STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of John McNamara, New Britain File No. 2008-134

FINDINGS AND CONCLUSIONS

The Complainant filed the instant complaint with the Commission pursuant to General Statutes §9-7b, and asserts, inter alia, that on or about October 1, 2008, Barry Faticoni, a resident of Burlington, Connecticut, sent from his personal computer to an undetermined number of individuals an email seeking contributions to the Tom Bozek for State Senate Committee and that email failed to include an attribution.

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

1. Thomas Bozek was the Republican candidate for state senate for the 6th District. On August 29, 2008, he registered with the Commission a candidate committee (hereinafter the "Committee") to finance his candidacy. Mr. Bozek also agreed to participate in the Citizens' Election Program and was approved for a grant from the Citizens' Election Fund on October 15, 2008.

2. In September of 2008, Mr. Bozek distributed a one page letter under the title "Thomas A. Bozek" with his contact information to several individuals, including Barry Faticoni's father. That letter describes who Respondent Bozek is and why he is running for State Senate and states, among other things, the following: "I am a candidate for State Senator for the Sixth District . . . To qualify for financing of my campaign, I NEED TO RAISE $15,000 AND HAVE TO RECEIVE CONTRIBUTIONS FROM A MINIMUM OF THREE HUNDRED (300) INDIVIDUALS, BY OCT 9, 2008. These contributions can be ANY AMOUNT between $5 and $100. . . . Each contribution must accompany a completed and signed form, "*Qualifying Contribution Certification Forms for Candidates*", which I am supplying. This form may be copied and provided to other individuals that may also wish to be a contributor. . . . Please help before Oct 8, 2008 the deadline to qualify for this campaign financing." That letter did not contain an attribution.

3. In addition, the mailing included a "Qualifying Contribution Certification Form for Candidates Participating in the Citizens' Election Program." Notably, the attached form asks contributors to disclose whether they are a communicator lobbyist, spouse or dependent child of a communicator lobbyist but does not make the contributor certify that they are not a communicator lobbyist, spouse or dependent child of a communicator lobbyist. Furthermore, that form does not contain an attribution.

4. The third piece included in the mailing is a piece of paper that measures approximately 2 ½ by 8 ½ inches and states as follows: "Dear Friend, If I do not receive the $15,000 of contributions ($5 to $100) per individual by 10-8-2008, I will not qualify for the state campaign financing law and I will withdraw and I will return all contributions by check beginning 10-12-2008. Please try to be as generous as possible. Thank you. Tom Bozek Candidate for State Senator." Finally, the mailing includes an envelope pre-addressed to Thomas A. Bozek.

5. Mr. Bozek maintains that he is good friends with Mr. Faticoni's father and, in addition to sending him the aforementioned mailing, also spoke to him about contributing. Mr. Faticoni confirmed that Mr. Bozek was a good friend of his father. Mr. Faticoni also admitted that he is very fond of Mr. Bozek and was aware that he was a candidate for State Senate.

6. Mr. Faticoni further asserts he is his father's conservator and, thus, opens all of his mail. As such, he was aware of the solicitation letter that Mr. Bozek sent his father. However, Mr. Faticoni maintains that he never received such a letter and has never spoken with Mr. Bozek, or anyone from his campaign, about making a contribution.

7. He admits, however, that his father asked him to contribute to Mr. Bozek and spread the word about his candidacy. Mr. Faticoni acknowledges that after speaking with his father he mailed a check to the campaign. That check was returned by the campaign rather than deposited. Notably, Mr. Faticoni is not a resident of the 6th Senatorial District.

8. Furthermore, he admits he conveyed his opinion about Mr. Bozek's candidacy to two to three friends during an email conversation but maintains that he did not ask or suggest that they contribute to his campaign. He said his comments about Mr. Bozek were not planned in advance. He also said these emails originated from his home computer but have since been deleted so he was unable to provide them to the Commission.

9. The Complainant alleges that those emails sought contributions to the Tom Bozek for State Senate Committee and that email failed to include an attribution. Mr. Faticoni denies that the emails contained any solicitation or any other content that would have required an attribution.

10. General Statutes § 9-621 (a), as amended by Public Act 08-2, provides in relevant part as follows:

> No individual shall make or incur **any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent** . . . for any . . . web-based, written communication, which promotes the success or defeat of any candidate's campaign for . . . election or solicits funds to benefit any . . .

committee unless such communication bears upon its face (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual . . . and (2) the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual . . . . [Emphasis added.]

