

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Michael A. Hayes, Colchester

File No. 2018-083

FINDINGS & CONCLUSIONS

Complainant Michael A. Hayes of Colchester filed this Complaint pursuant to Connecticut General Statutes § 9-7b alleging that the candidate committee Melissa Ziobron in 2018 had used a picture in a mailer that showed another candidate running for office. The complaint alleged that use of this picture constituted a joint communication and that the Ziobron candidate committee had made an impermissible contribution to another candidate committee. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. Complainant Hayes filed this complaint on September 28, 2018, alleging that the Ziobron candidate committee, *MZ 2018*, had sent out a mailer that included a photograph of state representative Linda Orange, who was also a candidate for office in 2018.
2. Ziobron, a Republican, was running for the 33rd senatorial seat in 2018. On or about September 15, 2018, electors in the district received a mailer that included several pictures of the candidate. One of those pictures showed Ziobron standing in front of Gillette Castle with three other individuals, none of whom were identified in the mailer. The complainant, however, identified two of the individuals in the picture as Rep. Linda Orange and former state senator Eileen Dailey, both Democrats.
3. Complainant stated:

The text to the left of the photo indicates with a red check that Ms. Ziobron is a “Bipartisan Leader.” The mail piece clearly implies both that Rep. Orange supports Ms. Ziobron and agrees that she is bipartisan – she is photographed with a sitting Democratic State Representative.
4. Complainant alleged that the mail piece could have resulted in an in-kind contribution and endorsement of Rep. Orange given that “Rep. Orange is a candidate, the piece was mailed to some in her district, and contained her image.”
5. The mailer at issue here is a two-sided mailer. One side of the mailer includes six pictures with the caption “Meet Melissa Ziobron.” Four of the six photographs show only the candidate. A fifth shows her talking with a two men and a child. The sixth picture, the one at issue in this complaint, show her standing in front of Gillette Castle with two women

and a man. None of the individuals in the pictures are identified. The photograph at issue takes up less than 1/16th of the page.

6. General Statutes § 9-607 (g) requires that all expenditures made by a candidate committee promote the candidacy of the candidate that created the committee.¹ Candidate committees may not make contributions to another candidate committee.²
7. Candidate committees may make joint expenditures where the committees pay the proportionate cost of a communication based on the benefit they glean from the communication. The Commission issued Declaratory Ruling 2011-03 outlining its guidance to candidate committees on how properly to make these joint expenditures.
8. The finding of a violation may not be necessary where the Commission determines the benefit to a candidate or candidates was incidental. *See* In the Matter of a Complaint by Joseph Romano, SEEC File No. 2018-115.
9. Among the threshold issues addressed in the Commission's declaratory ruling, however, is at what point does referencing another candidate in a communication require some sort of allocation to a candidate who is not the primary candidate in the communication. One example noted by the Commission where such an allocation would not be necessary was where a photograph included other legislators in a group shot and there was no other reference to the candidates or promotion of them or their candidacy.³
10. The Declaratory Ruling cites a 2008 matter in which the Commission dismissed a complaint where a political committee used a photograph from a bill signing in a mailer it was sending to promote a candidate. In that case, the photograph in the mailer sent showed the candidate that the political committee was supporting in addition to two other candidates running for office. The political committee that paid for the mailer showed two other elected officials, also running for office, in addition to the candidate that the political committee was supporting by name. The two other individuals were neither identified nor promoted as candidates that the political committee was supporting for office. *See* In the Matter of a Complaint by Carl Strand, Cheshire, SEEC File No. 2008-150 (dismissing complaint alleging that appearance of candidate in photograph results in promotion of candidate by political committee that paid for mailer).

¹ *See* General Statutes § 9-607(g)(1)(A)(i) (limiting expenditures from candidate committee to those that promote nomination or election of candidate that established committee).

² *See* General Statutes § 9-616 (a)

³ *See* Declaratory Ruling 2011-03: Candidate Committees and Joint Communications, State Elections Enforcement Comm'n., May 18, 2011.

11. As the Commission noted in that 2008 opinion:

A candidate's mere appearance in a mailing that promotes the election of another candidate running for office does not lead to the *per se* conclusion that the mailing was made for the purpose of influencing the nomination of the first candidate.

Id. at paragraph 14.

12. The Commission has also commented similarly in the 2011 Declaratory Ruling that some instances would not create a “joint expenditure” between different candidates, noting that if a candidate committee used an old photograph taken at a group function, which only incidentally shows other elected officials in the photograph, but where other photographs in the mailer are dedicated only to the candidate named in the mailer, such incidental mention would not require allocation.

13. As stated in SEEC File No. 2018-115, the Commission may look to indicia to determine whether a communication that clearly identifies candidates within 90 days of election nevertheless provides only incidental benefit to those candidates or their opponents. These incorporate factors may include:

- Distribution - to what extent was the communication disseminated or targeted outside the attacked candidate's district;
- Allocation of space and message - what portion or percentage of the communication incorporated or included a clearly identified candidate or candidates;
- Cost - does the communication include videos or photos that were provided by a volunteer as part of ongoing content development and delivery for social media on the Internet or by telephone;
- Series - was the immediate communication part of a series of such communications or a pattern of communications by the sponsoring committee or was it an isolated incident;
- CEP - did the candidate or candidates supported or opposed participate in the CEP, which may trigger a heightened scrutiny in that all public funds must directly further the election of participants;
- Endorsements - did the communication fit within exemptions for endorsements or otherwise contain traditional campaign speech and associational rights in support of an individual candidate by the sponsor, such that the exercise of discretion is warranted;
- Prior bad history - consistent with Commission regulations for assessing penalties, whether the individual or entity sponsoring such communication has prior history with the Commission or whether discretion can be extended to newcomers to the process;

- Coordination - whether or not the communication was coordinated with benefited candidates; and,
- Disclosure - whether or not the expenditures were fully disclosed.

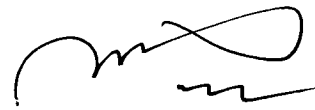
14. The appearance of Rep. Orange in a photograph included in the Ziobron committee's mailer does not create anything more than incidental benefit.
15. The mailer from the Ziobron candidate committee did not identify the other candidate in the photograph, discuss her record or experience, solicit funds on her behalf, or request voters to vote for her. Given that the only reference to these elected officials was that they appeared in a single photograph, this incidental reference to a candidate in the mailer, without more, does not require allocation or reporting as a joint expenditure.
16. The commission will dismiss this matter.

ORDER

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

That this matter shall be dismissed.

Adopted this 19th day of February, 2020 at Hartford, Connecticut.



Commissioner
By Order of the Commission