Advisory Opinion 2008-01: Proposed Political Activity of Nonprofit Association

The advice of the Commission has been sought by the Connecticut League of Conservation Voters regarding the Citizens' Election Program and how the Connecticut League of Conservation Voters may permissibly engage in certain activities during the upcoming election season. Specifically, the following questions regarding independent expenditures, scorecards, and endorsements have been asked:

Independent Expenditures

- Are there any limits as to the amounts we can spend independent of a candidate's campaign?
- Are there any possible fines or penalties to CTLCV for inadvertent violations of the rules governing independent expenditures?
- At what point must we sever all communications with a candidate (or potential candidate) to maintain independent expenditure?

Scorecards

- Can we distribute scorecard records of low-scoring candidates in their districts without affecting public financing?
- Using the 2007 scorecard as an example, would there be any restriction on language or any time limitations for broadly distributing a similar scorecard in 2008?
- Can we post our scorecard on our website regardless of its content without triggering an action by the public financing laws?

Endorsements

- May we collect questionnaires and interview candidates at any time during the campaign season? Are there any questions we may not ask a candidate if we are maintaining independent expenditure? (For example, questions to determine candidate viability).
- Is the amount of money we spend to publicize our endorsement limited or could affect public financing of either candidate?
- Can we post our endorsements and information about candidates on our website without triggering an action by the public financing laws?
- May we contact candidates to let them know of our decision to endorse?
- May candidates use a quote from CTLCV regarding our endorsement in their materials?
- May candidates in the public financing program use our endorsement in their materials?
- May other non profits reference our scorecard, endorsements, or web site in any of their public communications?

This Opinion will address each of the questions by area of concern, considering the application of Connecticut Campaign Finance Laws, Chapters 155 and 157 of the General Statutes, to the proposed 2008 activities of the Connecticut League of

Conservation Voters.[1] The advice provided is prospective and does not address whether past activities undertaken were or were not in compliance with the above statutes.

Background

The CTLCV (the "**League**") is a nonstock corporation exempt from taxation pursuant to Section 501(c) (4) of the Internal Revenue Code. The League also maintains the "Connecticut League of Conservation Voters PAC," a political committee registered with the Commission (the "**political committee**").

The League has registered as a client lobbyist; its executive director Lori Brown functions as an in-house communicator lobbyist for the organization. *See* https://www.oseapps.ct.gov/lobbyist/forms/search/ClientLobbyistUserHistory.asp (resulting search for "League of Conservation Voters") (last viewed on June 9, 2008). As a membership entity, the League solicits donations from individuals to support its ongoing work. Individuals who give to the organization are referred to as "members" of the group, with a suggested donation level of $35 per year.

Analysis

For ease of understanding – and because one explanation builds on the other – this opinion will address first the inquiries relating to independent expenditures. The opinion will then address the specific application of the general principles discussed in connection with these answers in sections addressing the use of scorecards and endorsements.

Independent Expenditures

An independent expenditure is defined as "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." General Statutes § 9-601 (18). The statute also provides an extensive definition of coordinated expenditures, identifying specific instances where a committee or individual working closely with a candidate committee could cross the line between making an independent expenditure and coordinating with a candidate to make campaign expenditures. General Statutes § 9-601 (19). (A copy of the full definition of a "coordinated expenditure" is attached hereto as Appendix A). Coordinated expenditures fall within the definition of contribution. General Statutes § 9-601a (a) (4). (A copy of the full definition of "contribution" is attached hereto as Appendix B.) Expenditures in aid of or in opposition to a candidate may be made only by a political committee registered with the Commission. General Statutes § 9-602 (a).

"Are there any limits as to the amounts we can spend independent of a candidate's campaign?"

A nonstock corporation that has applied to the Internal Revenue Service for tax exempt status pursuant to 26 U.S.C. § 501 (c) (4) or 501 (c) (3) may not make expenditures directly in aid of or in opposition to the candidacy for nomination or

[1] The Connecticut League of Conservation Voters has also submitted questions concerning the activities of political committees, which are general in nature and answerable with reference to the guidebook, UNDERSTANDING CONNECTICUT'S CAMPAIGN FINANCE LAWS: A GUIDE FOR POLITICAL COMMITTEES (Rev. April 2008). These questions are answered separately.

