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October 1, 2014

Adav Noti, Esq.
Acting Associate General Counsel for Policy
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Dear Mr. Noti:

I am writing on behalf of the Connecticut Democratic State Central Committee ("CDSCC") to request an advisory opinion regarding to the attached proposed mailing by the CDSCC. The CDSCC wishes to confirm whether the proposed mailing is considered a "federal election activity" as defined by 52 U.S.C. § 30101(20) and 11 C.F.R. § 100.24(a)(3). In addition, the CDSCC wishes to request confirmation that the proposed mailings may be paid for either exclusively with federal funds, or a combination of federal and Levin funds, if the Commission determines that the mailing qualifies as a "federal election activity." Finally, the CDSCC wishes to confirm that the state of Connecticut would be precluded by the preemption clause of the Federal Election Campaign Act of 1971 ("FECA"), as amended (52 U.S.C. § 30143(a)), from requiring the CDSCC to pay for the attached mailing directly from its non-federal account or otherwise mandating that non-federal funds be used to pay for the attached mailing. Due to the proximate timing of the election, the CDSCC respectfully requests that the Commission expedite the consideration of this request to the extent that it is possible.

MAILING

Attached as Exhibit A, please find a mailing that the CDSCC proposes to send on behalf of Dan Malloy, a candidate for Governor, in the 2014 general election. The CDSCC plans to undertake this mailing on behalf of Governor Malloy, as well as similar mailings on behalf of other non-federal candidates in the 2014 election, as well as future elections. For purposes of this request, the Commission should assume that the requested mailings will not reference any candidate for federal offices. As evidenced from the attached mailing, the CDSCC intends to provide recipients of the mailings with information regarding the date of the election, the time that the polls are open, as well as a phone number that they can call to request a ride to the polls. In addition, in some cases, the CDSCC may laser print the location of the recipient's polling place on the mailing in the address panel at the same time their address is printed on the mailing.[1] The CDSCC intends to pay for the mailings either entirely with federal funds, or, when feasible, allocate the costs, at its own discretion, with federal funds and Levin funds as permitted by federal regulations (for the 2014 election cycle, the CDSCC would transfer no more than 85% of the total costs of the mailing from its non-federal account (from properly designated Levin funds) to its federal account).

QUESTIONS PRESENTED

1) Is the attached mailing considered a "federal election activity" as defined by 52 U.S.C. § 30101(24) and 11 C.F.R. § 100.24(a)(3)?
2) If the answer to Question 1 is Yes, may the CDSCC pay for the mailing, at its own discretion, either entirely with federal funds, or with a combination of Federal and Levin funds, at a ratio of its own choosing so long as the share of Levin funds does not exceed 85% of the total cost of the mailing?
3) If the answers to Questions 1 and 2 are Yes, is the state of Connecticut preempted from requiring the CDSCC to pay for the attached mailing directly from its non-federal account or otherwise requiring that the CDSCC use non-federal or Levin funds to pay for the mailing?

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1 If the Commission determines that the mailing must be paid for with Federal funds, the CDSCC will modify the disclaimer on the mailing to include a website and a statement that it was not authorized by any candidate or candidate's committee as required by 52 U.S.C. § 30120 and 11 C.F.R. § 110.11(b)(3).

DISCUSSION

In 2002, Congress amended the FECA by expansively regulating non-federal activities of state and local party committees. Section 101(a) of the Bipartisan Campaign Reform Act of 2002 ("BCRA") added new section 323(b) of the FECA (now codified at 52 U.S.C. § 30125). This new provision required, amongst other things, that any activities that were undertaken by a state or local party committee that constituted a "federal election activity"[2] must be paid for exclusively with federal funds, or with a combination of federal funds and non-federal funds provided that several conditions were met. 52 U.S.C. § 30125(b)(2).

In order for a party activity to be subject to the provisions above, it must qualify as a "federal election activity" as defined by 52 U.S.C. § 30101(20) and 11 C.F.R. § 100.24. For purposes of this request, the CDSCC believes that the activities proposed in this request may constitute "get-out-the-vote" as defined at 11 C.F.R. § 100.24(a)(3). Section 100.24(a)(3)(i)(A) deems any activity that encourages or urges a voter to vote to be a "get-out-the-vote" activity. However, get-out-the-vote activity does not include a brief exhortation to vote "so long as the exhortation is incidental to a communication..." 11 C.F.R. § 100.24(a)(ii). The CDSCC is not requesting that the Commission determine whether the exhortations to vote made in the attached mailing are "incidental" as the mailing includes sufficient voting information that appears to trigger a separate portion of the rule at section 100.24(i)(B) and (C).[3]

Once a determination is made that the mailing is a "federal election activity," Commission regulations mandate that a party committee must either pay for the mailing exclusively with federal funds or the party may pay for the mailing with a combination of federal and Levin funds.[4] 11 C.F.R. § 300.33(a)(2)[5] Commission regulations further provide that a party committee has the discretion to pay for the costs of such activities either entirely with federal funds or with some combination of federal and Levin funds, so long as the Levin portion does not exceed the non-federal share of the expenditure (in this case it could not exceed 85% of the total cost of the mailing (11 C.F.R. § 300.33(b)). 11 C.F.R. § 300.32(c)(4).

