

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Edward H. Raff, et al., Hartford

File No. 2008-141

FINDINGS AND CONCLUSIONS

Complainant, Edward Raff, filed a complaint with the Commission on October 20, 2008 pursuant to General Statutes § 9-7b, and asserts that the Madison Republican Town Committee (hereinafter the "Madison RTC") "has violated the spirit of the law" by publishing a negative advertisement in the Madison Source newspaper opposing Democratic candidates. Complainant Raff avers that while the advertisement does not specifically name a candidate or candidates, it does implicitly refer to State Representative Deborah W. Heinrich as a Vice Chairman of the Appropriations Committee. On June 22, 2009, a second complaint was filed by James R. Ball concerning the aforementioned advertisement as well as two others. Complainant Ball alleges that these ads constituted "undocumented independent expenditures" by the Madison RTC "in violation of Section 9-714-1" of the Regulations of Connecticut State Agencies. The aforementioned complaints were consolidated and are addressed herein.

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

1. On October 16, 2008, an advertisement appeared in the Madison Source, a local newspaper serving the Town of Madison, Connecticut. That advertisement stated as follows:

WHAT have the Democrats been doing in Hartford?
*THE DEMOCRATS REPRESENTING US IN THE LEGISLATURE HAVE HAD FOUR
YEARS TO SHOW WHAT THEY CAN DO TO MAKE CONNECTICUT A BETTER
PLACE FOR US AND OUR CHILDREN*
WHAT have they done?

- ☞ Voted *FOR* educating the children of illegal aliens at in-state tuition rates and allow them to compete for college entrance spots with Connecticut residents
- ☞ Voted *AGAINST* a law to put criminals who have been convicted of three violent crime, such as rape or murder, in jail for life
- ☞ In spite of four previous years of surpluses, voted *FOR* a \$1 billion *TAX INCREASE* which the Governor vetoed
- ☞ Changed the \$1 billion surplus to a \$435 million *DEFICIT* in one year (sitting as vice-chair of the appropriations committee)
- ☞ Let our *PILOT* money (which we get to cover the costs the town spends on its police & fire departments to protect visitors to Hammonasset State Park, a major source of the calls to 911) be *CUT*, while giving the Park a grant to attract *MORE* visitors
- ☞ Earned a *50th* out of 50 rating as the least "business-friendly State"

- ☞ *CONTINUE TO REFUSE* to convene a special session to immediately address the 2009 budget deficit
- ☞ Posed for more pictures than imaginable to make people think they are doing something
- ☞ In the meantime, the Republicans in Hartford, despite being the vast minority, defeated the tax increase and have been leaders against the “do-nothing-good” Democrat-controlled legislature to protect the interests of the citizens of Connecticut

Vote Republican on Tuesday, November 4. Stop the bleeding and start the healing!

Paid for by the Madison Republican Town Committee

2. On October 23, 2008, a second advertisement appeared in the Madison Source. That advertisement stated as follows:

THE *REAL* THREAT TO EDUCATION

When you are voting this November, remember that the real threat to education is our taxes. The Democratic-controlled government in Hartford disdains, disrespects and loots Madison. The insignificant increases in ECS funding that we’ve received can’t keep pace with the increases in our taxes.

MADISON GETS BACK ONLY 6¢ ON EVERY TAX DOLLAR WE SEND TO HARTFORD!

Our money serves as political handouts to other cities that THE LEGISLATURE ACTUALLY CARES ABOUT.

We all understand doing our part – but how can 6 cents on the dollar be fair!

SOMETHING HAS TO CHANGE! As long as the legislature is controlled by one political party, our children will continue to suffer, AND our taxes will continue to rise.

Remember this when you vote! Some candidates have a nice personality and attractive rhetoric – but anyone who allows the status quo to be perpetuated is doing so at the expense of Madison.

Vote for POSITIVE change in the legislature. Vote REPUBLICAN!

