STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
20 Trinity Street Hartford, Connecticut 06106—1628

DECLARATORY RULING 2007-03
Citizens' Election Program: Qualifying Contributions

At its Regular Meeting on August 15, 2007, the State Elections Enforcement Commission (the "Commission") voted to initiate a declaratory ruling concerning the application of the qualifying contribution provisions in section 9-704 of the Connecticut General Statutes.[1]

This declaratory ruling addresses issues concerning the proper form, amount, sources, and documentation requirements for qualifying contributions.

Re: CONN. GEN. STAT. § 9-7b; § 9-606; § 9-607; § 9-608; § 9-701; § 9-704; § 9-706.

Qualifying Contributions – Basic Requirements

Candidates participating in the Citizens' Election Program (the "Program") must demonstrate that they have substantial public support in order to qualify for a grant from the Citizens' Election Fund (the "Fund"). Candidates may accomplish this by meeting a two-part "threshold" that sets requirements for the aggregate amount of money which must be raised and the minimum amount of the contributions which must be received from individuals who reside in Connecticut (for statewide candidates),[2] or within the municipalities, in whole or in part, in the district for which a candidate seeks a legislative office (for legislative candidates).[3] CONN. GEN. STAT. § 9-704(a).

To meet the threshold requirement, a candidate participating in the Program must collect contributions, not to exceed one hundred dollars ($100), from identifiable individuals. These contributions are called "qualifying contributions."

The aggregate amount of qualifying contributions differs, depending on the office being sought. The required amount of qualifying contributions for specific statewide and legislative offices is discussed below.

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[1] 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 Conn. Gen. Stat. § 4-183, pursuant to Conn. Gen. Stat. § 4-176(h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter. *See* CONN. GEN. STAT. § 4-176(c).

[2] Candidates for statewide office are candidates seeking election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of State, or State Treasurer. CONN. GEN. STAT. § 9-1(t).

[3] Candidates for legislative office (General Assembly) are candidates seeking election to the office of State Senator or State Representative.

Proper Form of Qualifying Contributions

Section 9-700 of the Connecticut General Statutes, the definition section for Chapter 157, does not define "qualifying contribution." *See* CONN. GEN. STAT. § 9-700. The Commission has received numerous informal inquiries about what constitutes a qualifying contribution.

Chapter 157 expressly provides that qualifying contributions must be monetary contributions. Section 9-704(a) of the Connecticut General Statutes instructs that candidates for Governor must receive contributions "in the aggregate amount of two hundred fifty thousand dollars," candidates for other statewide offices must receive contributions "in the aggregate amount of seventy-five thousand dollars," candidates for State Senator must receive contributions "in the aggregate amount of fifteen thousand dollars," and candidates for State Representative must receive contributions "in the aggregate amount of five thousand dollars." CONN. GEN. STAT. § 9-704(a). Section 9-704(d) further provides that after receiving the required aggregate amount of qualifying contributions, "the candidate committee shall transmit any additional contributions that it receives to the State Treasurer for deposit in the Citizens' Election Fund." CONN. GEN. STAT. § 9-704(d). Section 9-706 also directs that candidates applying for a grant from the Citizens' Election Fund must certify that they have "transmitted all excess qualifying contributions to the Citizens' Election Fund." CONN. GEN. STAT. § 9-706(b)(4).

The language describing qualifying contributions as an "amount of . . . dollars" directs that qualifying contributions must be monetary contributions. In addition, section 9-704(d) and section 9-706(b)(4) provide that once a candidate receives the amount of qualifying contributions required for the office sought, the candidate committee must transmit all additional contributions received for deposit to the Citizens' Election Fund, which is a nonlapsing account within the State of Connecticut's General Fund. CONN. GEN. STAT. § 9-701. The Citizens' Election Fund account is administered by the State Treasurer, and "may contain any moneys required by law to be deposited in the fund." CONN. GEN. STAT. § 9-701.

Qualifying Contributions Must be Monetary: As the statutory provisions discussed above instruct, qualifying contributions must be monetary contributions and may be made and received only in the following forms: cash, money order, personal check or debit card, or personal credit card. Accordingly, qualifying contributions may not be in the form of in-kind contributions.

Permissible Sources of Qualifying Contributions

Only individual human beings may make qualifying contributions. *See* CONN. GEN. STAT. § 9-704(a)(1) – (4).[4] However, contributions from an individual who is a

[4] The campaign finance statutes define "individual" as "a human being, a sole proprietorship, or a professional service corporation organized under chapter 594a and owned by a single human being."

communicator lobbyist, a member of the immediate family of a communicator lobbyist, or a principal of a state contractor or prospective state contractor, do not constitute qualifying contributions. CONN. GEN. STAT. § 9-704(c)(1) & (2). This differs from the prohibition on contractor contributions that applies to nonparticipating candidates as set forth in section 9-612(g)(2), which is branch specific.