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2 "Federal Election Activity" was separately defined in Section 101(b) of the BCRA and is now codified at 52 U.S.C. § 30101(20).

3 Although the BCRA includes a provision that exempts activities that are "public communications" that reference only state and local candidates from the definition of "Federal Election Activity" it only does so if the communication does not otherwise qualify as a "Federal Election Activity." 52 U.S.C. § 30101(20)(B)(i).

4 "Levin Funds" is a term created by the FEC to describe non-federal funds received by a state or local party committee that are regulated by Section 101(b) of the BCRA. 11 C.F.R. § 300.2(i).

5 The BCRA and Commission regulations place several restrictions on what types of non-federal contributions may even qualify as Levin Funds. See 52 U.S.C. § 30125(b)(2)(B) & (c). The CDSCC is not seeking any clarification on the scope of these provisions in this request.

Once it is established that the mailing is a "federal election activity" and subject to the allocation scheme found in 11 C.F.R. §§ 300.32 & 300.33, Federal law "occupies the field" with respect to the proposed activity in this request. In this matter, the State of Connecticut has stated its belief that communications that reference non-federal candidates must be paid exclusively from the party's non-federal account. For example, in recent Advisory Opinion 2014-01, the Connecticut State Elections Enforcement Commission ("SEEC") opined that:

> Generally speaking, the federal account cannot spend its funds to make expenditures with the state account for Connecticut candidates for statewide office or the General Assembly (i.e. non-federal offices)...The overarching principle to be followed is simple: Connecticut committees pay for their expenses with money raised within the Connecticut campaign finance system....
>
> ...The major issue of contention addressed by this Opinion, is whether, because certain activities benefitting federal candidates *cannot* be paid for by the state account, activities promoting, attacking, supporting or opposing state candidates may therefore be paid for outside of the Connecticut campaign finance laws with no reporting or source restrictions under Connecticut law. The answer is that they may not. Connecticut committees must pay for their expenses for state candidates with money raised within the Connecticut campaign finance system, i.e. from permissible contributions or public financing grants, properly reported under Connecticut law....

State Elections Law Enforcement Commission, Advisory Opinion 2014-01, pp. 2-3.

Although not readily apparent from the attached opinion and enforcement decision, the SEEC presumably relies on sections 9-601a, 9-601b & 9-616 of Connecticut campaign finance laws.

The SEEC recently reasserted their views related to the use of the federal account by the CDSCC in a recent enforcement opinion related to fundraising into the CDSCC's federal account by persons who are considered prohibited sources under Connecticut law. In that case (a copy of which is attached), the Commission opined that it would be monitoring the activities of the CDSCC's federal account to determine if violations of state law have occurred. See State Elections Enforcement Commission, *In the Matter of Complaint by Andreas Duus, III*, File No. 2013-76 (September 16, 2014), p.4.[6] See also Id. at p. 7.[7]

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6 See also, *Panel Clears NU Executive; CEO May's Solicitation Deemed 'Offensive.' But Not a Violation;* Elections Enforcement Commission, Hartford Courant, September 17, 2014, Pg. B1.

7 SEEC's asserted interest in this enforcement matter relates to the fact that state contractors (a prohibited source under Connecticut law) have made contributions to the federal account of the CDSCC. Although it is not germane to the proper disposition of this request, it is worth noting that the CDSCC has established a segregated federal account in which it deposits contributions from known state contractors. This account is not used for any communication that advocates the election or defeat of any state or local

The preemption analysis in this request is indistinguishable with the legal analysis in previous FEC Advisory Opinions 1993-17 and 2000-24. In these two opinions, the Commission ruled that a state was pre-empted from requiring a state party committee from paying its administrative costs with the minimum federal percentage allowed by federal regulations. The Commission found that the state parties were permitted to utilize more than the federal minimum required by Commission regulations and that the states of Massachusetts and Alaska were pre-empted from requiring the state parties from transferring the non-federal portion of the allocable operating expenses since the Commission determined that it intended to make allocation of such expenses discretionary and party committees were free to use more than the minimum federal amounts required to pay for administrative expenses under former 11 C.F.R. § 106.5 (now codified at 11 C.F.R. § 106.7).. Therefore, since it was the intent of the Commission to allow such discretion, the preemption clause forbade a state from overriding Commission intent.