election of any individual or any party. General Statutes § 9-602 (a); *see also* SEEC Opinion of Counsel 2008-3: Application of Connecticut General Statutes § 9-602 to the proposed political activities of a nonstock corporation exempt from taxation pursuant to section 501(c)(4) of the Internal Revenue Code. For clarification, the statute defines "expenditure" to include:

> (1) Any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, when made for the purpose of influencing 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 on behalf of any political party;
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> (2) Any advertisement that (A) refers to one or more clearly identified candidates, (B) is broadcast by radio or television other than on a public access channel, or appears in a newspaper, magazine or on a billboard, and (C) is broadcast or appears during the ninety-day period preceding the date of an election, other than a commercial advertisement that refers to an owner, director or officer of a business entity who is also a candidate and that had previously been broadcast or appeared when the owner, director or officer was not a candidate; or
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> (3) The transfer of funds by a committee to another committee.

General Statutes § 9-601b (a). A communication, and the costs associated therewith, will be deemed to be an expenditure pursuant to General Statutes § 9-601b if that communication contains words that expressly advocate the election or defeat of a candidate or candidates or the functional equivalent of such express advocacy. *See* SEEC Opinion of Counsel 2008-3 (citing *Buckley* v. *Valeo*, 424 U.S. 1, 44 n.52, 80 (1976) and *Federal Election Com'n* v. *Wisconsin Right to Life, Inc.*, 56 U.S. 410, 127 S.Ct. 2652, 2666 (2007)).

A political committee, however, may make an independent expenditure, and Connecticut's campaign finance laws impose no limits on independent expenditures made by political committees. *See* General Statutes § 9-612 (e) (1).

"Are there any possible fines or penalties to CTLCV for inadvertent violations of the rules governing independent expenditures?"

The Commission, in assessing the amount of a civil penalty, would consider whether such violation was intentional or inadvertent in applying applicable regulations including Regs., Conn. State Agencies § 9-7b-48. Such considerations could include a committee's good faith efforts to comply as well as the amount necessary to ensure immediate and continued compliance. Any such determination would be based on the facts and circumstances of each case.

Violations of Connecticut's statutes governing independent expenditures carry both potential civil and criminal sanctions. *See generally* General Statutes § 9-623. The enabling statute that created the SEEC allows it to impose a civil penalty of "$2,000 per offense or twice the amount of any improper payment or contribution . . . ." General Statutes § 9-7b (a) (2) (D). It is an "illegal practice" to "make a coordinated expenditure for a candidate without the knowledge of said candidate." General Statutes § 9-622 (13). Furthermore, should a political committee fail to report independent expenditures, fines

of up to $10,000 and as many as five years in prison are authorized. *See* General Statutes § 9-612 (e) (5). The League would similarly be open to potential civil and criminal liabilities as well should it violate the State of Connecticut's campaign finance laws. *See* General Statutes § 9-623.

"At what point must we sever all communications with a candidate (or potential candidate) to maintain independent expenditure?"

The question you have posed is too vague to address with any specificity. As a result, only the relevant statutory provisions that should be applied when deciding what actions may lawfully be undertaken are provided. The determination of whether an expenditure is truly "independent" relies on the facts of the individual situation. Given the definition of "coordinated expenditure," such an expenditure can occur at many points in the campaign cycle. The temporal proximity to an election of contact between a political committee and a candidate committee is only one of several factors to be considered in determining the relationship between a political committee and a candidate and whether that relationship has resulted in the making of a coordinated expenditure. The determination, however, may have great import for a candidate participating in the Citizens' Election Program (the "**Program**").

Candidates participating in the voluntary Program have agreed to limit use of personal funds and the types and amounts of contributions their committees may receive. Candidates voluntarily accept only public grant monies and a specified amount in monetary donations ranging from $5 to $100 from people, a certain portion of which reside in their district. In joining the Program, participating candidates are required to forego non-monetary "in-kind" contributions and contributions from political committees.

The definition of a contribution thus becomes vital to determining whether participating candidates are abiding by the Program restrictions. A contribution includes "[a]n 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." General Statutes § 9-601a (a) (1) (4).

Coordinated expenditures are "in-kind" contributions and cannot occur with respect to candidates participating in the Program. A well-intentioned association with a participating candidate, therefore, could ultimately hurt the candidate that the political committee intends to help. Any determination as to whether a coordinated expenditure was made, and therefore an impermissible contribution received, would be based on the facts and circumstances of each case.

Coordinated Expenditures

The determinative question thus becomes whether an expenditure by a political committee falls within the definition of a contribution, which includes coordinated expenditures, or if it is independent.

