STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Mary Pugh, Norwalk

File No. 2007-355

AGREEMENT CONTAINING CONSENT ORDER AND PAYMENT OF A CIVIL PENALTY FOR VIOLATIONS OF CONNECTICUT GENERAL STATUTES (Rev. to 2007) §§ 9-602, 9-603 & 9-604

This Agreement, by and between Scott P. Merrell, of the City of Norwalk, County of Fairfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The instant Complaint, dated May 19, 2007, alleges that the "Dr. Scott P. Merrell for Governor 06" candidate committee made an expenditure for an advertisement, a portion of which benefitted Scott P. Merrell's 2007 campaign for Mayor of the City of Norwalk. The Referral alleges that after said advertisement, the Respondent failed to timely file a registration statement forming a single candidate committee on behalf of the 2007 campaign for Mayor or, alternately, a certification in accordance with the provisions of General Statutes (Rev. to 2007) § 9-604 (b).[1]

2. On or about January 17, 2006, Respondent Scott P. Merrell registered as a candidate for Governor in the November 2006 election and designated "Dr. Scott P. Merrell for Governor 06" candidate committee as the funding vehicle for the campaign.

3. After the November 4, 2006 election, "Dr. Scott P. Merrell for Governor 06," with the cooperation of and in consultation with the Respondent, made expenditures for two advertisements that ran in "The Hour," a local Norwalk newspaper on December 24 and 31, 2006. According to the Statements of Receipts and Expenditures filed by that committee and covering the period from October 24, 2006 through December 31, 2006, the committee made expenditures totaling $1,600 for said advertisements.

4. Said advertisements promoted the Respondent generally and made reference to his 2006 candidacy for Governor, but also promoted his "undeclared" candidacy for Mayor of the City of Norwalk in 2007 and solicited contributions for the "Merrell Campaign."

5. On or about January 10, 2007, Respondent attempted to file a Registration of Candidate Committee (Secretary of the State Form ED49) with the State Elections Enforcement Commission ("SEEC") for Respondent's candidacy for Mayor, designating the "Merrell Campaign" candidate committee as the funding vehicle.

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[1] The allegations with respect to Respondent Scott E. Clingenpeel, Treasurer for both named committees, are addressed in a separate document.

6. General Statutes (Rev. to 2007) § 9-603 provides in pertinent part:

> (a) Statements filed by party committees, political committees formed to aid or promote the success or defeat of a referendum question proposing a constitutional convention, constitutional amendment or revision of the Constitution, individual lobbyists, and those political committees and candidate committees formed to aid or promote the success or defeat of any candidate for the office of Governor, Lieutenant Governor, Secretary of the State, State Treasurer, State Comptroller, Attorney General, judge of probate and members of the General Assembly, shall be filed with the State Elections Enforcement Commission. . . . .
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> (b) Statements filed by . . . those political committees or candidate committees formed to aid or promote the success or defeat of any candidate for public office, other than those enumerated in subsection (a) of this section, . . . shall be *filed only with the town clerk of the municipality in which the election or referendum is to be held*. . . .
> [Emphasis added.]

7. On or about February 28, 2007, Respondent filed a single Registration of Candidate Committee (SOTS Form ED49) with the Town Clerk of the City of Norwalk for the Respondent's dual candidacies for both Mayor and Sheriff, designating the "Merrell Campaign" candidate committee as the sole funding vehicle for both candidacies.

8. On or about March 5, 2007, Respondent filed two sets of "Registration of Candidate" and "Candidate Committee Registration" forms (SEEC Forms 1 & 1A) with the Town Clerk of the City of Norwalk for the Respondent's dual candidacies for both Mayor & Sheriff, designating the "Merrell Campaign" candidate committee as the sole funding vehicle for both candidacies.

9. On the November 6, 2007 municipal election ballot in the City of Norwalk, Respondent appeared as a candidate for the offices of both Mayor and Sheriff.

10. General Statutes (Rev. to 2007) § 9-601, provides in pertinent part:

> (11) "Candidate" means an *individual who seeks nomination for election or election to public office* whether or not such individual is elected, and for the purposes of this chapter and sections 9-700 to 9-716, inclusive, an individual shall be deemed to seek nomination for election or election if such individual has (A) been endorsed by a party or become eligible for a position on the ballot at an election or primary, or (B) solicited or received contributions, made expenditures or *given such individual's consent to any other person to* solicit or receive contributions or *make expenditures with the intent to bring about such individual's nomination for election or election to any such office*. . . . [Emphasis added.]

11. General Statutes (Rev. to 2007) § 9-601a provides in pertinent part:

> (a) As used in this chapter "contribution" means:
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> (1) Any gift, subscription, loan, advance, payment or deposit of money or *anything of value, made for the purpose of influencing the nomination for election, or election, of any person or for the purpose of aiding or promoting the success or defeat of any referendum question or on behalf of any political party;*
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> . . .
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> (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;
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> . . . .
>
> [Emphasis added.]

12. General Statutes (Rev. to 2007) § 9-602 provides, in pertinent part:

> (a) Except with respect to an individual acting on his own, *no contributions may be made, solicited or received and no expenditures may be made, directly or indirectly, in aid of or in opposition to the candidacy for nomination or election of any individual or any party or referendum question, unless (1) the candidate or chairman of the committee has filed a designation of a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds* or (2) the candidate or, in the event of a referendum question, a group of individuals has filed a certification in accordance with the provisions of section 9-604 or 9-605, as the case may be. . . .
>
> [Emphasis added.]

13. General Statutes (Rev. to 2007) § 9-604, provides in pertinent part:

> (a) *Each candidate for a particular public office or the position of town committee member shall form a single candidate committee* for which he shall designate a campaign treasurer and a depository institution situated in this state as the depository for the committee's funds *and shall file a committee statement containing such designations, not later than ten days after becoming a candidate, with the proper authority as required by section 9-603*. The candidate may also designate a deputy campaign treasurer on such committee statement. The campaign treasurer and any deputy campaign treasurer so designated shall sign a statement accepting such designation which the candidate shall include as part of, or file with, the committee statement. . . .

(b) The formation of a candidate committee by a candidate and the filing of statements pursuant to section 9-608 shall not be required if the candidate files a certification with the proper authority required by section 9-603, not later than ten days after becoming a candidate, and any of the following conditions exist for the campaign: *(1)* The candidate is one of a slate of candidates whose campaigns are funded solely by a party committee or a political committee formed for a single election or primary and expenditures made on behalf of the candidate's campaign are reported by the committee sponsoring the candidate's candidacy; *(2)* the candidate finances the candidate's campaign entirely from personal funds and does not solicit or receive contributions, provided if said candidate personally makes an expenditure or expenditures in excess of one thousand dollars to, or for the benefit of, said candidate's campaign for nomination at a primary or election to an office or position, said candidate shall file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a candidate committee under section 9-608; *(3)* the candidate does not receive or expend funds in excess of one thousand dollars; or *(4)* the candidate does not receive or expend any funds, including personal funds, for the candidate's campaign. . . .

(c) . . . No 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. . . . [Emphasis added.]

14. The expenditures for the aforementioned advertisements also constituted in-kind contributions to the Respondent's candidacy for Mayor of the City of Norwalk, in the value of the advertisements, because, as discussed above, said advertisements inured to the benefit there of and were made with the cooperation of and in consultation with the Respondent.

15. Pursuant to General Statutes (Rev. to 2007) §§ 9-602, 9-603 & 9-604, Respondent had until no later than ten (10) days following the date of the December 24, 2006 advertisement, or January 3, 2007, to file with the Town Clerk of the City of Norwalk either a registration statement forming a single candidate committee for the Mayoral candidacy or a certification of exemption from forming a candidate committee under § 9-604 (b).

16. The Commission concludes that although Respondent made a good faith effort to file a registration statement for his candidacy as Mayor on January 10, 2007, that statement was filed with the SEEC and not the Town Clerk, which was proper filing repository, and therefore registration was not perfected on that date. Moreover, even if registration had been perfected on that date, it was seven (7) days past the ten-day period enumerated in General Statutes (Rev. to 2007) § 9-604.

17. Accordingly, the Commission concludes that the Respondent violated General Statutes (Rev. to 2007) §§ 9-602 & 9-604 for receiving a contribution and giving his consent to "Dr. Scott P. Merrell for Governor 06" to make expenditures with the intent to bring about his election as Norwalk Mayor and failing to timely file a registration statement forming a single candidate committee or a certification of an exemption in accordance with the provisions of § 9-604 (b).

18. The Commission also concludes that the Respondent further violated General Statutes (Rev. to 2007) §§ 9-602 & 9-604 for attempting to designate the "Merrell Campaign" candidate committee as the funding vehicle for his candidacy as both Mayor *and* Sheriff and for failing to file a *separate* registration statement forming a single candidate committee for each candidacy or a *separate* certification in accordance with the provisions of § 9-604 (b).

19. The Respondent has one prior similar matter before this Commission. In In Re Scott P. Merrell, SEEC File No. 2005-266CNF, Respondent, a candidate for Governor in 2006, was found to have violated General Statutes (Rev. to 2005) § 9-333f (now 9-604) and paid a $200 civil penalty when he failed to timely file a registration statement forming a single candidate committee or a certification of an exemption in accordance with the provisions of § 9-333f (b).

20. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

21. It is understood and agreed that this Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.

22. The Respondent waives:

    (a) Any further procedural steps;
    (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
    (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.

23. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent shall:

1) Pay a civil penalty of three hundred dollars ($300.00) to the Commission on or before May 25, 2009.
2) Complete one campaign finance seminar produced by Commission staff on or before September 1, 2009.
3) Henceforth strictly comply with the requirements of Connecticut General Statutes §§ 9-602, 9-603, and 9-604.

The Respondent:

Scott P. Merrell

Dated: 5/15/2009

For the State of Connecticut:

BY: _____

Joan M. Andrews, Esq.
Director of Legal Affairs & Enforcement
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 5/19/09

Adopted this 27th day of May of 2009 at Hartford, Connecticut

Stephen F. Cashman, Chairman
By Order of the Commission