The reasoning of the two opinions equally applies in this instance. In these two opinions, the Commission noted that the allocation scheme that it had created to require a minimum payment of federal funds for such expenses was "discretionary." The Commission's regulations clearly make the requirement to allocate "federal election activities" discretionary by providing a party committee with a clear choice of paying for such activities either with federal funds or with a combination of federal or Levin funds. In addition, the Commission has clearly set the allocation percentage as merely the minimum federal percentage that is required to be allocated by the clear terms of its regulations. To be sure, the Commission refers to the federal share of allocable expenses as the "minimum federal percentage" (11 C.F.R. § 300.33(b)(1). In addition, the Explanation and Justification for Section 300.33 states that the percentages require that a party committee "must allocate no less than the following amounts to their Federal accounts...." *Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule*, 67 Fed. Reg. 49064, 49098 (July 29, 2002). Therefore, it is clear that the Commission is treating the allocation regime for "federal election activities" in the same way that it treated the administrative allocation regime in AO's 1993-17 and 2000-24.

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candidate and is used exclusively for federal and administrative purposes in order to ensure compliance with the spirit of Connecticut law.'

Congress has clearly intended to regulate the campaign activity proposed in the attached mailings by federalizing even those communications that only reference non-federal candidates. The BCRA created a regulatory regime whereby any public communication that refers to a non-federal candidate and otherwise qualifies as a "federal election activity" must be subject to federal regulation. 52 U.S.C. § 30101(20)(B)(1). Although it may seem counterintuitive that federal law would somehow pre-empt a communication that only references a non-federal candidate, this is exactly what Congress sought to do when it passed the BCRA. An explanation of Congress' intent to occupy the field is succinctly explained by Justice Stevens in his majority opinion in McConnell v. FEC:

> In constructing a coherent scheme of campaign finance regulation, Congress recognized that, given the close ties between federal candidates and state party committees, BCRA's restrictions on national committee activity would rapidly become ineffective if state and local committees remained available as a conduit for soft-money donations [footnote omitted]. Section 323(b) is designed to foreclose wholesale evasion of § 323(a)'s anticorruption measures by sharply curbing state committees' ability to use large soft-money contributions to influence federal elections. The core of § 323(b) is a straightforward contribution regulation: It prevents donors from contributing nonfederal funds to state and local party committees to help finance "Federal election activity." 2 U.S.C. § 441i(b)(1) (Supp. II) [now codified at 52 U.S.C. 21 30125(b)(1).
>
> 540 U.S. 93, 161-162 (2003)[8]

Once federal jurisdiction is established, Commission regulations provide that a party committee may either pay for the activity entirely with federal funds or with a minimum percentage of federal funds and Levin funds. Thus, Congress and the Commission has "occupied the field" with respect to these activities.

Federal law is clear on this point. Federal courts, as well as the FEC, have consistently determined that the FECA preempts any state law that frustrates the purpose of the federal election laws, as well as interpretations of federal law and regulations of the FEC. See Weber v. Heaney, 995 F.2d 872 (8th Cir. 1993); Bunning v. Kentucky, 42 F.3d 1008 (6th Cir. 1994); Teper v. Miller, 82 F.3d 989 (11th Cir. 1996); FEC Advisory Opinions 2012-10; 2009-21; 2000-24; 2000-23; 1998-8; 1998-7; 1997-14; 1993-9 1995-48; 1994.2; 1993-25; 1993-17; 1993-14; 1991-22; 1991-5; 1989-25; 1986-40; 1983-8.

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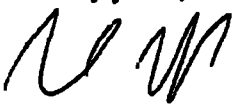
8 Justice Stevens likewise rejected the contention that the BCRA exceeded Congress' Election Clause authority to "make or alter" rules governing federal elections. McConnell, 540 U.S. at 186. See also Shays v. FEC ("Shays I"), 337 F.Supp.2d 28, 104 (D.D.C. 2004) (rejecting FEC's argument that Congress had federalism concerns in mind when it promulgated the BCRA).

Based on the above, the CDSCC requests that the Commission determine whether the attached mailing qualifies as a "federal election activity." If the answer to this question is yes, the CDSCC seeks confirmation that it may choose to pay for the activity either entirely with federal funds or with a minimum percentage of 15% federal funds combined with Levin funds at its sole discretion. In addition, the CDSCC seeks to confirm that the State of Connecticut may not require the CDSCC to spend any non-federal funds on the attached mailing, and to the extent that it does, it is preempted from doing so by 52 U.S.C. § 30143(a).