Scorecards

The Commission understands the following: The League publishes an annual document entitled "Environmental Scorecard: Electing Pro-Environment Lawmakers, Holding Legislators Accountable, Engaging the Public in State Policy." The 2007 pamphlet began with a section called "2007 Session in Review," which included lists of "victories," "bad bills that passed," and "work left undone," as well as four short articles regarding specific legislative initiatives. The next section is entitled "Constituents Take Note" and this contains a brief explanation of the scorecard process; an analysis of the overall average, as compared to other years, of the Senate and House voting; and a list of the four members of the Senate and the House with the highest and lowest scores. The next section, entitled "Scorecard Summary," reports the name, party, district and score (presented as a percentage point). This chart is followed by "Important Bills Scored" and "Important Bills Not Scored," sections which summarize the goals and status of environment-related bills and include information as to which politicians and/or lobbyists supported or opposed the bills. Next is a section entitled "Interpreting Scoring Tables" and followed by a two page chart listing Senate votes (or failures to vote) by bill and name and an eight page chart listing the same information for the House of Representatives. The scorecard document addressed all legislators in the General Assembly, reflecting their votes and providing a short-hand "score" based on a compilation of those votes. Any references to specific politicians were limited to their score or to a reporting, in the sections discussing the bill, of the role played with respect to that particular bill in the relevant legislative session.

This scorecard, created each year following the legislative session in both election and non-election years, is the sole publication produced by the League. In addition to its registered members, the League sends the scorecard to approximately 100 like-minded, environmental organizations in Connecticut as well as several media outlets and posts it for general download and review on its website. *See* http://ctlcv.org/scorecards.htm (last viewed on June 9, 2008). The League is currently seeking advice regarding the release of a highly similar scorecard document in 2008.

"Using the 2007 scorecard as an example, would there be any restriction on language or any time limitations for broadly distributing a similar scorecard in 2008?"

The scorecard reviewed by the Commission that the League has created and distributed in 2007 would not represent "expenditures" under Connecticut campaign finance laws as the document was not "made for the purpose of influencing the nomination for election, or election, of any person," nor are they advertisements appearing on or in radio, television, billboards, newspapers or magazines within ninety days preceding the election. General Statutes § 9-601b (a) (1) & (2). Thus, these scorecards as described above, limited to notices of legislation status and evaluations of the legislative performance of elected officials without specific reference to or advocacy with respect to an upcoming election, would not be subject to campaign finance laws or regulations and could be distributed throughout the state by the League, at any time. *See* SEEC Opinion of Counsel 1992-2: Applicability of Chapter 150 [now Chapter 155] to Preparation and Dissemination of Voter Guide by Planned Parenthood of Connecticut.

"Can we distribute scorecard records of low-scoring candidates in their districts without affecting public financing?" "Can we post our scorecard on our website regardless of its content without triggering an action by the public financing laws?"

As discussed above, the League may create and disseminate to the public scorecards that are modeled on similar examples created following previous legislative sessions. Those previous scorecards, released annually, discussed legislation during the relevant period and reflected legislators' votes on environmental legislation, assigned a value to each vote, added up the scores, and then assigned a percentage to legislators based on their voting history. This activity falls outside the definitions of expenditure and thus is not subject to the Connecticut campaign finance laws.

The determination, however, of whether an activity qualifies as a regulated expenditure and/or contribution, and therefore triggers campaign finance laws, is a fact specific inquiry. As noted above, a communication, and the costs associated therewith, will be deemed to be an expenditure pursuant to General Statutes § 9-601b if that communication contains words that expressly advocate the election or defeat of a candidate or candidates or the functional equivalent of such express advocacy. Thus, for example, should the content of the scorecard change to include a opening page exhorting voters not to vote for eight named individuals receiving the lowest scores in 2008 on a first page entitled "Vote NO for Pollution," or other language that unequivocally calling for the election or defeat of a specific candidate or its functional equivalent, then that would become an expenditure under Connecticut's campaign finance laws. Similarly, if the scorecard is distributed through a mailing to all voters in the district of a low-scoring candidate just prior to an election and is accompanied by a cover letter that exhorts the voters not to vote for the low-scoring candidate and contains unfavorable statements clearly meant to portray the candidate in an unfavorable light, then the cost of that mailing would be an expenditure under § 9-601b.

If the scorecard's content were to change, and it subsequently qualified as an expenditure, then the costs for its production and dissemination must be borne by the political committee, which would need to report the associated costs to the Commission. General Statutes § 9-602. If the expenditure called for the defeat of a candidate participating in the Program then public financing could be affected. Under the Program, a participating candidate targeted by an independent expenditure calling for the defeat of that candidate may be eligible for supplemental grant money from the fund. General Statutes § 9-714; Regs., Conn. State Agencies § 9-714-1.

Endorsements

As part of its election year activities, the League endorses candidates for the General Assembly. According to the group's website, the endorsements rely on assessments of candidates' past actions as well as their environmental goals. The website promises that receiving the League's endorsement can result in both financial and organizational assistance:

> Each year, CTLCV researches political candidates for state and local office and endorses individuals who have demonstrated leadership and pledge to make the

> environment a high legislative priority. CTLCV assists these candidates with media, fundraising, and direct campaign work.

See http://www.ctlcv.org/endorsements.htm (last viewed on June 9, 2008).

The League bases its endorsements in part on the answers candidates give to a voluntary questionnaire as well as a personal interview. The most recent questionnaire from 2006 began by asking candidates about their general platform on environmental issues. Thereafter, the questions focused on specific issues and asked the candidates to rank their agreement with statements from 1 to 4, with 1 representing full support and 4 indicating opposition to the statement. The issues addressed in this portion of the questionnaire, which represented the remainder of the document, included: "Energy and Global Warming," "Open Space & Farm Land," "Smart Growth," "Water Management," and "Solid Waste."

After evaluating the written responses to this questionnaire, the League determines which candidates it will interview. The personal interviews are conducted by League personnel as well as community activists. These people are invited by the League and function as local experts on the environmental issues in the interviewee's district. In addition to environmental issues, the personal interview has traditionally touched on a candidate's viability for election, such as funding resources, organization strength, and campaign plans.

The League's 2006 endorsement list is available to the general public via its website; and it plans to disseminate information about its 2008 endorsements in a similar fashion. *See* http://www.ctlcv.org/endorsements 2006.htm

Initially, in analyzing the questions posed regarding endorsements, one must begin by asking whether such activity falls within the definition of either "expenditure" or "contribution" and is therefore regulated under Connecticut campaign finance law. Because an endorsement advocates for the election of a specific candidate, any costs associated with the endorsement fall within the definition of an expenditure. Connecticut law, however, does provide specific exceptions for certain activities that would otherwise fall within the definition of expenditure. *See* General Statutes § 9-601b (b). Specifically, § 9-601b (b) (2) excludes from the definition of "expenditure" communications "made by any corporation, organization or association to its members, owners, stockholders, executive or administrative personnel, or their families." *See also* General Statutes § 9-601a (b) (2) ("'[C]ontribution' does not mean . . . [a]ny communication made by a corporation, organization or association to its members, owners, stockholders, executive or administrative personnel, or their families . . ."). This exception for *internal* communication allows an association to communicate with its membership without that communication resulting in a contribution or expenditure. This exception covers even communications expressly advocating the election or defeat of a particular candidate, so long as the communication remains limited to the restricted class.

Chapter 155 does not define "association" as used in § 9-601b (b) (2). When the legislature does not define a term, "it is appropriate to look to the common understanding expressed in the law and in dictionaries." *Conn. Natural Gas Corp. v. Dep't of Consumer Protection*, 43 Conn. App. 196, 200 (1996) (internal citations omitted). Webster's New World Dictionary, in relevant part, defines "association" as ". . . 3. an organization of persons having common interests, purposes, etc.; society, league . . ."

WEBSTER'S NEW WORLD DICTIONARY, 84 (1986). Moreover, the SEEC has adopted the following definition for "member":

> [A]ll persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:
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> (1) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake; or
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> (2) Pay membership dues at least annually, of a specific amount predetermined by the organization; or
>
> (3) Have a significant organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

SEEC Opinion of Counsel 2007-12 (adopting FEC's definition of "members" for Connecticut's campaign finance laws); *See also* 11 C.F.R. 100.134 (f).