Paid for by the Madison Republican Town Committee.

3. On October 30, 2008, a third advertisement appeared in the Madison Source. That advertisement in substantial part as follows:

MADISON IS THE WORST!!!

Madison gets only 6¢ back for every \$1 sent to Hartford. . .among the lowest in the State!. In contrast, some CITIES in Connecticut receive MORE THAN \$4 IN STATE AID PER \$1 SENT TO HARTFORD!

MEANWHILE, What we receive from Hartford *CONTINUES TO FALL* as a percentage of our of our expenditures.

State Grants as Percent of Madison's Expenditure

[Omitted – Bar Graph Depicting State Grants as Percent of Madison's Expenditure]

OUR DEMOCRAT REPRESENTATIVES IN HARTFORD CONTINUE TO SELL US
OUT!

SEND REPUBLICANS TO HARTFORD TO FIGHT FOR FAIRNESS AND POSITIVE
CHANGE. VOTE REPUBLICAN!

Paid for by the Madison Republican Town Committee.

4. Representative Deborah Heinrich was the incumbent Democratic candidate for the 101st Assembly District in the November 4, 2008 state election. Representative Heinrich and her Republican opponent, Jeanne W. Stevens were both participating in the Citizens' Election Program. The other Republican candidate from the Madison area was Ryan Suerth. He was also participating in the Citizens' Election Program and was opposing Edward Meyer, the Democratic candidate for the 12th Senatorial District.
5. Jeanne W. Stevens was the Republican candidate for the 101st Assembly District (which includes Guilford and Madison) and Ryan Suerth was the Republican candidate from the 12th Senatorial District (which includes Branford, Durham, Guilford, Killingworth, Madison & North Branford). Both were participating in the Citizens' Election Program and submitted an application for a grant from the Citizens' Election Fund. Furthermore, they were both members of the Madison RTC.
6. The Itemized Campaign Finance Disclosure Statement (SEEC Form 20) for the Madison RTC filed with the Commission on October 27, 2008 reflects an expenditure for advertisements in the amount of \$1242.21. That payment reflects the cost of three different advertisements placed in Madison Source newspaper. Each advertisement cost approximately \$414.07.
7. Jennifer Tung was the legally designated treasurer of the Madison Republican Town Committee (hereinafter "Madison RTC") at the time the payment for the advertisement was made. Pursuant to General Statutes § 9-606 (a) and 9-607 (a), as treasurer, the Respondent was the only person authorized to make "expenditures," as that term is defined in General Statutes § 9-601b, on behalf of the Madison RTC.

8. Ms. Tung was also the legally designated deputy treasurer of Jeanne Stevens' candidate committee. Roddy Diotalevi was the legally designated treasurer of that committee.
9. Complainant Raff, asserts that the Madison RTC "has violated the spirit of the law" by publishing a negative advertisement in a local free newspaper, the Madison Source, opposing Democratic candidates. The Complainant avers that while the advertisement does not specifically name a candidate or candidates, it does implicitly refer to State Representative Deborah W. Heinrich as a Vice Chairman of the Appropriations Committee.
10. While Complainant Raff does not allege that the Madison RTC violated any specific provision of the general statutes, his Complaint does raise the issue of whether the Jeanne W. Stevens, Ryan Suerth or other Republican candidates participating in the Citizens' Election Program and/or the treasurers of their candidate committees received an in-kind contribution from the Madison RTC.

11. General Statutes § 9-702 (b) provides as follows:

Any such candidate committee is eligible to receive such grants for a primary campaign, if applicable, and a general election campaign if (1) the candidate certifies as a participating candidate under section 9-703, (2) the candidate's candidate committee receives the required amount of qualifying contributions under section 9-704, **(3) the candidate's candidate committee returns all contributions that do not meet the criteria for qualifying contributions under section 9-704**, (4) the candidate agrees to limit the campaign expenditures of the candidate's candidate committee in accordance with the provisions of subsection (c) of this section, and (5) the candidate submits an application and the commission approves the application in accordance with the provisions of section 9-706. [Emphasis added.]

