

NOV 13 2018

ENFORCEMENT COMMISSION

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by William Shortell,
New Britain

File No. 2017-055

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between the Erin E. Stewart, City of New Britain, County of Hartford, State of Connecticut (hereinafter "Respondent") and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Complainant alleged that, on or about September 1, 2017, the City of New Britain Tax Collector mailed motor vehicle tax bills that included a tri-folded brochure that was promotional of Mayor Erin E. Stewart and in violation of General Statutes § 9-610 (d).
2. More specifically, Complainant alleged that the brochure contained a "Mayor's Message 2017," Mayor Stewart "...describing policies and positions entitled "New Britain: Leading the Way" [and] promoting the incumbent Mayor's administration on a range of tax-related and non-tax related issue that [was] part of the Re-Elect Erin Committee."
3. Though no allegation was made against, Cheryl S. Blogoslowski, City of New Britain Tax Collector, she nevertheless issued the tax bill and brochure in question and therefore was originally named by the Commission as a Respondent in this matter. Furthermore, the Commission notes that Ms. Blogoslowski name and title are not included on the mailer and there is no mention of candidates, an election, political parties or exhortations to vote for an individual or party.
4. Therefore, after a review of the brochure, it does not appear to be promotional of Respondent Blogoslowski in violation of General Statutes § 9-610 (d) (1). This holds true when applying Commission precedent as detailed herein. Therefore, the Commission dismisses this matter as to Ms. Blogoslowski.
5. General Statutes § 9-610, provides in pertinent part:
(d) (1) No incumbent holding office shall, during the three months preceding an election in which he is a candidate for reelection or election to another office, use public funds to mail or print flyers or other promotional materials intended to bring about his election or reelection.
[Emphasis added.]

6. General Statutes § 9-610 (d) (1) prohibits an incumbent within the three months preceding an election from using public funds “to mail or print flyers or other promotional materials” that are intended to promote the candidacy of the incumbent.
7. After investigation, it was determined that on or about September 1, 2017, Ms. Blogoslawski, in her capacity as the City of New Britain Tax Collector, mailed motor vehicle tax bills due and payable by October 2, 2017. The Commission finds that a color tri-folded brochure accompanied the New Britain motor vehicle tax notice. That brochure contained official tax and revenue information for the 2017-2018 budget. The second side contained a "Mayor's Message 2017" from incumbent Mayor Erin E. Stewart describing policies and positions that was entitled “New Britain: Leading the Way.”
8. Additionally, the Commission finds that the Respondent Stewart's, the incumbent mayoral candidate, along with a 2 3/8" by 2 3/8" color photo of her. Beneath Respondent Stewart's photo was displayed, in upper case and bolded letters, her full name and title as Mayor.
9. Finally, the Commission finds that the brochure touts Respondent Stewart's accomplishments, “successes”, how “proud” she is about her “budget for the 2017-18 fiscal year”, and states that “it is an honor to serve as your Mayor.”
10. Respondent Stewart cooperated with this investigation and, through counsel, provided a detailed written response to this complaint and investigation. Respondent Stewart's response is excerpted in part:

*The pamphlet is issued annually and is sent in the same envelope with our property tax bills. **Given the lack of a timely issued state budget and the commensurate uncertainty surrounding final municipal aid (and, therefore, our tax rate), New Britain joined many other municipalities across Connecticut in electing to post the property tax bills later than normal this fiscal year.***

*Further, as to the contents of the pamphlet itself, as evidenced by the copy provided by Complainant, the piece is divided into three distinct sections: (i) a message from the Mayor to taxpayers; (ii) a section discussing progress made by the City in numerous areas; and (iii) information on the City's top taxpayers and expenditures. **In short, it tells the taxpayers where their money is going and the return that they are receiving on their investment in New Britain. In that way, it serves both to inform the public and to hold the City accountable for its undertakings and expenditures. ...***

There is nothing contained in the subject pamphlet that is of a political nature; makes mention of any election; exhorts the

reader to consider participating in any election; or seeks to bring about my election or reelection (or that of the Tax Collector). In short, it does not fall within the ambit of 9-610(d) (1).

[Emphasis added.]

11. The Commission has applied a two-pronged test for determining whether a communication violates General Statutes §9-610 (d) (1). A communication is deemed to violate § 9-610 (d) (1) if it: (1) expressly advocates the candidate's reelection or (2) *is so laudatory as to implicitly advocate such reelection*. See *Complaint of Karen Mulcahy*, Waterbury, File No. 2005-292A & B; *Complaint of Ann Piscattano*, New Haven, File No. 97-221; *Complaint of Joseph Travagliano*, East Haven, File No. 91-170; and *Complaint of Peter Torrano*, Norwalk, File No. 99-214.
12. Furthermore, to the extent that the phrase "made to promote the success or defeat of any candidate seeking the nomination for election, or election" as contained in the definition of contribution and expenditure needs further elucidation, the United States Supreme Court has held that words such as "'promote,' 'oppose,' 'attack,' and 'support' 'provide[d] explicit standards for those who apply them' and 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.'" *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 170 n. 64 (2003). See also *Vermont Right to Life Comm., Inc. v. Sorrell*, 875 F. Supp. 2d 376, 389 (D. Vt. 2012) (reading "for the purpose of ...influencing an election . . . or affecting the outcome of an election" as simply, "supporting or opposing one or more candidates").

"Laudatory" Language and the Application of General Statutes § 9-610 (d)

13. The Commission, pursuant to its standard application of General Statutes § 9-610 (d) (1), has determined that two mailers were "*so laudatory of Respondent's record as an incumbent as to be promotional of his re-election as First Selectman.*" See *In the Matter of a Complaint by Matthew Paulsen*, Bethel, File No. 2015-150. Further, the Commission in *Paulsen* found that the aforementioned materials were produced and disseminated at public cost within three months of the November 3, 2015 Bethel municipal election.
14. The Commission concluded therefore that the Respondent in *Paulsen*, as the incumbent First Selectman who was seeking re-election, violated § 9-610 (d) (1) on two occasions by using public funds, within three months prior to the November 3, 2015 Bethel municipal election, to produce and disseminate materials that promoted his achievements as First Selectman and were intended to bring about his reelection.

General Statutes § 9-610 (d) (1) and “Relevant Record References”

15. The Commission, in past matters applying General Statutes § 9-610 (d) (1), has made the distinction between whether a communication contains “relevant” versus “irrelevant” record references. In doing so, the Commission considers whether the subject materials include any relevant record references to the candidate’s record and tolerates the same if the record does not otherwise refer to an incumbent’s candidacy, party affiliation, or solicit contributions or votes. *See In the Matter of a Complaint by Thomas Christiano*, Trumbull, File No. 2001-196 and *In the Matter of Ann Piscattano*, New Haven, File No. 97-221. Furthermore, pursuant to *In the Matter of Roger J. Roche*, Old Lyme, File No. 2007-390, a “relevant record reference” is one “...*announcing or explaining a recent government action of legitimate public importance.*” Further, it is “irrelevant” if it “...*touts past accomplishments more remote in time and relevance, and therefore offends the prohibition.*” *See Roche.*
16. In making its determination as to whether materials are promotional, the Commission has historically considered the consistency of the language of the communication in relationship to its governmental purpose. *See Mulcahy, Piscattano, Travagliano and Torrano.* Despite any governmental purpose, a communication will be deemed to violate § 9-610 (d), if it makes reference to:
- (1) the candidacy or party affiliation of any elected official;
 - (2) the *record* of any elected official; or
 - (3) a solicitation for contributions or other support for any official's campaign for re-election, or promoting the support of any other candidate, political committee or political party.
17. Additionally, in File Nos. 2011-027, 2011-028 and 2011-029, the Commission determined the following regarding the applications of General Statutes § 9-610 (d):
- The Commission, however, will take this opportunity to introduce two new factors that it will consider when making the determination of whether a communication is so laudatory that, in spite of its governmental purpose, it implicitly advocates for the reelection of an incumbent – timing of the communication and its relationship to other communications. If a communication is released shortly before an election and appears to be one of a series of communications that collectively seem to advocate for the reelection of an incumbent, then the Commission will take those factors into its determination of whether a communication violates the prohibition in § 9-610 (d) (1) on the use of public funds to promote an incumbent candidate’s reelection.*
- [Emphasis added.]

18. The Commission concludes that General Statutes § 9-610 (d) (1) applies here to Respondent Stewart because she was an incumbent seeking reelection as Mayor of New Britain at the November 7, 2017 municipal election. Furthermore, the Commission notes that the second prerequisite regarding timing of the publication is satisfied and not disputed in that the parties admit that the brochure that is subject to this complaint and investigation was mailed at public cost within the three month period before the November 7, 2017 New Britain municipal election.
19. To conclude a violation pursuant to General Statutes § 9-610 (d) (1), the Commission must also determine whether the brochure in question was promotional of Respondent Stewart's candidacy for re-election at the November 7, 2017 New Britain Municipal election.
20. Plainly, in applying the *PASO test*, the materials that are subject to this complaint "support" the re-election of Respondent Stewart as Mayor of the City of New Britain. More specifically, the Commission finds that the color tri-fold brochure that was included with the 2017 New Britain motor tax bills supports Respondent Stewart for re-election, in that it references her accomplishments and record as Mayor and makes favorable references to the improvements to Britain based on her record. The Commission concludes therefore that the brochure was promotional pursuant to General Statutes § 9-610 (d) (1),
21. Additionally, in its analysis, the Commission considers whether the materials subject to General Statutes § 9-610 (d) (1) incorporate any relevant record references to the candidate's record but does not otherwise refer to an incumbent's candidacy, party affiliation, or solicit contributions or votes. *See Christiano and Piscattano*. Pursuant to *Roche*, a relevant record reference "...is one announcing or explaining a recent government action of legitimate public importance." Further, it is "irrelevant" if it "...touts past accomplishments more remote in time and relevance, and therefore offends the prohibition." *See Roche*.
22. It follows that the Commission must therefore determine whether the references in the tri-fold brochure, as detailed herein, were relevant to the record or irrelevant to the record of the Mayor Stewart and her administration *in relation to* the motor tax bills that were issued along with the brochure.

23. The Commission finds, for the reasons detailed herein, that the record references to the Respondent's and the City of New Britain's accomplishments are *irrelevant* to the tax bill and therefore their inclusion in the mailer is violative of § 9-610 (d) (1). Further, the Commission finds that the mailer plainly could have been limited to the mill rate and various other information regarding motor vehicle taxes in New Britain, without including favorable references to the budget and past performance of the Mayor of New Britain and her administration.
24. The Commission concludes, for the reasons detailed herein, that the brochure is promotional of Respondent Stewart's candidacy for re-election as Mayor at the November 7, 2017 municipal election in New Britain and therefore the authorization of the use of public funds for its production and dissemination was in violation of § 9-610 (d) (1).
25. The Respondent admits all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and Order entered into after a full hearing and shall become final when adopted by the Commission.
26. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used against either party in any subsequent hearing, if the same becomes necessary.
27. 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.
28. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.

ORDER

IT IS HEREBY ORDERED THAT Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-610.

IT IS HEREBY FURTHER ORDERED THAT Respondent shall pay a civil penalty in the amount of five hundred dollars (\$500.00) for her violations of General Statutes § 9-610 and in settlement of this matter, before its adoption by the Commission.

The Respondent

For the State of Connecticut

By:



Erin E. Stewart
242 Reservoir Road
New Britain, Connecticut

By:



Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated:

11/8/18

Dated:

11/14/18

Adopted this 14th day of November, 2018 at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman
By Order of the Commission



Salvatore A. Bramante Vice