This definition of "association" encompasses the League, which offers a description of its activities and goals on its website:

> CTLCV is a bi-partisan, statewide, non-profit organization dedicated to protecting Connecticut's environment by making it a priority for our elected leaders.
>
> As a legislative watchdog, CTLCV works in concert with Connecticut's environmental advocacy groups to identify and highlight important bills impacting our air, water, wildlife, open space, and our health.
>
> CTLCV also supports pro-environment candidates for political office at election time and holds state legislators accountable for their votes in an annual Environmental Scorecard.

http://www.ctlcv.org/about.htm (last viewed on June 9, 2008). In addition, given the League's membership structure wherein members pay annual dues of at least $35, the group qualifies as an association with members for the purposes of Connecticut's campaign finance laws. As such, any candidate endorsements by the League communicated to its members fall within the exception under §§ 9-601a (b) (2) and 9-601b (b) (2) for in-house association communications with a restricted class.

The breadth of the in-house association communications exception affords the League great latitude in communicating with its members. A membership association like the League may rely on this exception to communicate in-house regarding political subjects, and even encourage them to support, volunteer on behalf of, or vote for or against selected candidates; these specific communications that advocate on behalf of or against a specific candidate are termed "express advocacy."

This exception, however, has limitations. As an exception, it will be narrowly construed. *See Commission on Human Rights and Opportunities* v. *Sullivan*, 285 Conn. 208, 222, 939 A.2d 541 (Jan 22, 2008); *see also* SEEC Opinion of Counsel 2000-07: Voter Registration and Education (discussing limitation on intra-corporate communication exception to expenditures under General Statutes § 9-333b (b) (2) [*now* § 9-601b (b) (2)] and concluding that hanging materials expressly advocating on behalf of candidate on bulletin board in workplace exceeded the limits of the "in-house communications"). Once the communication extends beyond the restricted class, a cost incurred related to that express advocacy or its functional equivalent is an expenditure for the purposes of the campaign finance laws. The originator of the communication to the non-restricted class must report making this expenditure to the SEEC and since corporations, organizations, and associations may not make campaign expenditures, the League's political committee must create, pay for, and report any communications distributed beyond the entity's restricted class.

Moreover, under the election laws, client lobbyists and political committees established by or on behalf of client lobbyists may not contribute to candidate committees or other political committees established by or on behalf of members of and candidates for the General Assembly or statewide office, during certain legislative sessions. *See* General Statutes § 9-610 (e). The statute explicitly suspends application of the "exclusions to the term 'contribution' in subsection (b) of section 9-601a" in connection with the sections implementing the ban on client lobbyist contributions during the legislative session. General Statutes § 9-610, as revised by Public Act No. 08-2, Section 8. Under this ban, the League as a client lobbyist, and any political committee it has formed, may not make contributions to candidates during the legislative sessions. Therefore, if the League or its political committee coordinates its efforts with a candidate and then communicates the resulting endorsement outside of its membership, then the communication would be a coordinated expenditure, and therefore a contribution, that violates the lobbyist ban.

Caution should therefore be exercised when planning on relying on the exception for membership communications.

"May we collect questionnaires and interview candidates at <u>any</u> <u>time</u> during the campaign season? Are there any questions we may <u>not</u> ask a candidate if we are maintaining independent expenditure? (for example, questions to determine candidate viability)."

The League and/or its political committee may distribute questionnaires and interview candidates during the campaign season and at other times during the year. Caution is advised during this process to ensure that any expenditures later made by the political committee to publicize its endorsement will not be deemed coordinated contributions.

The content of the 2006 questionnaire submitted with the League's request does not include questions that would indicate coordination or cooperation with a candidate. If the questionnaire is changed, however, to include questions aimed at determining candidate viability or campaign plans, projects and/or needs, then expenditures later made to publicize the endorsement that was made in light of the candidate's own plans could be deemed a contribution.

Similarly, if for example the conversation during an interview evolves to include discussion of the League's plans regarding the content, intended audience, timing, location and/or mode and frequency of communications regarding the endorsement, then later expenditures implementing those plans would fall within the definition of a coordinated expenditure and therefore constitute an impermissible contribution to a candidate participating in the Program. Moreover, the League's website currently indicates that it will provide "media, fundraising, and direct campaign work" to support the endorsed candidates' campaigns. http://www.ctlcv.org/endorsements.htm (last viewed on June 9, 2008). Such exchange could also satisfy the definition of "coordinated expenditure."

The League and its political committee should therefore exercise caution when drafting questionnaires and interviewing candidates. Best practices might include (1) careful review of questionnaire content in light of the definition of coordination, (2) beginning interviews by sharing with candidates the definitions of coordination and contribution, (3) clearly expressing the intent at the beginning of an interview to avoid any conversation that would fall within those definitions, (4) training interviewers as to questions to be avoided and/or (5) conducting interviews according to a pre-determined check-list of topics.

