



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

DECLARATORY RULING 2009-01
Public Declarations by Candidates in Exploratory Committee

At its regular meeting on April 8, 2009, the Commission initiated a declaratory ruling to provide guidance on what constitutes a “public declaration” of a candidate’s intention to seek a particular office, thereby requiring that candidate to dissolve the exploratory committee and form a candidate committee pursuant to section 9-604 (c) of the Connecticut General Statutes.

Under Connecticut campaign finance law, an individual must form a committee within ten days after becoming a candidate by virtue of receiving a party endorsement or otherwise securing a place on the ballot, or by soliciting, receiving or spending money “with the intent to bring about such individual’s nomination for election or election” to office. General Statutes §§ 9-601 (11) and 9-604 (c). If the individual becomes a candidate by virtue of receiving a party endorsement or securing a place on the ballot, or if he or she intends to aid or promote his or her candidacy for a particular public office, whichever occurs first, then the candidate should form a candidate committee. General Statutes §§ 9-601 (4) and 9-604. If, however, the individual is still determining *whether* to seek nomination or election to a public office, and he or she intends *only* to aid or promote said candidate’s candidacy for nomination, then the candidate also has the option of forming an exploratory committee rather than a candidate committee. General Statutes §§ 9-601 (5) & 9-604 (c).

A candidate who forms an exploratory committee *must* dissolve that committee and form a candidate committee within a specified time following a “public declaration” of the candidate’s intention to seek nomination or election to a particular public office. General Statutes §§ 9-604 (c) and 9-608 (f). If a candidate has decided to run for the General Assembly or Statewide office, the requirement to dissolve an exploratory committee may also be triggered by the “candidate’s endorsement at a convention, caucus or town committee meeting, or . . . the candidate’s filing of a candidacy for nomination under section 9-400 or 9-405.” General Statutes § 9-608 (f).

The distinction between an exploratory committee and a candidate committee grows more important in reference to public campaign financing. Under the Citizens’ Election Program (“Program”), a candidate for the General Assembly or Statewide office must be mindful of when and how he or she dissolves the exploratory committees and forms a candidate committee. A candidate who chooses to participate in the voluntary Program submits to expenditure limits for his or her candidate committee. General Statutes § 9-702 (c). When an exploratory committee is dissolved and a candidate committee is formed, any surplus or liability of the candidate’s exploratory committee transfers to that candidate’s candidate committee. General Statutes § 9-608 (f). Such surplus and deficit



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

can have a significant impact on a candidate's ability to participate in the Program. *See generally* Declaratory Ruling 2007-02 (Citizens' Election Program: Surplus and Deficit of Exploratory Committees). Moreover, although a candidate for Statewide office or the General Assembly who does not participate in the Program does not have to adhere to the expenditure limits, the candidate committee is subject to filing supplemental disclosure statements that are calculated according to the expenditures attributable to the candidate committee. General Statutes § 9-712.

A candidate who remains in an exploratory committee after triggering the need to dissolve and form a candidate committee runs the twofold risk of (1) violating the statutory requirements to timely dissolve and (2) making expenditures attributable to a candidate committee. If the expenditures deemed attributable to the candidate committee exceed the applicable expenditure limits for the Program, a candidate could be ineligible for a grant. It is therefore critical that all candidates, especially those interested in participating in the Program, are aware of, and abide by, the requirements for dissolving an exploratory committee and forming a candidate committee.

The Commission has received many questions concerning what constitutes a "public declaration" that will trigger the requirement for a candidate to dissolve the exploratory committee and establish a candidate committee. This declaratory ruling is intended to provide general guidance to those individuals wanting to explore the possibility of running for office while maintaining their eligibility to participate in the Program.

Public Declaration Defined

When performing statutory interpretation, close analysis of the legislature's choice of words in the context of the broader statutory regime plays a fundamental role. As the Connecticut Supreme Court noted in 2008: "[w]hen construing a statute, [the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature.... In other words, [one must] seek to determine, in a reasoned manner, the meaning of the statutory language 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 implement, and to its relationship to existing legislation and common law principles governing the same general subject matter..." (Internal quotation marks omitted.) *Bloomfield v. United Electrical, Radio & Machine Workers of America*,



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

Connecticut Independent Police Union, Local 14, 285 Conn. 278, 286-87, 939 A.2d 561 (2008).

The statute does not define “public declaration” for purposes of General Statutes § 9-604 (c). Moreover, the phrase is not utilized or defined in any other Connecticut statute. Other Connecticut campaign finance statutes, however, do shed light on the meaning of the phrase as it is used in § 9-604 (c). Subsection (5) of § 9-601 defines an exploratory committee as one established (1) to determine whether to seek nomination or election to a public office and (2) to aid or promote the candidate’s candidacy for nomination. This is in contrast to subsection (4) of § 9-601, which defines a candidate committee as one established to aid or promote a candidate’s candidacy.

The legislative history of § 9-608 similarly indicates that exploratory committees were intended to allow candidates “to determine the particular public office to which he shall seek nomination or election.” Public Act No. 81-357. In 2005, a separate definition of “exploratory committee” was added to Connecticut campaign finance law, and this definition clarified that an exploratory committee may be used to promote the candidate’s candidacy for nomination. Public Act 05-5, § 18. We note, however, that the legislative history that we have reviewed contains no discussion concerning the dissolution of an exploratory committee and the nature of a “public declaration” that would trigger the requirement for dissolution of such a committee.

Where a term is not defined in the statute, it is also appropriate to “look to the dictionary definition of the [term] to ascertain [its] commonly approved meaning.” *R.C. Equity Group, LLC v. Zoning Commission*, 285 Conn. 240, 254 n. 17, 939 A.2d 1122 (2008); see also *Groton v. Mardie Lane Homes, LLC*, 286 Conn. 280, 288, 943 A.2d 449 (2008) (“[i]f a statute or regulation does not sufficiently define a term, it is appropriate to look to the common understanding of the term as expressed in a dictionary” [internal quotation marks omitted]). Webster’s NewWorld Dictionary does not define the term “public declaration,” therefore we look at each word separately. Webster’s NewWorld Dictionary defines the adjective “public” as “of, belonging to, or concerning the people as a whole; of or by the community at large; . . . as regards community, rather than private affairs.” Webster’s NewWorld Dictionary (2d ed. 1986). Webster’s NewWorld Dictionary defines “declaration” as “announcement” and “a formal statement,” and defines “declare” as “to make clearly known; state or announce openly, formally.” Webster’s NewWorld Dictionary (2d ed. 1986).

The Commission thus looks to the statute’s language, as well as the legislative history and the legislative policy that exploratory committees were designed to implement, in order to define “public declaration” and provide the necessary guidance to the regulated community.



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

An exploratory committee exists to allow a candidate to determine whether an individual would have a viable candidacy. Under Connecticut law, the legitimate activity of such a committee includes the promotion of one's nomination to the ballot. Once the candidate has actually decided to pursue election to a particular office, the underlying purpose of his or her activities is no longer exploration but rather election to office. While it cannot identify the subjective moment that a candidate decides to run for a particular office, the Commission can monitor external objective conduct that would signify to a member of the public that the candidate has reached this decision. Thus, once a "public declaration" of that intent occurs, the candidate must form a candidate committee.

Therefore, it follows that the term "public declaration" means an announcement made to a wide audience within the state or relevant community that the candidate seeks nomination or election to a specific office. In order to constitute a "public declaration" of intent to seek a specific office, the candidate must meet both the "public" and the "declaration" prongs.

The term "public" refers to communications and actions directed to or intended for the general public, those people with whom it will be necessary for the candidate to communicate in order to win election to public office. The Commission does not interpret the term "public" to include communications to those committee workers and volunteers working closely with the candidate and his or her exploratory committee to determine whether the candidate should run for public office, nor does it include the communications within the candidate's family. Finally, the Commission recognizes that exploratory committees serve an important purpose by allowing candidates to determine whether or not they have enough support to have a realistic chance to obtain the party's nomination to office or public support to obtain a spot on the ballot. In doing so, a candidate must be able to effectively communicate with the individuals whose support he or she needs in order to determine whether the candidacy is viable enough to secure such nomination. Therefore, in this context, the term "public" does not include communications made to endorsing authorities, which will decide whether the candidate receives his party's nomination, or potential endorsing authorities such as town committee members, elected and appointed town officials and party chairpersons. In the case of a candidate who must petition for access to the ballot, a public declaration shall not be deemed to include communications to those who are asked to sign the petitions.

Whether an individual has made a "declaration" of intent to seek a particular office is necessarily a fact-specific inquiry. The Commission will consider whether a reasonable person would believe that the words or actions of the candidate, or those acting in coordination with the candidate, constituted a statement of intent to seek such public office. More specifically, in determining whether a declaration has been made, the Commission will consider whether a reasonable person would believe that the activity or activities in question indicate that the candidate is continuing to deliberate whether to run,



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

or whether his or her actions are indicative that the candidate is actually seeking election to a specific public office. Thus, the Commission cautions that any written or oral statement made or authorized to be made by a candidate who intends to remain properly in exploratory committee must not refer to the candidate as a candidate for office. Rather, such statements should refer only to his potential candidacy, which would include remarks that he has not yet determined whether to run or is in the process of determining his viability. Further, the exploratory committee should also refrain from using catch phrases that refer to the individual as a candidate or indicate that he or she is definitely running such as “Joe for State Rep” or “Vote Jane in 2010.”

In determining who may make a “public declaration” triggering the need for a candidate with an exploratory committee to dissolve and form a candidate committee, the Commission will apply the definition of coordination contained in General Statutes § 9-601 (19) to determine that such declarations may come from either a candidate or one acting in consultation, in concert with, at the request, suggestion or direction of, or pursuant to a general or particular understanding with (i) the candidate or the exploratory committee, or (ii) a consultant or other agent acting on behalf of a candidate or the exploratory committee.

In determining whether a public declaration has been made, the Commission will consider various factors, including the extent to which the declaration was public, in other words the breadth of the distribution; the nature of the declaration; the efforts made by the exploratory committee to avoid such public declarations before the candidate chose to form a candidate committee; other declarations, public announcements and actions during the exploratory committee relating to the candidate’s candidacy; and whether there has been a good faith attempt to avoid public declarations triggering the requirement.¹

Application of “Public Declaration” Standard

¹ For example, under the following particular facts and circumstances, a public declaration would not be found to have occurred if a Commission investigation found (1) that the “public declaration” in question occurred when the candidate in exploratory committee was introduced to a large audience at a town fair by his campaign treasurer as “our next governor” and the candidate immediately corrected the speaker, explaining that he had formed an exploratory committee to consider whether to run for election but that he was still testing the waters; (2) that the exploratory committee had set up reasonable safeguards to respect the differences between exploratory and candidate committees and the need to avoid premature public declarations; (3) the exploratory committee’s actions during the relevant time frame were otherwise consistent with determining viability of the candidacy, rather than promoting the election of the candidate; and (4) the candidate made a timely good faith attempt to effectively correct the public declaration. Thus, in very limited circumstances, there may be an opportunity to correct a minor error where a candidate, or his or her agent, makes a public declaration, and the candidate promptly remedies the situation.



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

Whether there has been a “public declaration” of intent to seek nomination or election to a specific office is a fact-specific inquiry, and there is not a clear bright-line test applicable in all situations.² As noted above, the activity in question must be both “public” and a “declaration” in order to trigger the need to dissolve that exploratory committee.

If a candidate or agent of the candidate holds a press conference and announces that the candidate is seeking nomination or election to the office of Governor, such candidate has clearly made a public declaration of intent to seek the office of Governor, and must dissolve the exploratory committee and form a candidate committee. Similarly, if the candidate makes the same announcement via the internet, the candidate has triggered the requirement to form a candidate committee by making a public declaration.

By contrast, if a candidate in an exploratory committee appears on a radio show and states that she is considering whether or not she will run for office in 2010, then, although the communication was public, there was no declaration. Similarly, a candidate with an exploratory committee has not made a public declaration by announcing to his family in the family’s kitchen a decision to run for a specific office because, although there was a declaration, it was not public.

Because Chapter 153 of the General Statutes establishes different procedures for nomination for major party, minor party, and petitioning candidates, the determination of whether an activity aimed at securing nomination or a place on the ballot constitutes a “public declaration” involves analyzing both the actual content of the declaration, as well as considering the audience to which it is communicated.

For example, a candidate seeking a major party’s endorsement may, while still in an exploratory committee, communicate with the major party’s potential endorsing authorities at a town committee meeting, and explain why the candidate believes she would be the strongest candidate for a particular office, without triggering the

² Such case-by-case analysis is consistent with the Federal Election Commission (“FEC”) approach to determine when an individual crosses the line from “testing the waters” to becoming a candidate. FEC MUR 5693 (General Counsel’s Report #2), at 7 (Nov. 7, 2007) (citation and quotation omitted) (emphasis added); *see also* Payments Received for Testing the Waters Activities, 50 Fed. Reg. 9992-01 (March 13, 1985). While we look to the FEC for general guidance, it is important to note that there are some significant differences between exploratory committees under federal election law, and Connecticut law. Notably, under federal law an individual is not considered a “candidate” while testing the waters. In addition, the federal “testing the waters” exemption “prohibit[s] activity designed to accumulate funds to be spent at a date after the decision to become a candidate is made.” FEC AO 1981-32, at 4. In contrast, Connecticut law expressly allows candidates to raise money in exploratory committees which can be spent after the decision to seek a particular office is made and the candidate forms a candidate committee. *See* General Statutes 9-704 (a) (candidates intending to participate in the Citizens’ Election Program may raise qualifying contributions in exploratory committee).



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

requirement to form a candidate committee. Such a communication would be a declaration but would not be public. However, the exact same communication to a broader audience, such as attendees at a town committee fundraiser when the general public was invited, would constitute a public declaration of candidacy and thus trigger the requirement to form a candidate committee. Similarly, a candidate seeking nomination by a minor party may make an unequivocal communication about his or her fitness for a particular office to the minor party's nominating authorities (typically the minor party's town committee members or delegates to conventions, as set forth in the minor party's prescribed rules filed with the Secretary of the State, *see* General Statutes § 9-451).

A petitioning candidate who utilizes nominating petitions pursuant to §§ 9-453a *et. seq.* and 9-705 is permitted the same degree of latitude in communication with the nominating authorities, which, in this case, are the individuals whose petition signatures the candidate seeks. Note that this does not mean that a petitioning candidate is exempt from the "public declaration" requirement. While a petitioning candidate may circulate a pointed statement about his/her qualifications for a particular office to potential petition signers in a one-on-one fashion (*i.e.* by speaking directly with, or handing out literature directly to, potential petition signers), a wider mass-distribution of the exact same literature would constitute a "public declaration." For example, a petition signature gatherer seeking signatures outside of a supermarket may speak directly with individuals and may hand the candidate's literature directly to such individuals whose signatures are sought without this, in itself, constituting a "public declaration." But if the signature gatherer leaves the candidate's literature at the supermarket for anyone passing by to pick up, this would constitute a public declaration if the literature contained a statement that the candidate was seeking nomination or election to a specific office.

Finally, the Commission notes that any candidate who has formed an exploratory committee may collect qualifying contributions for the Citizens' Election Program. As with other activities conducted during the exploratory committee, the candidate should exercise care that any effort to raise qualifying contributions do not amount to a public declaration. For example, if a candidate were to mail a solicitation throughout the state seeking qualifying contributions that was titled, in large print, "Smith for State Rep," and only mentioned that he was undecided whether to run in small print, this could mislead reasonable recipients to believe that he was declaring his intent to definitively run for state representative and lead to a determination that he had made a public declaration. By contrast, the candidate clearly would not have made a public declaration if the printed solicitation had a conspicuous title, which said "Candidate Jane – Exploring the Possibilities" and contained text in large and readable font that the candidate was considering running for public office and, in the process of exploring, was collecting contributions in an effort to determine whether she will be a viable candidate.



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

This constitutes a declaratory ruling pursuant to § 4-176, and provides guidance about what constitutes a “public declaration” of intent to seek nomination or election to a particular office, as provided in § 9-604 (c) and § 9-608 (f). 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 § 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. The determination as to whether a candidate has publicly declared their candidacy is necessarily fact-specific and thus must be determined on a case-by-case basis. The Commission will, however, consider the aforementioned factors in determining whether a public declaration has been made. In view of the serious consequences that may arise from a candidate’s failure to abide by the requirements for dissolving an exploratory committee and forming a candidate committee, the Commission has established an expedited process for providing advice to candidates in exploratory committee who are considering participation in the Program. Such candidates may contact their candidate liaison or the Compliance help desk for further advice.



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

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 6th day of May, 2009, by Order of the Commission.


Stephen F. Cashman, Chairman