



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

***Resolution and Order Denying Petition of Silver Golub & Teitell LLP for
Declaratory Ruling***

Pursuant to General Statutes §§ 4-176 (e), 9-7b and Connecticut Agency Regulations § 9-7b-65 (c), it is hereby resolved and ordered that the Commission will not issue a declaratory ruling in response to the Petition filed on behalf the Connecticut Democratic State Central Committee (the “state party”). The reasons for the Commission’s action are set forth below.

The Petition for Declaratory Ruling was filed on March 4, 2015. The subject matter of the Petition overlaps and coincides with the subject matter of an on-going administrative proceeding.¹ That proceeding was initiated by a complaint filed October 17, 2014 for which the Commission made a Necessary to Investigate Determination on November 18, 2014. See *In the Matter of a Complaint by Jerry Labriola, Jr.*, Wallingford, File No. 2014-126.

Presently, the administrative enforcement proceeding initiated in the fall of 2014 is ongoing, with the assigned investigator and staff attorney attempting to obtain relevant documents from counsel for the state party, among others. A decision with respect to the mailers attached as exhibits to the Petition will be issued with the resolution of Complaint No. 2014-126. That decision will constitute a comprehensive account of the petitioners’ (and other respondents’) actual conduct and circumstances, will be the result of a truth-seeking adversarial fact-finding process involving all relevant parties, and will address all relevant legal issues raised by the facts as discovered during the investigatory phase of the administrative enforcement proceeding.

To the extent that the 2014 flyers attached to the Petition, and the other facts discovered during the investigatory phase of the administrative proceeding, raise the question of whether one or more provisions of state campaign finance law is preempted by federal law with respect to one or more of the respondents, that will be addressed and adjudicated as part of the on-going administrative enforcement proceeding with all relevant parties’

¹ In its Petition, the state party seeks a determination by the Commission that Connecticut campaign finance law is inapplicable any time the state party uses its federal account for activity it deems to be voter registration and get out the vote activities because the state law is preempted by federal law. This petition is filed on behalf of the state party by the same attorney, David Golub from the law firm Silver Golub & Teitell LLP, who is also representing the state party as one of four currently named respondents in the pending enforcement action, *In the Matter of a Complaint by Jerry Labriola, Jr.*, Wallingford, File No. 2014-126. The exhibits attached to the Petition are the 2014 flyers promoting the candidate who is also a named respondent in the above referenced enforcement case currently pending before the Commission. The flyers were produced to the Commission as evidence in that enforcement matter in response to requests from Enforcement Staff Attorney Ahern and Lead Legal Investigator Urso.

participation and in light of the facts and circumstances revealed during the investigatory phase of the on-going administrative proceeding.

The “question of the legality of [the state party’s and candidate’s] alleged actions – namely, the using of funds from a federal account in a state election – is precisely the type of question that has been left to the SEEC’s discretion pursuant to the statutory scheme” *Republican Party of Connecticut v. Democratic Party of Connecticut*, Memorandum of Decision re: Motion to Dismiss (October 30, 2014) at 20 (rejecting the plaintiff’s claim that the state party’s pre-emption defense was a matter of pure law allowing the Superior Court to address the issue before administrative remedies were exhausted). Because there is an on-going administrative enforcement proceeding begun, the SEEC will address the relevant issues within that action.

The Commission notes that the issues raised by the state party in the Petition and in the ongoing administrative enforcement proceeding have been the subject of discussions between the state party and agency staff since at least 2010. Indeed, the SEEC has earlier addressed the issues raised again by the state party in the Petition in an advisory opinion and in response to the state party’s effort to have the Federal Elections Commission address the issue.² See Advisory Opinion 2014-01, dated February 11, 2014; Comment on FEC Advisory Opinion Request by SEEC, dated October 12, 2014; and Comment on FEC Advisory Opinion Request by SEEC, dated October 22, 2014. Should the state party have requested the declaratory ruling before Complaint No. 2014-126 was filed and deemed necessary to investigate, the Commission staff would have worked with the state party in accord with Conn. Regs. § 9-7b-64 to develop the facts necessary for a Commission determination so that the Petition could be addressed.

Should the on-going enforcement proceeding result in a dismissal of the pending Complaint, or otherwise not resolve the issues of law presented in the Petition, the Commission would consider issuing a declaratory ruling at that time. Should the state party choose to submit such a petition, the Commission notes that several additional facts would be required in order to finally determine the issue presented. The current Petition states:

Petitioner maintains multiple federal accounts, including a “federal account” which serves as a repository for contributions from individuals, federal political committees and federal Political Action Committees (“PACs”) and a “federal limited account” which lawfully receives contributions, *inter alia*, from state contractors and state lobbyists. Although not required by state or federal law, Petitioner – to comply with the spirit of Connecticut’s election laws – restricts its expenditures from the federal limited account to purely federal activity that cannot confer even an incidental benefit on state candidates.

² The state party withdrew their request to the FEC for an advisory opinion addressing the legal issues currently presented in their March 4 Petition to the SEEC. This was done after expedition had been granted by the FEC and just before the draft opinions were to be released.

This reference to a “federal limited account” has been made by the state party to Commission staff, to the FEC, to the Superior Court and to the media. The brief statements provided by the state party thus far do not provide enough information to perform an analysis. In order to issue a declaratory ruling concerning the propriety of the use of any “federal account” in the future, the Commission would need additional information such as what methods and safeguards are used to determine the status of contributors; e.g. are they state contractors or lobbyists as those terms are defined in Connecticut campaign finance statutes; how and by whom the accounts referenced by the state party are maintained; whether funds may be transferred between the “federal account” and “federal limited account; and what documentation and disclosure is provided to the public and SEEC concerning such contributions and accounts. Depending on the future activities for which advice is sought, also relevant may be the involvement of the candidates and whether they are participating in the public financing program, as well as the state party’s choices with respect to the use of Levin funds or the permissible reimbursements under federal law. Also, a more detailed statement would be necessary regarding which campaign finance provisions are claimed to be preempted and with respect to whom.

Adopted this 14 day of April, 2015, at Hartford, CT by vote of the Commission.



Anthony J. Castagno - Chairman
By Order of the Commission