"Is the amount of money we spend to publicize our endorsement limited or could it affect public financing of either candidate?"

The amount of money independently spent by a political committee is not limited; however, the independent expenditure may still affect the amount of public financing available to a participating candidate. If the independent spending advocates the defeat of a candidate participating in the Program, then these expenditures could trigger the release of additional monies to the targeted participating candidate. General Statutes § 9-714 (a); Regs., Conn. State Agencies § 9-714-1.

Moreover, if the expenditure is deemed coordinated and thus a contribution then the endorsed candidate who is participating in the Program would be in violation of the Program.

"Can we post our endorsements and information about candidates on our website without triggering an action by the public financing laws?"

The Connecticut League of Conservation Voters' website includes a home page listing three main areas: a watchlist, environmental scorecard, and candidate endorsements. When the candidate endorsements are chosen, the viewer is taken to a page with the following statement:

> Each year, CTLCV researches political candidates for state and local office and endorses individuals who have demonstrated leadership and pledge to make the environment a high legislative priority. CTLCV assists these candidates with media, fundraising, and direct campaign work.
>
> Endorsements for the 2008 election cycle will be published in late summer 2008. Candidates should check back for our questionnaire in mid to late June 2008.

The viewer also has the option to view the list of 2006 endorsements, which consists of a list of names accompanied by information regarding party affiliation, chamber and voting

district. There is no member password required to view the endorsements and access to the information on this website is not otherwise restricted.

The exception from the definition of expenditures for communications within a membership association would cover any internal communications that the League may have with its members concerning the endorsements but would not extend to disseminating this material to the general public.

Use of the Internet to communicate with the public would be considered an expenditure subject to Connecticut's campaign finance laws. *See*, e.g., In the Matter of a Complaint by Frank DeJesus, Hartford, File No. 2006-193 (civil penalty imposed for failure to report expenditure related to purchase and payment of web hosting services for website that, at various times, contained messages made for the purpose of influencing an election); *see also* FEC Advisory Opinion 1998-22 (reporting requirements apply to Connecticut individual's independent creation of a website, costs associated with creating and maintaining that website). Once a communication extends beyond the restricted class, the exemption from the definition of "expenditure" is not applicable. As distinguished from its communications to its own restricted class, an association's expenditures for publicizing the endorsement to the general public must be made pursuant to Connecticut's election laws by a political committee. *See* General Statutes § 9-602.

The political committee may make unlimited independent expenditures to publicize the endorsements, via the web or any other method of distribution. As noted above, the political committee will need to report these expenditures. Thus, with respect to a web posting, the political committee is required to report costs associated with the website – e.g., domain name registry, hosting costs, website maintenance and creation, bandwidth – as it would other expenditures in support of a candidate or candidates. *See* SEEC Opinion of Counsel 2007-13: Permissibility of Proposed Party Committee Web Activities; In the Matter of a Complaint by Donald Bernardo, Oxford, File No. 93-136 (civil fine for entity making expenditures for endorsement letters without utilizing political committee); In the Matter of a Complaint by Frank DeJesus, Hartford, File No. 2006-193. When, as here, the League already has a website, a link to the website of the political committee could be utilized or the political committee could pay the pro rata share of the web related costs. *Cf.* Alaska Department of Administration, Public Offices Commission AO 97-21-CD:Posting of a PAC Website Consistent with the Campaign Disclosure Law (endorsements must be made on a PAC web site, not the organization's website, as reported). In addition, the political committee must comply with the attribution requirements in General Statutes § 9-621 (a).

The Commission, however, has recognized, in light of the Program and the consequent changes in the election laws, there is a need for regulatory action in this area similar to action taken by our sister agencies on the state and federal level. The Commission on Governmental Ethics and Election Practices for the State of Maine, which also administers a public financing program, has adopted a policy permitting a press release announcing a candidate endorsement available to the general public on an association's website, provided that four conditions are met: 1) the association ordinarily makes press releases available to the general public on its website; 2) the press release is limited to an announcement of the organization's endorsement or pending endorsement and a statement of the reasons therefore; 3) the press release is made available in the

same manner as other press releases made available on the website; and 4) the costs of making the press release available on the website are *de minimis*. Commission on Governmental Ethics and Election Practices, Maine, Minutes of February 13, 2002 Meeting (adopting internet use policy statement). Similarly, the Federal Election Commission has a regulation allowing a corporation or organization that routinely posts press releases on its website to post a press release announcing its endorsement in the same manner, if the press release and notice of the press conference distributed only to the representatives of the news media that the corporation or labor organization customarily contacts when issuing non-political press releases or holding press conferences for other purposes, and if the public announcement of the endorsement is not coordinated with the candidate, the candidate's agents or the candidate's authorized committees. 11 CFR 114.4 (c) (6). The need for such a regulation in Connecticut will be factored into the Commission's enforcement actions and complaint consideration with respect to the 2008 elections and until such regulation can be proposed and decided upon by the legislature. Limited communication of endorsements by an association beyond its membership through its normal press release channels will not be the subject of civil action, absent any other aggravating factors. Any other dissemination of the release will be considered an expenditure and must be borne by the League's political committee.

"May we contact candidates to let them know of our decision to endorse?"

Yes, the League and/or the political committee may contact candidates to inform them that an endorsement has been made. As noted previously, care should be taken not to cross the line into coordinating campaign activities with an endorsee who has chosen to participate in the Program, since participating candidates cannot receive contributions from political committees. Connecticut election law defines a "coordinated expenditure" to include communications "if the person making the expenditure . . . has informed said candidate . . . concerning the communication's contents, intended audience, timing, location or mode or frequency of dissemination." General Statutes § 9-601 (19) (g) (2008). Thus, for example, alerting candidates of the timing and location of a press conference so that they may attend or include them in the drafting of a press release to announce the endorsements could result in a determination that coordination had occurred. For a nonparticipating candidate, coordination could occur, but the value should be reported to the candidate committee treasurer for inclusion on the committee's campaign finance disclosure report as a contribution.

"May candidates in the public financing program use our endorsement in their materials?" "May candidates use a quote from CTLCV regarding our endorsement in their materials?"

Yes, participating candidates may use a quote from the endorsement in their campaign material. The endorsement itself, as well as the use of language from a press release supporting that endorsement, absent any financial, logistical, or administrative support, would not be a campaign contribution. Again, caution should be exercised with respect to coordination. The definition of "coordinated expenditure" includes any "expenditure made . . . [f]or the production, dissemination, distribution or publication, in whole or in substantial part, of . . . any written . . . political advertising or campaign communication prepared by . . . a political committee . . . ." General Statutes § 9-601

(10) (B). Thus, for example, a participating candidate would have received an impermissible in-kind contribution if he or she distributed a glossy flyer designed and published by the League's political committee in order to announce its endorsements to the general public.

"May other non profits reference our scorecard, endorsements, or web site in any of their public communications?"

Other nonprofit entities must operate under the same statutes and regulations as the League and its political committee. The content of the communication will determine whether and how it is regulated. The question is otherwise too vague to answer with any specificity and generally questions about third parties are not addressed. Any other entity wishing to utilize the League's endorsement in its materials may seek a separate opinion to address this issue directly.

The foregoing advice is an Advisory Opinion of the Commission. This Advisory Opinion is issued pursuant to the provision of General Statutes § 9-7b (14).

Adopted this 11th day of June, 2008 at Hartford, Connecticut by a vote of the Commission.

Stephen F. Cashman, Chairman

Appendix A: General Statutes § 9-601 (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, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party 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, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee;

(C) Based on information about a candidate's plans, projects or needs, provided by (i) a candidate, candidate committee, political committee or party committee, or (ii) a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party 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, political committee or party 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, political committee or party committee;

(E) For fundraising activities (i) with or for a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party committee, or (ii) for the solicitation or receipt of contributions on behalf of a candidate, candidate committee, political committee or party committee, or a consultant or other agent acting on behalf of a candidate, candidate committee, political committee or party 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, a political committee or a party committee, or a consultant or other agent acting on behalf of said candidate, candidate committee, political committee or party 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, a political committee or a party committee, or a consultant or other agent acting on behalf of said candidate, candidate committee,

political committee or party committee, concerning the communication's contents, intended audience, timing, location or mode or frequency of dissemination.

Appendix B: General Statutes § 9-601a

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

(1) Any gift, subscription, loan, advance, payment or deposit of money or **anything of value, made for the purpose of influencing 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 on behalf of any political party;

(2) A written contract, promise or agreement to make a contribution for any such purpose;

(3) The payment by any person, other than a candidate or campaign treasurer, of compensation for the personal services of any other person which are rendered without charge to a committee or candidate for any such purpose;

(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; or

(5) Funds received by a committee which are transferred from another committee or other source for any such purpose.

(b) As used in this chapter and sections 9-700 to 9-716, inclusive, "contribution" does not mean:
(1) A loan of money made in the ordinary course of business by a national or state bank;

(2) Any communication made by a corporation, organization or association to its members, owners, stockholders, executive or administrative personnel, or their families;

(3) Nonpartisan voter registration and get-out-the-vote campaigns by any corporation, organization or association aimed at its members, owners, stockholders, executive or administrative personnel, or their families;

(4) Uncompensated services provided by individuals volunteering their time;

(5) The use of real or personal property, and the cost of invitations, food or beverages, voluntarily provided by an individual to a candidate or on behalf of a state central or town committee, in rendering voluntary personal services for candidate or party-related activities at the individual's residence, to the extent that the cumulative value of the

invitations, food or beverages provided by the individual on behalf of any single candidate does not exceed two hundred dollars with respect to any single election, and on behalf of all state central and town committees does not exceed four hundred dollars in any calendar year;

(6) The sale of food or beverage for use in a candidate's campaign or for use by a state central or town committee at a discount, if the charge is not less than the cost to the vendor, to the extent that the cumulative value of the discount given to or on behalf of any single candidate does not exceed two hundred dollars with respect to any single election, and on behalf of all state central and town committees does not exceed four hundred dollars in a calendar year;

(7) Any unreimbursed payment for travel expenses made by an individual who on the individual's own behalf volunteers the individual's personal services to any single candidate to the extent the cumulative value does not exceed two hundred dollars with respect to any single election, and on behalf of all state central or town committees does not exceed four hundred dollars in a calendar year;

(8) The payment, by a party committee, political committee or an individual, of the costs of preparation, display, mailing or other distribution incurred by the committee or individual with respect to any printed slate card, sample ballot or other printed list containing the names of three or more candidates;

(9) The donation of any item of personal property by an individual to a committee for a fund-raising affair, including a tag sale or auction, or the purchase by an individual of any such item at such an affair, to the extent that the cumulative value donated or purchased does not exceed fifty dollars;

(10) (A) The purchase of advertising space which clearly identifies the purchaser, in a program for a fund-raising affair sponsored by the candidate committee of a candidate for an office of a municipality, provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single such candidate or the candidate's committee with respect to any single election campaign if the purchaser is a business entity or fifty dollars for purchases by any other person;
(B) The purchase of advertising space which clearly identifies the purchaser, in a program for a fund-raising affair sponsored by a town committee, provided the cumulative purchase of such space does not exceed two hundred fifty dollars from any single town committee in any calendar year if the purchaser is a business entity or fifty dollars for purchases by any other person. Notwithstanding the provisions of this subparagraph, the following may not purchase advertising space in a program for a fund-raising affair sponsored by a town committee: (i) A communicator lobbyist, (ii) a member of the immediate family of a communicator lobbyist, (iii) a state contractor, (iv) a prospective state contractor, or (v) a principal of a state contractor or prospective state contractor. As used in this subparagraph, "state contractor", "prospective state contractor" and "principal of a state contractor or prospective state contractor" have the same meanings as provided in subsection (g) of section 9-612;

(11) The payment of money by a candidate to the candidate's candidate committee;

(12) The donation of goods or services by a business entity to a committee for a fund-raising affair, including a tag sale or auction, to the extent that the cumulative value donated does not exceed one hundred dollars;

(13) The advance of a security deposit by an individual to a telephone company, as defined in section 16-1, for telecommunications service for a committee, provided the security deposit is refunded to the individual;

(14) The provision of facilities, equipment, technical and managerial support, and broadcast time by a community antenna television company, as defined in section 16-1, for community access programming pursuant to section 16-331a, unless (A) the major purpose of providing such facilities, equipment, support and time is to influence the nomination or election of a candidate, or (B) such facilities, equipment, support and time are provided on behalf of a political party;

(15) The sale of food or beverage by a town committee to an individual at a town fair, county fair or similar mass gathering held within the state, to the extent that the cumulative payment made by any one individual for such items does not exceed fifty dollars; or

(16) An organization expenditure by a party committee, legislative caucus committee or legislative leadership committee.

(Emphasis added.)