Further, individuals otherwise prohibited from contributing to campaigns may not, of course, make qualifying contributions. *See e.g.* 2 U.S.C. § 441e (an individual who is a foreign national, which is defined as "an individual who is not a citizen of the United States or a national of the United States. . . and who is not lawfully admitted for permanent residence," is prohibited from making direct or indirect campaign contributions in connection with a state election).

Permissible Amounts of Qualifying Contributions Per Source

Participating candidates for Statewide and General Assembly offices may receive qualifying contributions from a permissible individual source up to and including one hundred dollars per individual, in the aggregate. CONN. GEN. STAT. §§ 9-704(a).

The required amounts of qualifying contributions for specific offices in regular election cycles are as follows:

- Candidates for Governor must raise an aggregate of $250,000 in qualifying contributions (including at least $225,000 from individuals residing in Connecticut).
- Candidates for Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, and Secretary of State must raise an aggregate of $75,000 (including at least $67,500 from individuals residing in Connecticut).
- Candidates for State Senator must raise an aggregate of $15,000 (including contributions between five and one hundred dollars from at least three hundred individuals residing in municipalities, in whole or in part, in the district where the candidate seeks office).
- Candidates for State Representative must raise an aggregate of $5,000 (including contributions between five and one hundred dollars from at least one hundred fifty

CONN. GEN. STAT. § 9-601(9). Section 9-704(a) establishes that a certain amount of qualifying contributions must be received from *individuals residing in* municipalities in-district (for General Assembly candidates) or in-state (for statewide candidates). Because only human beings (and not sole proprietorships or professional service corporations) may *reside* somewhere, it is clear that qualifying contributions must be made by human beings. A contribution drawn on the check of a sole proprietorship or professional service corporation does not constitute a qualifying contribution.

- individuals residing in municipalities, in whole or in part, in the district where the candidate seeks office).

CONN. GEN. STAT. § 9-704(a)(1) – (4).

The required amounts of qualifying contributions for special elections for *State Senator or State Representative* are as follows:

- Candidates for State Senator must raise an aggregate of $11,250 (including contributions between five and one hundred dollars from at least two hundred twenty five individuals residing in municipalities, in whole or in part, in the district where the candidate seeks office).
- Candidates for State Representative must raise an aggregate of $3,750 (including contributions between five and one hundred dollars from at least one hundred thirteen individuals residing in municipalities, in whole or in part, in the district where the candidate seeks office).

CONN. GEN. STAT. § 9-704(a)(5).[5]

Candidates are Permitted to Raise, But Not Spend, an Additional "Buffer" of Qualifying Contributions

During the qualifying period candidates are permitted to raise, but not spend, additional qualifying contributions in their candidate committees. As noted above, once a candidate has raised the required threshold of qualifying contributions, all additional qualifying contributions received by the candidate committee must be transmitted to the Fund. CONN. GEN. STAT. § 9-704(d); § 9-706(b)(4). Such additional qualifying contributions received by a candidate, adequately documented, and transmitted to the Fund may serve as a "buffer", in the event that any reported qualifying contributions are determined by the Commission not to meet the criteria for qualifying contributions.

Required Documentation of Qualifying Contributions

In order to protect the Public Fisc, all qualifying contributions must be carefully documented in order for the Commission to review candidates' grant applications and determine whether reported qualifying contributions are from permissible sources and do not exceed permissible amounts. Pursuant to Chapters 155 and 157, the candidate and campaign treasurer bear the burden of demonstrating that all reported qualifying

[5] There are no special elections for statewide offices that become vacant during a term. Section 9-213 of the General Statutes sets forth the procedures when a vacancy occurs in the office of State Comptroller, Attorney General, Secretary of State, and/or Treasurer. Article Fourth, Sections 18, 19, and 21 of the Connecticut Constitution set forth the procedures when a vacancy occurs in the office of Governor and/or Lieutenant Governor.

contributions meet the criteria for qualifying contributions. CONN. GEN. STAT. § 9-606(a); § 9-607(f); § 9-706.

Section 9-606 instructs that the campaign treasurer is responsible to receive, deposit, and report all campaign contributions, and to maintain internal records substantiating each entry reported on the candidate committee's disclosure statements. CONN. GEN. STAT. §§ 9-606(a)(1), (4), (5). The treasurer (or the candidate, if the candidate requests to do so) must maintain and preserve all such internal records for four years from the date of the last report required to be filed under subsection (a) of section 9-608. CONN. GEN. STAT. § 9-607(f). In addition, the Commission is authorized "[t]o inspect or audit at any reasonable time and upon reasonable notice the accounts or records of any campaign treasurer or principal campaign treasurer." CONN. GEN. STAT. § 9-7b(5). Accordingly, the campaign treasurer must maintain, and be prepared to submit to the Commission upon request, records documenting every reported qualifying contribution.

