



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

DECLARATORY RULING 2016-01: **Funding for Concurrent Regular and Special Elections for Office of General Assembly Occurring on Same Ballot on Same Election Day**

At its regular meeting on August 17, 2016, the State Elections Enforcement Commission (the "Commission") voted to initiate a declaratory ruling to clarify the application of the Citizens' Election Program when two ballot positions are assigned to the same particular General Assembly office on a single election day: one for a full two year term running from January to January and one for the approximately two months leading up to the beginning of that full term. The Commission issued a *Resolution and Order Setting Forth Specified Proceedings* for the proposed declaratory ruling, directing staff to issue notice and setting forth a comment period which ended at 11:59 p.m. on September 12, 2016. No comments were received.

Generally speaking, regular elections for the office of General Assembly occur biennially on the first Tuesday after the first Monday in November in the even-numbered years (the "regular election").¹

When there is a vacancy due to resignation or the death of a member of the General Assembly, the law provides for elections to be held within specified time periods to fill the office for the remainder of a term (the "special election"). General Statutes § 9-215.

¹ Section 8 of Article III of the Constitution of the State of Connecticut provides, in relevant part, that "[a] general election for members of the general assembly shall be held on the Tuesday after the first Monday of November, biennially, in the even-numbered years...." See also section 10 of Article III of the Constitution of the State of Connecticut ("The members of the general assembly shall hold their offices from the Wednesday following the first Monday of the January next succeeding their election until the Wednesday after the first Monday of the third January next succeeding their election, and until their successors are duly qualified.").

General Statutes § 9-1 provides, in relevant part:

- (o) "Regular election" means any state or municipal election;
- (r) "Special election" means any election not a regular election;
- (s) "State election" means the election held in the state on the first Tuesday after the first Monday in November in the even-numbered years in accordance with the provisions of the Constitution of Connecticut;....

This year the regular election for all districts will be held November 8, 2016 (the “November election”). In addition, a sitting representative in the 90th district passed away during the window of time² that causes both a special election and a regular election to be held on the same November election day for that district.

By way of background, the Citizens’ Election Program (the “Program” or “CEP”), established in 2005 by the Connecticut legislature as part of a landmark campaign finance reform effort, makes clean election grants available to candidates who qualify for the Program by demonstrating a certain amount of public support through meeting established criteria, including a specified number of small-dollar contributions from individuals with a certain number of these contributions from individuals who live in the district where the candidate seeks election. The amount of the grant depends on the office and whether the election is a primary election, regular election, or special election. *See* General Statutes § 9-705 (a) through (h); *see also* General Statutes § 9-705 (i) regarding special election grants. The grant amount for the 2016 general election of a state representative is \$28,150 and the special election amount is \$21,112.50.

Executive Summary

This declaratory ruling addresses which grant amounts and qualifying thresholds apply when there are concurrent regular and special elections, and whether a candidate is limited to one candidate committee or may form two committees for the November election day. The Commission concludes that in such a situation, a candidate may have only a single candidate committee and that candidate committee may only receive one grant under the Program. Candidates on the general election ballot line (regardless of whether they also appear on the special election ballot line) will be eligible to qualify for a \$28,150 general election grant for the office of state representative. Candidates appearing *only* on the special election ballot line will be eligible to qualify for the special election grant.

Analysis

Neither the statutory provisions in chapter 157, which establish the Citizens’ Election Program, nor the more general campaign finance provisions in chapter 155 explicitly address how many committees a candidate may have in this rare situation.

² If a vacancy of office occurs between the one hundred twenty-fifth day and the forty-ninth day before the day of a regular state election in November, the Governor is required to issue a writ on the forty-sixth day prior to the regular election, ordering the special election to be held on the same day as the regular election. General Statutes § 9-215 (b).

General Statutes § 9-604 (a) provides that “[e]ach candidate *for a particular public office* or the position of town committee member *shall form a single candidate committee*....” The statute further directs that “[n]o candidate shall establish, agree to or assist in establishing, or give his consent or authorization to establishing a committee other than a single candidate committee to promote his candidacy for any public office except that a candidate may establish an exploratory committee.” General Statutes § 9-604 (c). Once a candidate who has formed an exploratory committee has made a “public declaration ... of the candidate’s intention to seek nomination or election to a particular public office,” such candidate is required “to form a single candidate committee.” General Statutes § 9-604 (c).³

The campaign finance statutes define “candidate” to mean, in relevant part, “an individual who seeks nomination for election or election to public office whether or not such individual is elected.” General Statutes § 9-601 (11). “Candidate committee” means, in relevant part, “any committee designated by a single candidate ... for the purpose of a single ... election and to aid or promote such candidate’s candidacy alone for a particular public office.” General Statutes § 9-601 (4).