12. Pursuant to the express language of General Statutes § 9-702 (b)(3), a participating candidate committee is not eligible to receive a grant unless it, *inter alia*, returns the value of all non-monetary contributions to the respective contributors. That express eligibility requirement necessarily implies the legislature's intention to prohibit a participating candidate's candidate committee from receiving any non-qualifying contribution, which includes, but is not limited to non-monetary contributions, after that candidate applies for an initial grant under General Statutes § 9-706. See SEEC Declaratory Ruling No. 2007-3, *Citizens' Election Program: Qualifying Contributions* (concluding that qualifying contributions may not be in the form of non-monetary contributions.) Said legislative intention is supported by an examination of the remaining provisions of Chapter 157 as well as the legislative history of Public Acts, Special Session, Oct. 2005, No. 05-5.
13. Here, Ms. Stevens applied for her grant on July 7, 2008 and Mr. Suerth applied for his grant on July 31, 2008. As noted above, the payment for the subject advertisements were reported as being made on October 3, 2008. In order to determine whether their candidate committees received an impermissible in-kind contribution, the Commission

must first determine (1) that the Madison RTC made an "expenditure" as that term is defined in General Statutes § 9-601b; and (2) that that expenditure was not an independent expenditure as that term is defined in General Statutes § 9-601 (18) but rather was made with the cooperation of, in consultation or concert with, or at the request or suggestion of Ms. Stevens, Mr. Suerth or their agents or was otherwise a coordinated expenditure.

14. General Statutes § 9-601a further provides that:

(a) As used in this chapter and sections 9-700 to 9-716, inclusive, the term "contribution" means:

* * *

(4) An expenditure when made by a person with the cooperation of, or in consultation with, any candidate, candidate committee or candidate's agent or which is made in concert with, or at the request or suggestion of, any candidate, candidate committee or candidate's agent, including a coordinated expenditure. . . .

(b) As used in this chapter and sections 9-700 to 9-716, inclusive, "contribution" does not mean:

* * *

(16) An organization expenditure by a party committee

15. General Statutes § 9-601b provides in relevant part as follows:

(a) As used in this chapter and sections 9-700 to 9-716, inclusive, the term "expenditure" means:

(1) Any purchase, payment . . . distribution, loan, advance, deposit or gift of money or anything of value, when made for the purpose of influencing the . . . election of any person or . . . on behalf of any political party. . . .

(b) The term "expenditure" does not mean:

* * *

(8) An organization expenditure by a party committee

16. General Statutes § 9-601 (18) and (19) further provide, in pertinent part, as follows:

(18) "Independent expenditure" means an expenditure that is made without the consent, knowing participation, or consultation of, a candidate or agent of the candidate committee and is not a coordinated expenditure.

(19) **"Coordinated expenditure" means an expenditure made by a person:**

(A) In cooperation, consultation, in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (i) a candidate, candidate committee . . . or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee

(B) For the production, dissemination, distribution or publication, in whole or in substantial part, of any broadcast or any written, graphic or other form of political advertising or campaign communication prepared by (i) a candidate, candidate committee . . . or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee

(C) Based on information about a candidate's plans, projects or needs, provided by (i) a candidate, candidate committee . . . or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee . . . with the intent that such expenditure be made;

(D) Who, in the same election cycle, is serving or has served as the campaign chairperson, campaign treasurer or deputy treasurer of a candidate committee . . . benefiting from such expenditure, or in any other executive or policymaking position as a member, employee, fundraiser, consultant or other agent of a candidate, candidate committee

* * *

(F) Based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by said candidate, the candidate's candidate committee . . . or a consultant or other agent acting on behalf of said candidate, candidate committee . . . to the person making the expenditure or said person's agent, with an express or tacit understanding that said person is considering making the expenditure; or

(G) For a communication that clearly identifies a candidate during an election campaign, if the person making the expenditure, or said person's agent, has informed said candidate, the candidate's candidate committee . . . or a consultant or other agent acting on behalf of said candidate, candidate committee concerning the communication's contents, intended audience, timing, location or mode or frequency of dissemination. [Emphasis added.]