11. In the present matter, even assuming arguendo that Mr. Faticoni's emails constituted an "expenditure" as that term is defined in General Statutes § 9-601b, and that the expenditure either promoted Mr. Bozek's election or solicited funds on behalf of his candidate committee, there is insufficient evidence at this time to establish that those emails were made with "with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent" which is required to trigger the attribution requirement in General Statutes § 9-621(a).

12. Mr. Faticoni asserts that neither Mr. Bozek nor anyone from his campaign had any idea about his email conversation. Instead, he maintains that he mentioned Mr. Bozek's candidacy to his friends because he was fond of Mr. Bozek and wanted to help him.

13. Mr. Bozek and Gary Zeil, treasurer of Tom Bozek for Senate candidate committee also maintain that they had no knowledge of Mr. Faticoni's email(s) prior to the filing of this Complaint. They further maintain that, to their knowledge, no one from the campaign requested or suggested that Mr. Faticoni send such emails.

14. Notably, despite the Commission's repeated efforts to contact the Complainant to obtain additional information concerning this allegation, the Complainant has been unable or unwilling to forward the complained of communication to the Commission.

15. As such, the Commission cannot conclude that Mr. Faticoni violated General Statutes § 9-621 (a) because the evidence is insufficient to establish by a preponderance of the evidence that the emails at issue were made with the cooperation of, at the request or suggestion of, or in consultation with Mr. Bozek, his candidate committee or his agent.

16. The Complainant also alleges that Mr. Faticoni's emails "may constitute an impermissible and illegal in-kind contribution to the Tom Bozek for State Senate campaign."

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

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

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

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

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

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

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

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

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

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

(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 . . . or other agent of a candidate, candidate committee . . . .

(F) Based on information about a candidate's campaign plans, projects or needs, that is directly or indirectly provided by said candidate, the candidate's candidate committee . . . or a consultant or other agent acting on behalf of said

candidate, candidate committee . . . to the person making the expenditure or said person's agent, with an express or tacit understanding that said person is considering making the expenditure; or

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

19. General Statutes § 9-601 (26) defines "solicit" as follows:

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions . . . . "Solicit" does not include (i) making a contribution that is otherwise permitted under this chapter, (ii) informing any person of a position taken by a candidate for public o-ffice or a public official, or (iii) notifying the person of any activities of, or contact information for, any candidate for public office.

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

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

21. Finally, General Statutes § 9-601a provides in pertinent part that:

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

. . .

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

22. Although General Statutes § 9-702 required Mr. Bozek, a participating candidate, to return any non-monetary contributions made by Mr. Faticoni prior to attaining eligibility to receive a grant, when Mr. Faticoni allegedly made the purported non-monetary contribution, Mr. Bozek had not yet attained said eligibility and thus, Mr. Faticoni was not prohibited from making said contribution.

23. General Statutes § 9-622 (13) does, however, state in relevant part as follows:

The following persons shall be guilty of illegal practices . . . .

(13) Any person who makes a ***coordinated expenditure*** for a candidate without the knowledge of said candidate. . . . [Emphasis added.]

24. Here, the Commission does not know the exact content of said emails. Furthermore, Mr. Faticoni, Mr. Bozek and Mr. Zeil all deny that they or, to their knowledge anyone from the campaign, knew about or coordinated the emails. Mr. Faticoni also denies that he requested that a contribution be made on behalf of Mr. Bozek in those emails. At this point, the Commission does not have any evidence to suggest otherwise. Finally, there is no evidence that any contributions were collected in connection with those emails.

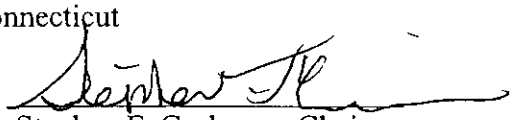
25. The Commission therefore concludes that the evidence is insufficient to establish that the emails at issue were coordinated expenditures made by Mr. Faticoni without Mr. Bozek's knowledge. In other words, the Commission cannot conclude that Mr. Faticoni committed the illegal practice set forth in General Statutes § 9-622 (13).

ORDER

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

That the matter be dismissed.

Adopted this 11th day of February 2009 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission