PROPOSED DECLARATORY RULING 2011-02:
Propriety of Expenditure out of Surplus Funds Following Election for Treasurer Services in Absence of a Written Agreement

Martin Mador, the campaign treasurer for Citizens for Mushinsky, a committee for a candidate for state representative participating in the Citizens' Election Program (CEP), has requested a declaratory ruling pursuant to sections 9-7b-63 through 9-7b-65 of the Regulations of Connecticut State Agencies regarding the propriety of the candidate committee issuing a one-thousand dollar payment to him now, after the November 2, 2010 election and from surplus funds otherwise required to be returned to the Citizens' Election Fund, for the services he provided as treasurer of the committee, in the absence of a written agreement executed prior to the time that his services were completed. At its regular meeting on January 26, 2011, the Commission initiated a declaratory ruling to respond to this petition and to memorialize advice repeatedly requested and given throughout the 2008 and 2010 election cycles regarding the application of sections 9-607-1 and 9-706-2 of the Regulations of Connecticut State Agencies to the payment of committee workers including committee treasurers.

Summary

- Section 9-607-1 of the Regulations of Connecticut State Agencies mandates that, in order to substantiate payments in excess of one hundred dollars to committee staff (including campaign treasurers) or consultants for services rendered to the committee, committees must enter into a ***written*** agreement, signed before the work or services are performed which sets forth (i) the nature and duration of the fee arrangement and (ii) a description of the scope of the work to be performed or services to be rendered. *See* Regs., Conn. State Agencies § 9-607-1 (a).

- Pursuant to section 9-706-1 of the Regulations of Connecticut State Agencies, for committees of candidates participating in the CEP, the absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate's nomination for election or election shall render that expenditure impermissible. *See* Regs., Conn. State Agencies § 9-706-1.

- Committees of CEP candidates are strictly limited in the types of post-election expenditures they may make and are expressly prohibited from using campaign funds to make post-election bonus payments. *See* Regs., Conn. State Agencies § 9-706-2 (b) (11). General Statutes § 9-608 (e) (1) provides in pertinent part that: "(ii) a candidate committee which received moneys from the Citizens' Election Fund **shall distribute such surplus to such fund**, and (iii) a candidate committee for a nonparticipating candidate, as described in subsection (b) of section 9-703, may only

distribute any such surplus to the Citizens' Election Fund or to a charitable organization." (emphasis added).

Background

Mr. Mador presented the following facts in his petition:

I hereby request a ruling on the propriety of paying a campaign Treasurer a nominal amount under the circumstances described below. I would like to issue a check for this purpose before closing out the Committee at the end of January, but, on the advice of Commission staff, will wait pending a ruling from the Commission. I served as the Treasurer for Citizens for Mushinsky, a candidate committee for the 2010 general election, as I have for the previous five election cycles. The candidate and I made a verbal agreement that, should funds be available after all campaign expenses had been paid, I would receive $1,000 for my services to the committee. The candidate will certify that such an agreement was made. In support of this request, I show the following:

The training session I attended last March taught us that SEEC/CEP finds it acceptable to pay a campaign treasurer. There was no mention then of the need for a written contract for a Treasurer, as there would be for a campaign worker.

We did execute a written contract with our paid campaign worker before she began working, but that is not the subject of this request.

Under state law, the Treasurer is an officer of the campaign, not a campaign worker. The duties of the Treasurer are clearly defined by law. A contract cannot alter them. I talked with the Candidate shortly after the training session. As she is willing to attest, she and I made a verbal agreement at the time that I would be paid $1,000, but only if the campaign had a surplus post election.

It was my choice to ask that the funds be paid only if there was a surplus, as I wished them to be available to the campaign if needed. All decisions as to major expenditure of funds were made solely by the Candidate and the campaign manager.

The committee now shows a surplus of $9,476.83, with all outstanding obligations paid.