17. General Statutes § 9-601 (27) provides as follows:

"Agent" means any person acting at the direction of an individual.

18. The evidence establishes that the payment for the advertisements at issue was made on behalf of a political party-the Republican Party- and was made to influence the election of all Republican candidates for General Assembly, including those seeking to represent the town of Madison – Jeanne Stevens and Ryan Suerth. As such, it is an “expenditure” pursuant to General Statutes § 9-601b. Ms. Tung admits as much.

19. As a consequence, the Commission must determine whether that expenditure was also a contribution to either the Stevens or Suerth campaigns pursuant to General Statutes § 9-601a (a)(4). More specifically, the Commission must determine whether the expenditure was made with the cooperation of, in consultation or concert with, or at the request or

suggestion of Ms. Stevens, Mr. Suerth or their agents or was a “coordinated expenditure” pursuant to General Statutes § 9-601 (19).

20. There is evidence that in prior election cycles the Madison RTC purchased advertisements in the Madison Source that named and supported their candidates. However, the Committee members were under the mistaken impression that such communications were impermissible organization expenditures pursuant to the Citizens’ Election Program’s requirements because Ms. Stevens and Mr. Suerth were candidates participating in the Citizens’ Election Program. Ms. Tung maintains that the Committee was advised by the state central committee of the Republican Party that the communications such as the advertisements at issue were permissible under the Program as they were pure party literature and did not name any specific candidate.
21. The evidence, however, is insufficient to conclude that Ms. Tung was acting at the direction of Ms. Steven’s or another individual from her campaign when the advertisements were prepared nor when she made the expenditure in question. While the Commission acknowledges that Ms. Tung acted as the treasurer of the Madison RTC and the deputy treasurer for Ms. Stevens’ candidate committee, the evidence establishes that her role in that candidate committee was limited to reviewing that committee’s initial Itemized Campaign Finance Disclosure Statement in April of 2008 and accompanying Ms. Steven’s as she introduced herself to Ms. Tung’s neighbors, several months prior to the expenditure at issue. It did not include participation in discussions concerning the needs of Ms. Stevens’ campaign. Instead, there is evidence that the idea for the advertisements came about during an executive board meeting of the Madison RTC, at which neither Mr. Suerth nor Ms. Stevens were present.
22. With respect to Mr. Suerth, while the Commission acknowledges that he was a member of the Madison RTC, he was not on the board of finance nor did he act as any other officer of that Committee. Moreover, he only attended a fourth of the Committee meetings and, of those he did attend, would leave the room when any discussion of expenditures occurred in an effort to avoid running afoul of the Citizens’ Election Program requirements. The Commission finds that Mr. Suerth also expressed to the Committee that he did not want to be part of any advertisements produced by that Committee.
23. In addition, there is no evidence that the expenditure was made by the Madison RTC based on information about Ms. Steven’s or Mr. Suerth’s plans, projects or needs that was *provided* by those candidates or their agents. Again, while Ms. Tung was designated the deputy treasurer of the Ms. Steven’s candidate committee, the evidence does not establish that she was an agent of that committee when the expenditure at issue was made by the Committee. In other words, she was not acting at the direction of Ms. Steven’s or anyone else from her candidate committee when that expenditure was made. See General Statutes § 9-601 (27)(defining “agent” as “any person acting at the direction of an individual.)

24. The Commission therefore concludes that the evidence is insufficient to establish that the expenditure at issue was made by the Madison RTC with the cooperation of, in consultation or concert with, or at the request or suggestion of Ms. Stevens, Mr. Suerth or their agents.
25. Furthermore, the Commission concludes that with respect to Mr. Suerth and his candidate committee, the expenditure at issue was not a "coordinated expenditure" as defined in General Statutes § 9-601 (19). Put another way, the evidence is insufficient to conclude that Mr. Suerth's candidate committee received an impermissible in-kind contribution from the Madison RTC. The same cannot be said for Ms. Steven's candidate committee.
26. As referenced above, pursuant to General Statutes § 9-601 (19)(D) a "coordinated expenditure" also means "an expenditure **made by a person . . .** who, in the same election cycle, is serving or has served as the . . . deputy treasurer of the candidate committee . . . benefiting from such expenditure. . . ."
27. Here, the evidence establishes that the expenditure at issue was authorized by Ms. Tung using Madison RTC funds, the communication was attributed as being "Paid for by the Madison Republican Town Committee," and was reported by Ms. Tung as an expenditure of the Committee. As noted, Ms. Tung was the legally designated treasurer of the Madison RTC during the same election cycle that she acted as the deputy treasurer of Ms. Steven's candidate committee.
28. Furthermore, the communications for which the expenditure was made benefited Ms. Steven's candidate committee as they appeared in a publication that was distributed in the Madison area in the weeks prior to the November 4, 2008 election, and called for readers to "Vote Republican."
29. As such, the Commission is left to determine whether General Statutes § 9-601 (19)(D) applies to the expenditure at issue given it was required to be (and was) reported and attributed as being *made* by the Committee and § 9-601 (19)(D) only applies when the expenditure is made by an individual. See General Statutes § 9-608 (c)(1)(C)(requiring an itemized accounting of each expenditure of committee funds); General Statutes § 9-621 (a)(prohibiting expenditures for certain communications unless that communication bears an attribution that indicates who paid for it).
30. In other words, the Commission must identify the identity of the person that makes the expenditure referenced in General Statutes § 9-601 (19)(D). For example, is it the "person" whose funds were spent (here, the Committee's funds) or does it also include the "person" who actually caused the funds to be spent (here, Ms. Tung acting as Treasurer of the Madison RTC).
31. This is an issue of first impression for the Commission. As such, we begin by looking at the language of the relevant provision. Section 9-601 (19)(D) states that a "coordinated expenditure" means "an expenditure *made by a person . . .*" The campaign finance statutes define the term "person" to include, inter alia, individuals and committees.

General Statutes § 9-601(10). Those statutes do not, however, define the term “made.” As such, we look to the common definition of that term. See Conn. Natural Gas Corp. v. Dep’t of Consumer Protection, 43 Conn. App. 196, 200 (1996)(stating that when the legislature does not define a term, it is appropriate to look to the common understanding expressed in law and dictionaries.”)

32. The term “make” has several definitions including “1. to bring into being; spec., . . . (c) **to cause, bring about, produce . . .**” [Emphasis added.] See e.g., Webster’s New World Dictionary, Second College Edition (1986). The term “made” is an inflected form of the term “make”; put simply, it is the past tense or past participle of that term. As such, the definition of “make” applies to our analysis.
33. In addition, the Commission notes that General Statutes § 9-622 (10) contains similar language to the provision at issue and states that “any **person who . . . makes or receives a contribution** that is otherwise prohibited . . .” is guilty of committing an illegal practice. [Emphasis added.] While the Commission has not had occasion to interpret who the person is that *makes* a contribution (and thus, an expenditure) pursuant to this provision, the Commission has consistently and repeatedly interpreted this provision to apply to an individual (such as a treasurer) who *receives* a contribution, regardless of whether that individual is receiving its personal funds or receiving committee funds. E.g., *Complaint of Steve Elworthy*, Fairfield, File No. 2007-354.
34. The Commission feels its prior interpretation of General Statutes § 9-622 (10) is sufficiently analogous to the issue at hand and in line with the common meaning of the term “make.” The Commission, therefore, concludes that pursuant to General Statutes § 9-601 (19)(D), an expenditure is made by the person (committee or individual) that causes that expenditure to occur. Here, that includes the Committee *and* Ms. Tung as she authorized that the check in the amount of \$1242.21 to be paid to Shore Publishing for the communications at issue.
35. The Commission further concludes, therefore, that because the expenditure at issue was made by Ms. Tung while she was acting as the deputy treasurer of Ms. Steven’s candidate committee, Ms. Steven’s candidate committee received a non-monetary (in-kind) contribution in the amount of \$1242.21.
36. Ms. Steven’s candidate committee was therefore prohibited from receiving that contribution because the expenditure was made after Ms. Stevens applied for an initial grant. General Statutes § 9-702 (b).
37. General Statutes § 9-622 (13) further provides that the following person is guilty of committing an illegal practice:

Any person who makes a coordinated expenditure for a candidate without the knowledge of said candidate. No candidate shall be civilly or criminally liable with regard to any such coordinated expenditure

38. In light of the legal analysis presented above, for the purposes of General Statutes § 9-622 (13), the Commission also concludes that Ms. Tung is the person that made the coordinated expenditure for Ms. Stevens. The evidence establishes that Ms. Stevens did not have knowledge of that expenditure. As such, the Commission concludes that Ms. Tung committed an illegal practice.
39. The Commission notes, however, that neither Ms. Steven's nor Ms. Tung believed that the expenditure at issue was a contribution to Ms. Steven's candidate committee. Instead, the evidence establishes that Ms. Tung believed in good faith that the expenditure at issue was not made in cooperation, consultation, in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with Ms. Stevens or her agents, nor was it a "coordinated expenditure" pursuant to General Statutes § 9-601 (19)(D) but rather was a communication that purely promoted the party. As such, she did not inform Mr. Diotalevi that such expenditure was made nor did she report the expenditure as a coordinated expenditure that benefited Ms. Stevens.
40. In addition, the Commission has not uncovered any evidence that prior to the Commission investigation of the Complaint Mr. Diotalevi had any knowledge about the expenditure at issue nor the advertisements referenced herein. As such, he did not have an opportunity to prevent any potential violation of General Statutes § 9-702.
41. Given the novelty of the legal issue in this case, Ms. Tung's good faith belief that the expenditure at issue was not a contribution to Ms. Steven's candidate committee but rather pure party literature, and Mr. Diotalevi's lack of knowledge of the expenditure at issue, the Commission declines to take any further action against Mr. Diotalevi or Ms. Tung.
42. The Commission's inquiry does not end here, however, as Complainant Ball further alleges the advertisements at issue constitute "undocumented independent expenditures" that were made in violation of Section 9-714-1 of the Regulations of Connecticut State Agencies. Section 9-714-1 does not, however, set forth any requirement or prohibition concerning independent expenditures. Instead, the Complainant's allegation appears to be based in General Statutes § 9-612 (e)(2) which requires the filing of an independent expenditure report under certain circumstances.
43. General Statutes § 9-612 (e)(2) provides as follows in pertinent part:

Any person who makes or obligates to make **an independent expenditure or expenditures, as defined in section 9-601, intended to promote the success or defeat of a candidate** for the office of . . . state senator or state representative, which exceeds one thousand dollars, in the aggregate, during a primary campaign or a general election campaign, as defined in section 9-700, on or after January 1, 2008, shall file a report of such independent expenditure to the State Elections Enforcement Commission. If the person makes or obligates to make such independent expenditure or expenditures more than twenty days before the day of a primary or election, the person shall file such report not later than forty-eight hours after such payment or

obligation. . . . The report shall be filed under penalty of false statement. [Emphasis added.]

44. With respect to Ms. Steven's candidate committee, the Commission has already concluded herein that the expenditure was not independent. As such, Ms. Tung was not required to file the independent expenditure report referenced in General Statutes § 9-612 (e)(2) on behalf of the Committee.
45. With respect to Mr. Suerth's candidate committee, the Commission concludes that the expenditure at issue qualified as an "independent expenditure" as that term is defined in General Statutes § 9-601(18). Pursuant to 9-612 (e)(2), the Commission must therefore determine whether that expenditure was "intended to promote the success or defeat" of a candidate for state senator or state representative. If so, the Madison RTC was required to report that expenditure within forty-eight hours because that expenditure exceeded \$1000. In other words, the Committee needed to report it by October 5, 2008. Instead, the Committee reported it on October 27, 2008 without indicating that the expenditure was independent and identifying the candidate who benefited from it.
46. To date, it appears that the Commission has not analyzed in a final decision whether an expenditure is "*intended to promote the success or defeat*" of a candidate for state senator or state representative for the purposes of General Statutes § 9-612 (e). As such, we apply the following familiar principles of statutory construction to determine the meaning of that phrase.
47. "When construing a statute, [the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . ." State v. Tabone, 292 Conn. 417, 431-32 (2009).
48. The phrase "intended to promote the success or defeat" is not defined in the campaign finance statutes. General Statutes § 9-714 does, however, refer to a report filed pursuant to General Statutes § 9-612 (e) that an independent expenditure had been made with "the intent to promote the *defeat* of a participating candidate." Specifically, General Statutes § 9-714 (a) provides as follows:

(a) The State Elections Enforcement Commission, (1) **upon the receipt of a report under subsection (e) of section 9-612 that an independent expenditure has been**

made or obligated to be made, with the intent to promote the defeat of a participating candidate whose candidate committee has received a grant under section 9-705 for a primary campaign or a general election campaign, or (2) upon determining at the request of any such participating candidate that such an independent expenditure has been made or obligated to be made with such intent, shall immediately notify the State Comptroller that additional moneys, equal to the amount of the independent expenditure, shall be paid to the candidate committee of such participating candidate. Not later than two business days following notification by the commission, the State Comptroller shall draw an order on the State Treasurer for payment of such amount to said candidate committee from the Citizens' Election Fund.

(b) If, during the ninety-six-hour period beginning at five o'clock p.m. on the Thursday preceding the day of a primary or an election, **the commission receives (1) a report under subsection (e) of section 9-612 that an independent expenditure has been made or obligated to be made, with the intent to promote the defeat of a participating candidate**, or (2) a notice from a participating candidate that such an independent expenditure has been made or obligated to be made but not yet been reported to the commission, the commission shall expeditiously review the report or such notice, as the case may be, and notify the State Comptroller, who shall immediately wire or electronically transfer moneys from the fund, in the amount of such independent expenditures confirmed or estimated by the commission, to the qualified candidate committee of said participating candidate or to any person requested by the participating candidate.

(c) (1) The maximum aggregate amount of moneys that the qualified candidate committee of a participating candidate shall receive under subsections (a) and (b) of this section to match independent expenditures made, or obligated to be made, with the intent to promote the defeat of said participating candidate shall not exceed the amount of the applicable grant authorized under section 9-705 for the participating candidate for the primary campaign or general election campaign in which such independent expenditures are made or obligated to be made.

(2) The additional moneys under subsections (a) and (b) of this section to match independent expenditures shall be granted to the qualified candidate committee of a participating candidate opposed by a nonparticipating candidate only if the nonparticipating candidate's campaign expenditures, combined with the amount of the independent expenditures, exceed the amount of the applicable grant authorized under section 9-705 for the participating candidate for the primary campaign or general election campaign in which such independent expenditures are made or obligated to be made. [Emphasis added.]

49. That phrase is interpreted in Section 9-714-1 of the Regulations of Connecticut State Agencies as follows:

(a) A person makes or obligates to make an independent expenditure with the intent to promote the defeat of a candidate for the office of . . . State Senator or State Representative, if the independent expenditure expressly advocates the defeat of such candidate.

(b) "Expressly advocates" shall mean:

1. Conveying a public communication containing a phrase including, but not limited to, "vote against," "defeat," "reject," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the primary or election, can have no reasonable meaning other than to advocate the defeat of one or more **clearly identified candidates**; or

2. Making a public communication which names or depicts one or more **clearly identified candidates**, which, when taken as a whole and with limited reference to external events, contains a portion that can have no reasonable meaning other than to urge the defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements by or about the candidate. [Emphasis added.]

50. In light of the aforementioned Regulation, the Commission concludes that for the purposes of General Statutes § 9-612 (e) an independent expenditure report is made or obligated to be made with the intent to promote the defeat of a candidate for the office of . . . State Senator or State Representative, if that independent expenditure expressly advocates the defeat of such candidate.
51. The Commission applies a similar interpretation to the phrase "intended to promote the success" found in General Statutes § 9-612 (e)(2). In other words, in determining whether an independent expenditure which exceeds one thousand dollars triggers the filing requirements, the Commission will look to the content of the communication to see if it has no reasonable meaning other than to urge the success of one or more clearly identified candidates for General Assembly.
52. In the present matter, while the advertisements at issue clearly advocate the success of Republican candidates generally for General Assembly, as previously concluded herein, those advertisements do not clearly identify Mr. Suerth or his opponent, Edward Meyer. The Commission therefore concludes that the Madison RTC did not violate General Statutes § 9-612 (e) because the expenditure at issue did not trigger the filing requirements found therein.
53. The Commission notes that shortly after the complaint was filed, Representative Heinrich's and Senator Meyer's candidate committees were advised by Commission staff that they could file a Supplemental Grant Request Form (SEEC Form 16) if they felt that the expenditures for the advertisements at issue triggered a supplemental grant. No such Supplemental Grant Request Forms were received by the Commission.

54. As a final point, the Commission notes that the expenditure in question did not qualify as an "organization expenditure" pursuant to General Statutes § 9-601 (25) because the advertisement contains language arguably discouraging electors from voting for Democratic candidates and is therefore not limited to encouragement to vote for such candidates.

55. General Statutes § 9-601 (25) provides in relevant part that:

"Organization expenditure" means an expenditure by a party committee . . . for the benefit of a candidate or candidate committee for:

(A) The preparation, display or mailing or other distribution of a party candidate listing. As used in this subparagraph, "party candidate listing" means any communication that meets the following criteria: (i) The communication lists the name or names of candidates for election to public office, (ii) the communication is distributed through public advertising such as . . . newspapers . . . (iii) the treatment of all candidates in the communication is substantially similar, and (iv) the content of the communication is limited to (I) for each such candidate, identifying information, including photographs, the office sought, the office currently held by the candidate, if any, the party enrollment of the candidate, a brief statement concerning the candidate's positions, philosophy, goals, accomplishments or biography and the positions, philosophy, goals or accomplishments of the candidate's party, (II) **encouragement to vote for each such candidate**, and (III) information concerning voting, including voting hours and locations [Emphasis added.]


56. The Madison RTC could, however, have made a party candidate listing as set forth in General Statutes § 9-601 (25)(A) -such as a positive party candidate listing encouraging voters to vote for Mr. Suerth and/or Ms. Stevens- so long as that organization expenditure was within permissible limits. See General Statutes § 9-718 (setting forth the applicable limits on organization expenditures made by party committees on behalf of participating candidates for the office of state senator or state representative.) "Organization expenditures" are not expenditures or contributions, so such a positive party candidate listing could have been coordinated with the Republican candidates. See General Statutes §§ 9-601a (b)(16) and 9-601b (b)(8).

ORDER

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

That the matter be dismissed.

Adopted this 24th day of March 2010 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission