Mr. Tong's candidacy for Attorney General appeared on television and criticized President Trump and indicated that "Donald Trump is attacking families like ours." Further, the advertisements included video clips of Mr. Trump and indicated that, as Connecticut's Attorney General, Mr. Tong would "beat [Trump] too."
4. General Statutes § 9-601, provides in pertinent part:
 - (a) As used in this chapter and chapter 157:

...

(11) "***Candidate***" means an individual who seeks nomination for election or election to public office whether or not such individual is elected, and for the purposes of this chapter and chapter 157, an individual shall be deemed to seek nomination for election or election if such individual has (A) been endorsed by a party or become eligible for a position on the ballot at an election or primary, or (B) solicited or received contributions, other than for a party committee, made expenditures or given such individual's

consent to any other person, other than a party committee, to solicit or receive contributions or make expenditures with the intent to bring about such individual's nomination for election or election to any such office. ...

5. General Statutes § 9-601b , provides in pertinent part:

(a) As used in this chapter and chapter 157, *the term “expenditure” means:*

(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 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; ...*

6. The Commission notes that, by definition, the “expenditure” , applies to any communication appearing on television that refers to one or more clearly identified candidates within 90 days of a vote General Statutes § 9-601b (a) (2) & (b) (7). The standards for whether a reference to a candidate is an expenditure “are less stringent the further before an election the communication is made. For example, if the communication is made longer than 90 days before an election, then the communication must go beyond the mere mention of a candidate to be for their benefit. In such cases, the Commission applies various indicia to determine whether the communication promotes, attacks, supports or opposes the secondary candidate, and whether, in fact, some financial allocation is required. . . . There are also fifteen exemptions from this definition of expenditure that must be applied. If any are present, then no allocation is required because it would not be considered an expenditure at all.” *In the Matter of a Complaint by John Mazurek*, Wolcott, File No. 2014-170. *See also In the Matter of a Complaint by Michael Nicastro*, Bristol, File No. 2016-088 (discussion of indicia used in determining when allocation of costs is required).

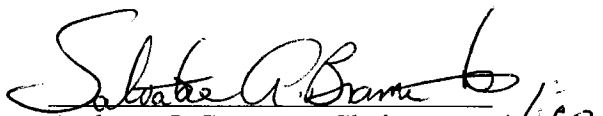
7. The Commission finds, upon investigation and at all times relevant to this complaint that Donald Trump was not on the ballot for election to public office in the November 6, 2018 election. The communication made no mention of the 2020 election. The communication was delivered only to potential voters in the 2018 Connecticut race and not to all potential voters in the 2020 race. It does not appear to be one of a series of communications that collectively seem to advocate for the 2020 election. See General Statutes § 9-601.
8. The Commission concludes that the expenditure made by Mr. Tong, for the airing of the two television advertisements by "Team Tong 2018" from July 1, 2018 to August 13, 2018, which are subject of this complaint and investigation was not on behalf of a presidential candidate in the 2020 election, given the timing of its release more than two-years before the next presidential election.
9. The Commission concludes therefore that the reference to Mr. Trump in Mr. Tong's campaign advertisements did not promote, attack, support or oppose a presidential candidate for the 2020 election cycle and was not therefore an "expenditure" pursuant to General Statutes § 9-601 and § 9-601b (a) (2).
10. The Commission therefore dismisses the allegation pertaining to Team Tong 2018 television advertisements that included images and references to Donald Trump, because they did not include an identifiable candidate for office and were not prohibited expenditures under these narrow and specific circumstances. See General Statutes § 9-601 and § 9-601b (a) (2).
11. Complainant's allegations are not supported by the facts or law after investigation and therefore this complaint warrants dismissal.

ORDER

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

That the complaint is dismissed.

Adopted this 5th day of June, 2019 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson *vice*
By Order of the Commission