We did not execute a written agreement for my services as Treasurer because:
(1) It was not necessary for a Treasurer, according to my understanding from the training

(2) It was not necessary to agree on the duties of a Treasurer; as these are provided by state law and SEEC regulations, and are not subject to alteration or negotiation
(3) The treasurer is not a campaign worker. He is an officer of the campaign with legally mandated authority, defined responsibility, and exposure to civil and criminal liability for malfeasance.
(4) I did not want to obligate the campaign to pay me unconditionally, but to pay only if there was a healthy surplus remaining post election. The obligation became effective when we closed the campaign with such a surplus, and the candidate and I agreed that the payment should be made.
(5) Oral contracts are enforceable under state law

Given the responsibilities, duties, time [commitment] and risk of both civil and criminal penalties, I submit that it is appropriate to award the Treasurer some modest compensation under these circumstances.

Analysis and Conclusions

Essentially, Mr. Mador inquires whether Citizens for Mushinsky, a committee for a candidate for state representative participating in the CEP, can make a one thousand dollar lump sum expenditure of surplus CEP funds to Mr. Mador after the election for the campaign services he provided during the campaign as treasurer, where such payment is contingent upon the availability of surplus funds. In his petition, Mr. Mador represents that such payment would be made in the absence of a written agreement for such services executed prior to the services being performed and the sole basis for such payment is an oral agreement between the treasurer and the candidate that "should funds be available after all campaign expenses had been paid, [he] would receive $1,000 for [his] services to the committee." The Commission concludes that, based on the facts provided, such a payment would constitute an impermissible expenditure of committee funds.

It is generally permissible for committees organized under Chapter 155 of the Connecticut General Statutes to expend funds for the services of committee workers, including campaign treasurers. *See* General Statutes § 9-607 (g) (2) (L). This is also a permissible use of campaign funds for candidates participating in the CEP. *See* Regs., Conn. State Agencies § 9-706-2 (a) (4). These provisions cannot be read alone however, and instead, must be read in the context of the other campaign finance statutes and regulations. *See Field Point Park Ass'n, Inc. v. Planning and Zoning Com'n of Town of Greenwich*, 103 Conn.App. 437, 440 (2007) ("Regulations must be viewed to form a cohesive body of law, and they must be construed as a whole and in such a way as to reconcile all their provisions as far as possible. This is true because particular words or sections of the regulations, considered separately, may be lacking in precision of meaning to afford a standard sufficient to sustain them.") (Internal quotation marks and citations omitted.)

Regulations of Connecticut State Agencies § 9-607-2 provides as follows:

> (a) Pursuant to the requirements described in sections 9-607(f), 9-607(g), 9-706(e) of the Connecticut General Statutes, and any regulations adopted thereto, ***in order to substantiate any payment for services of campaign or committee staff***, or campaign or committee services of attorneys, accountants, consultants, or other professional persons for campaign activities, ***the campaign treasurer shall maintain internal records***, including but not limited to:
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> **1. a written agreement, signed before any work or services for which payment in excess of $100 is sought is performed, which sets forth (i) the nature and duration of the fee arrangement and (ii) a description of the scope of the work to be performed or services to be rendered**; and
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> 2. contemporaneous records and/or invoices created by the close of the reporting period but in no event later than the date of the primary or election to which the expenditure relates, which set forth the nature and detail of the work performed or services rendered.

See Regs., Conn. State Agencies § 9-607-2 (emphasis added). Furthermore, Regulations of Connecticut State Agencies § 9-706-1 (b) provides:

> **The absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate's nomination for election or election shall mean that the expenditure was not made to directly further the participating candidate's nomination for election or election, and thus was an impermissible expenditure.** Contemporaneous detailed documentation shall mean documentation which was created at the time of the transaction demonstrating that the expenditure of the qualified candidate committee was a campaign-related expenditure 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. Contemporaneous detailed documentation shall include but not be limited to the documentation described in section 9-607 (f) of the Connecticut General Statutes.[1]

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[1]General Statutes §9-607 (f) provides:

> The campaign treasurer shall preserve all internal records of transactions required to be entered in reports filed pursuant to section 9-608 for four years from the date of the report in which the transactions were entered. Internal records required to be maintained in order for any permissible expenditure to be paid from committee funds include, but are not limited to, contemporaneous invoices, receipts, bills, statements, itineraries, **or other written or documentary evidence showing the campaign or other lawful purpose of the expenditure.** If a committee incurs expenses by credit card, the campaign treasurer shall preserve all credit card statements and receipts for four years from the date of the report in which the transaction was required to be entered. If any checks are issued pursuant to subsection (e) of this section, the campaign treasurer who issues them shall preserve all cancelled checks and bank statements for four years from the date on which they are issued. If debit card payments are made pursuant to subsection (e) of this section, the campaign treasurer who makes said payments shall preserve all debit card slips and bank statements for four years from the date on

See Regs., Conn. State Agencies § 9-706-1 (b) (emphasis added). Accordingly, read together these provisions mandate that a committee must execute a signed written agreement with any committee worker or consultant that it intends to pay in excess of $100 for campaign work or services and, furthermore, that *this agreement be signed prior to the work or services being performed.* Without such a written agreement, the expenditure is rendered impermissible. Thus, in this instance, it would be impermissible for Citizens for Mushinsky to pay Mr. Mador at this time due to the absence of such an agreement.

It is important to note that the committee could have entered a written agreement with Mr. Mador to pay him for his services as treasurer during the campaign. A candidate committee may compensate committee treasurers so long as there is a detailed written agreement signed prior to the services being rendered and the payment rendered is the usual and customary payment for the type of services provided. Committees should take care in determining reasonable compensation for campaign services. The Commission does recognize however that the fair market value for a treasurer's services may vary depending on the size of the campaign, the office sought, and the extent of the services the treasurer is providing.[2] Because Mr. Mador has not provided sufficient detail regarding the extent of his services for the committee, the Commission does not opine as to the reasonableness of the one thousand dollar ($1000) payment for treasurer services described in his petition.

Here, Mr. Mador asks the Commission to distinguish between the paid services of a campaign treasurer and those of all other campaign or committee staff. This we cannot do. Whenever a committee worker, including the committee treasurer, is paid, it is important for the committee to document that the worker is being paid the usual and normal charge for the services rendered. As is noted above, when a committee worker is paid in excess of one hundred dollars ($100), this documentation must take the form of a detailed written agreement signed before the services are rendered. The purpose of such detailed contemporaneous documentation is to substantiate that the expenditure is permissible and that the appropriate rate was charged for the services rendered. This is important, because if the committee worker provides his or her services at a discounted rate, then this would constitute an in kind contribution to the committee.[3] *See* General

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which the payments are made. In the case of a candidate committee, the campaign treasurer or the candidate, if the candidate so requests, shall preserve all internal records, cancelled checks, debit cards slips and bank statements for four years from the date of the last report required to be filed under subsection (a) of section 9-608.

[2] Mr. Mador correctly identifies that a campaign treasurer's duties are set by statute. The Commission notes, however that, especially for large campaigns, the accounting, data entry and legal work that may be conducted by the treasurer can be and often is delegated to other campaign workers or volunteers. Thus, one treasurer may perform services entitling him to significantly more compensation than another.

[3] It is especially important for candidates who are voluntarily participating in the CEP to pay to the usual and normal charge for services as such candidates are not permitted to receive in-kind contributions of any kind including discounts and have agreed to limit the contributions they may receive to small monetary contributions from human beings. *See Advisory Opinion 2010-02: Propriety of Placing Campaign Banners*

Statutes § 9-601a (a) (emphasis added) (defining "contribution" to include "***anything of value***, made for the purpose of influencing the nomination for election, or election, of any person"); *see also Advisory Opinion 2010-02: Propriety of Placing Campaign Banners or Signs on Commercial Property without Charge* (finding that "a business entity's provision of property to a committee for free or at less than the usual and normal price charged to commercial customers constitutes an impermissible in-kind contribution"). Furthermore, for candidates participating in the CEP, the SEEC Regulations expressly prohibit payment of campaign funds in an amount in excess of the usual and normal charge for services rendered. *See* Regs., Conn. State Agencies § 9-607-2 (b) (6). Thus, there is no reason to treat campaign treasurers differently than any other paid campaign worker with regards to the documentation required under the law. In fact, there is heightened reason to require such written documentation substantiating a service agreement in the case of a paid treasurer as such an agreement is not conducted at arm's length.

Mr. Mador also argues that the oral agreement between him and the candidate for payment for his services after the election should be enforceable as such an agreement would be enforceable under Connecticut law. Our inquiry is not whether this oral agreement is enforceable under principles of Connecticut contract law. Instead, the Commission can only opine as to whether payment under such an oral agreement would constitute a permissible expenditure under Connecticut campaign finance laws and regulations. We find that it would not. As noted above, the plain language of Regulations of Connecticut State Agencies § 9-607-2 instructs that service agreements for payments in excess of one hundred dollars ($100) must be signed and in writing *before* any of the work or services are performed. In addition, the Commission has found that an oral agreement does not satisfy the contemporaneous detailed documentation requirement in Regulations of Connecticut State Agencies § 9-706-1. *See In the Matter of a Complaint by Marie Hamilton,* Hartford, File No. 2008-093 (finding that an oral lease for headquarters space did not satisfy the contemporaneous written documentation requirement in General Statutes § 9-607 and Regulations of Connecticut State Agencies § 9-706-1 thus rendering the expenditure for the rent impermissible). Thus, the Commission finds that an oral agreement would not and does not here satisfy the written agreement requirement in Regulations of Connecticut State Agencies § 9-607-1.

Finally, it is important to note that, because Citizens for Mushinsky is a committee for a candidate participating in the CEP, its expenditures are strictly limited after the election. After the election, the statutes and regulations regarding campaign surplus or deficit take effect, and a participating candidate is only permitted to spend surplus public funds on a nominal amount of thank you notes or advertising and to pay costs associated with terminating the committee such as paying for outstanding committee bills. General Statutes § 9-608 (e) (1); Regs. of Conn. State Agencies § 9-706-2. The surplus provisions expressly provide that participating candidate committees for Statewide or General Assembly office "***shall***" distribute surplus funds to the Citizens' Election Fund, and that nonparticipating candidate committees for such offices "may ***only*** distribute" distribute surplus to the Citizens' Election Fund or to a tax-exempt charitable

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or Signs on Commercial Property without Charge at 3 n.3; *see also SEEC Declaratory Ruling 2007-03: Citizens' Election Program: Qualifying Contributions.*

501(c)(3) organization.[4] Furthermore, participating candidates are expressly prohibited from spending surplus funds on "[p]ost-election bonus payments, including but not limited to bonus payments to campaign staff or volunteers." *Id.* at § 9-706-2 (b) (11). This regulation is essential to protect the public fisc, as otherwise participating candidates could spend down all remaining public monies after the election by making bonus payments to committee workers, rather than returning these surplus monies to the Citizens' Election Fund. Here, Mr. Mador has indicated that his agreement with the candidate was to pay him a lump sum of one thousand dollars ($1000) after the election "should funds be available after all campaign expenses had been paid." Such a lump sum payment paid to Mr. Mador on the condition that there was surplus public monies available after the election would constitute a post election bonus payment in contravention of Regulations of Connecticut State Agencies § 9-607-2.

This constitutes a declaratory ruling pursuant to General Statutes § 4-176 concerning the applicability of Chapters 155 and 157 of the General Statutes and the regulations promulgated thereto. 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 expressly limited to the communications provided to the Commission by Mr. Mador and addresses only the issues raised therein. 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 __th day of February, 2011 at Hartford, CT by a vote of the Commission.

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[4] General Statutes § 9-608 (e) (1) provides in pertinent part that:

> (ii) a candidate committee which received moneys from the Citizens' Election Fund ***shall*** distribute such surplus to such fund, and (iii) a candidate committee for a nonparticipating candidate, as described in subsection (b) of section 9-703, ***may only distribute*** any such surplus to the Citizens' Election Fund or to a charitable organization

(emphasis added).