More specifically, the campaign treasurer must maintain, and be prepared to submit to the Commission upon request, copies of checks, money orders, debit card, and/or credit card contribution records, and contribution certification documentation for each cash, money order, and debit card and credit card contributions not made over the internet, which are reported as qualifying contributions. **Failure to maintain and/or provide these records will lead to a determination that any such undocumented contributions do not meet the criteria for qualifying contributions.**

In addition, any individual who makes a contribution in any form that separately or in the aggregate exceeds fifty dollars must certify that the contributor is not a communicator lobbyist, a member of the immediate family of a communicator lobbyist, or a principal of a state contractor or prospective state contractor. CONN. GEN. STAT. § 9-608(c)(3), as amended by section 3 of Public Act 07-1.

The Commission has prepared a sample contribution certification form which campaigns may elect to use in order to collect all of the required information, as described in this declaratory ruling. *See* attachment, *Qualifying Contribution Certification Form for Candidates Participating in the Citizens' Election Program*. Alternatively, campaigns may elect to create their own contribution certification forms as long as the documentation includes the required information.

Cash and money order contributions: Pursuant to the requirement to maintain documentation to substantiate all items reported in disclosure statements, qualifying contributions in the form of *cash or money order* must be accompanied by contribution certification documentation that includes the following information: the contributor's name and residential address (including zip code and telephone number); the amount, form, and date of the contribution; and the candidate committee's name. CONN. GEN. STAT. § 9-606(a); § 9-607(f); § 9-706. In addition, the following statement must be placed above the line for the contributor's signature: "I hereby affirm that this

contribution is being made from my personal funds, is not being reimbursed in any manner, is not being made as a loan, and is not an otherwise prohibited contribution." The contributor must sign and date the certification. *See* CONN. GEN. STAT. § 9-606(a); § 9-607(f); § 9-706; *see also* CONN. GEN. STAT. § 9-704(c)(3); CONN. GEN. STAT. § 9-706(b)(3).

Contribution certification documentation should be completed by the contributor, at the time she or he makes the contribution. Additionally, the treasurer must maintain a copy of each *money order* received.

Check contributions: To comply with the campaign treasurer's duty to maintain documentation to validate contributions reported in disclosure statements, qualifying contributions in the form of personal *check* must be documented by a copy of the check. CONN. GEN. STAT. § 9-606(a); § 9-607(f); § 9-706. If the qualifying contribution is being claimed as an in-state or in-district contribution, and the address pre-printed on the personal check does not match the individual's residential address, the Commission strongly recommends that the contributor be asked to complete a contribution certification form.

Additionally, the Commission generally recommends the use of contribution certification forms for ***all*** qualifying contributions. For qualifying contributions made by personal check, candidates and campaign treasurers have the option to submit signed contributor certification forms to substantiate the reported contributions. However, the campaign treasurer should maintain copies of checks as internal records.

Debit card and credit card contributions: Because the campaign treasurer must retain documentation to verify each contribution reported in the candidate committee's disclosure statements, qualifying contributions via *credit card* or *debit card* must be documented by a receipt of the credit card or debit card transaction. CONN. GEN. STAT. § 9-606(a); § 9-607(f); § 9-706. The campaign treasurer must keep the details of each transaction provided by the merchant account provider or payment gateway and ensure that the Commission is able to review all such records, whether electronic or otherwise, including the rate charged for each transaction. If the qualifying contribution is claimed as an in-state or in-district contribution, and the credit card billing address does not match the contributor's residential address, the Commission strongly recommends that the contributor be asked to complete a contribution certification form.

In addition, credit card contributions not made over the internet (*i.e.*, made in person) must be accompanied by the contribution certification documentation described above for cash and money order contributions.[6]

[6] Campaign treasurers and candidates who receive contributions of any type via credit card or debit card must comply with all of the requirements for electronically processed transactions set forth in the Commission's guidebooks.

Commission Recommendation

The Commission recommends that all contributions received by candidates intending to participate in the Citizens' Election Program be accompanied by contribution certification documentation.

The Commission urges all candidates and campaign treasurers to use contribution certification documentation, as described in the paragraph discussing cash or money order qualifying contributions, to document all reported qualifying contributions, if the candidate is even considering participating in the Citizens' Election Program. Connecticut law requires the treasurer to demonstrate that all reported qualifying contributions actually meet the criteria for qualifying contributions. The most prudent and efficient way to satisfy this obligation is for campaign treasurers to require all contributors to complete and sign contribution certification forms.

This constitutes a declaratory ruling pursuant to Conn. Gen. Stat. § 4-176, and provides guidance about the proper form, amount, sources, and documentation for qualifying contributions, as provided in sections 9-704 and 9-606, 9-607, and 9-608 of the Connecticut General Statutes.

This declaratory ruling is limited to addressing the specific issues raised. Any further questions regarding the issues discussed in this declaratory ruling may be raised to the staff of the State Elections Enforcement Commission.

Adopted this 12th day of September 2007, by Order of the Commission.

Jeffrey B. Garfield
Executive Director and
General Counsel