CEP provisions expressly provide that General Assembly candidates may be eligible to receive public funds for a regular election and a special election. *See* General Statutes § 9-702 (a). General Statutes §§ 9-705 and 9-706 discuss grant amounts in terms of *candidate committees*. Thus, the answer to how many CEP grants a candidate may receive depends on the amount of candidate committees a candidate in the 90th district may open for the November 8th election.

When construing campaign finance statutes, 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

³ In situations where a candidate has formed an exploratory committee or candidate committee for one election date, and subsequently becomes a candidate for another election to be held on an earlier date, only one committee may be actively promoting the candidate. The committee for the later election should generally remain dormant while the committee for the earlier election is active. For example, if a candidate has formed an exploratory committee for a municipal election to be held in 2017, and subsequently becomes a candidate for the 2016 General Assembly elections, then the 2017 exploratory committee should remain dormant while the candidate is raising and spending funds for the 2016 election in order to avoid running afoul of the campaign finance provisions.

implement, and to its relationship to existing legislation and common law principles governing the same general subject matter....” *Garcia v. City of Bridgeport*, 306 Conn. 340, 349-50 (2012) (internal quotation marks and citations omitted).

Moreover, “it is an elementary rule of statutory construction that we must read the legislative scheme as a whole in order to give effect to and harmonize all of the parts....” *Langello v. West Haven Bd. of Educ.*, 142 Conn. App. 248, 258 (2013) (internal quotation marks and citations omitted). “When more than one construction of a statute is possible, [the courts] adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results.” *S. New England Tel. Co. v. Cashman*, 283 Conn. 644, 653 (2007) (internal quotation marks and citations omitted).

Reading General Statutes § 9-604 (a) in isolation, it is not clear whether “particular public office” means the office itself appearing on the ballot on a given election date (in which case a candidate in the 90th district may have one candidate committee for the November election), or whether it means a specific office for a specific timeframe (in which case a candidate in the 90th district may have a candidate committee for the special election on the November ballot and a second committee for the regular election on the same day). Nor is it clear, reading General Statutes § 9-705 in isolation, whether the special election grant and general election grant are available for votes held on the same day.

Reading the campaign finance statutes in Chapters 155 and 157 of the General Statutes as a whole, however, leads to the clear conclusion that a single candidate may only form a single candidate committee as a funding vehicle for concurrent special and regular elections held on the same day and that the candidate may therefore only receive either the special election or general election grant amount. The campaign finance statutes set forth contribution limits, coordinated expenditure rules and CEP expenditure limits which would be circumvented or impossible to enforce if section 9-604 (a) were to be interpreted to allow candidates appearing multiple times on the ballot for the office of 90th district state representative at a single election to form multiple committees.

To allow one candidate to form two candidate committees for concurrent elections would be problematic given that candidate committees cannot make contributions to each other. *See* General Statutes § 9-616 (a). A single candidate appearing twice on the same ballot at the same election is targeting the exact same voters, and, therefore, all expenditures by both committees will generally target the exact same voters who come to the polls once that day with the opportunity to cast votes for all candidates on the ballot. The “clearly identified candidate” prong in the definition of “expenditure,” which will apply in the 90 days leading to the November 8th election, also includes: “[a]ny communication that (A) refers to one or more clearly identified candidates, and (B) is broadcast by radio, television, other than on a public access channel, or by satellite communication or via the Internet, or as a paid-for telephone communication, or appears in a newspaper, magazine or on a billboard, or is sent by

mail.” General Statutes § 9-601b (a) (2). Therefore, any communication by one committee during this time that mentions the candidate’s name will necessarily be an expenditure for both races, which would result in a violation of the law because, again, a candidate committee cannot benefit from a coordinated expenditure (a contribution) made by another candidate committee.

Moreover, every expenditure of the special election candidate committee would necessarily be coordinated with every expenditure of the general election candidate committee since a candidate committee cannot act independently of its candidate. *See* General Statutes § 9-601c. Since a coordinated expenditure is a contribution, *all* expenditures made by one committee would be a contribution to the other -- which is prohibited under General Statutes § 9-616 (a). For a participating candidate, it would also necessarily result in expenditure limit violations. Under the standard of statutory interpretation laid out in General Statutes § 1-2z, it is “absurd” and “unworkable” to construe the law in such a manner that it would be impossible to comply.

The legislative history and circumstances surrounding the enactment of the CEP, and the legislative policy it was designed to implement, also strongly support an interpretation allowing only one candidate committee and one grant. The last time a vacancy occurred during the necessary timeframe to cause a special and general election to be held on the same date was in 2004, shortly before the CEP was adopted in 2005. *See* SEEC Opinion of Counsel 2004-2 re: Concurrent Regular and Special Elections for State Senator, 5th Senatorial District, on November 2, 2004, issued to Mr. Robert H. Lutts, Deputy Director, Connecticut Republicans, August 5, 2004. Reading the statute as it existed then as a whole, Commission staff concluded that:

...the office of State Senator appearing on the ballot at an election is a single public office....[T]o conclude otherwise would make the restriction of [General Statutes 9-616 (a)], which prohibits one candidate committee from making a contribution to another candidate committee, impossible to enforce against a single candidate forming two committees for the same office, one for the full term and one for the partial term. Virtually anything the candidate’s campaign did or said in such instance would benefit that same candidate’s other campaign and therefore would constitute an illegal in-kind contribution. The election statutes must be construed in their entire context and in a manner that avoids such bizarre results.

Opinion of Counsel 2004-2. Given that this opinion was issued only a year prior to the CEP’s adoption, the legislature would likely have been aware that Commission staff had recently advised that a candidate for a concurrent regular and special election could only form a single candidate committee for a November election and therefore, in the context of passing the CEP without any language to the contrary, the legislature understood that such a candidate would only be eligible for one grant.

The legislative policy that the CEP was designed to implement further supports an interpretation allowing only one candidate and one grant in this situation. Candidates who participate in the voluntary Citizens' Election Program agree to strict contribution limits. In return for agreeing to forego special interest contributions, contributions from other committees and larger dollar donations, the candidates may qualify for a clean elections grant. Candidates who participate in the voluntary Program agree to strict contribution limits. There are strict spending limits as well. General Statutes § 9-711. A candidate seeking the clean elections grant must file an affidavit of intent to abide by the CEP expenditure limits, and when applying for a CEP grant the candidate and campaign treasurer (and deputy treasurer if applicable) must certify that all contribution limits have been and will be obeyed, that the committee will comply with Chapters 155 and 157 of the General Statutes and will spend all funds received from the Citizens' Election Fund in accordance with General Statutes § 9-607 (g) and the CEP regulations related to permissible expenditures for CEP grant recipients. General Statutes §§ 9-702 (c), 9-706 (b) (5) & (7). The regulations provide that "[a]ll funds in the depository account of the participating candidate's qualified candidate committee, including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used only for campaign-related expenditures made to directly further the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements." Conn. Agencies Regs. § 9-706-1 (a). All of these rules and regulations would be thwarted in the event one candidate could have two candidate committees with one participating in the Program and one not. The public would not receive the benefit of knowing that the clean elections candidate is not beholden to any large dollar and special interest donors even though one of the candidate's committees had received a grant in return for foregoing such contributions. This cannot have been the intent of the legislature.

For all of the forgoing reasons, the Commission concludes that when there is a concurrent regular and special election on the same date, a candidate may only form a single candidate committee or designate a single funding source⁴ to finance the candidate's campaign, irrespective of whether or not any such candidate is on the ballot for the special election, regular election, or both. Accordingly, candidates participating in the CEP are only eligible to apply for a single grant. Candidates on the general election ballot line (regardless of whether they also appear on the special election ballot line) will be eligible to qualify for a \$28,150 general election grant for the office of state representative. Candidates appearing only on the special election ballot line will be eligible to qualify for the special election grant.

⁴ The reasoning and conclusion in this Declaratory Ruling also apply to all candidates under the Commission's jurisdiction, including Judge of Probate and municipal candidates (who sometimes designate a town committee or political slate committee as their sole funding source, or claim another exemption from forming a candidate committee pursuant to General Statutes § 9-604 (b)).

State Elections Enforcement Commission
Declaratory Ruling 2016-01

This constitutes a declaratory ruling pursuant to General Statutes § 4-176, and provides guidance about the disclosure requirements for independent expenditures. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

This declaratory ruling is only meant to provide general guidance and addresses only the issues raised. Any specific questions should be directed to Commission staff.

Adopted this 14th day of September, 2016, at Hartford, CT, by vote of the Commission.


Anthony J. Castagno, Chair
By Order of the Commission