If you have any questions or need additional information in connection with this Advisory Opinion Request, please contact me at (202) 479-1111. Thank you for your time and attention to this matter

Sincerely yours,



Neil Reiff
Counsel to the Connecticut Democratic
State Central Committee

Democratic State Central Committee
30 Arbor Street, Suite 404
Hartford, CT 06106

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- **Passed the toughest** gun laws in the country
- **Set the course for more affordable housing** than we've had in the past 3 decades
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Poll hours: **6 am to 8 pm**

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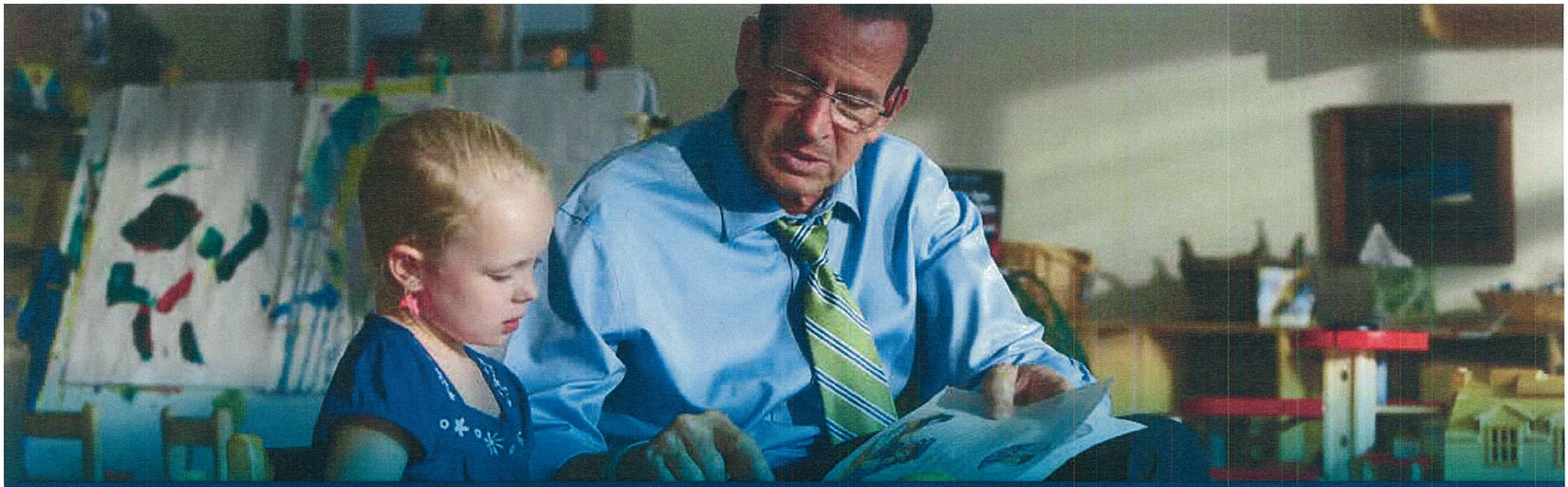

"While Republicans around the country are forcing debates that belong in the 19th century,
Connecticut is leading the nation in making progress for the 21st century.

While we have more work to do, we're on the right path, and we're moving forward."

- Democratic Governor Dan Malloy

Vote Democrat Dan Malloy for Governor on Tuesday, November 4th.

ADVISORY OPINION 2014-01:
The Use of Federal and State Accounts of Party Committees

At its special meeting on February 11, 2014, the State Elections Enforcement Commission (the "Commission") voted to issue this Advisory Opinion on the permissible activities of a state party committee registered with the Federal Election Commission ("FEC") vis-à-vis state party committees registered with the State Elections Enforcement Commission ("SEEC" or "Commission") and Connecticut state elections.

As an initial matter, the Commission notes that it does not have jurisdiction over federal committees *per se*, but that its jurisdiction extends to the enforcement of Connecticut campaign finance laws. When federal committees make expenditures for the purpose of influencing Connecticut state elections, the Commission is charged with administering and enforcing the relevant Connecticut laws related to such elections.

This Advisory Opinion is in response to the many questions posed by the regulated community and the media about the reported fundraising activity of a state party committee registered with the FEC, which is alternatively known as the federal account (hereinafter, the "federal account" or "federal committee") and how those funds might be used to benefit the state central party committee registered with the SEEC (hereinafter, the "state account" or the "state committee"). Of most concern is the fact that much of the reported fundraising has involved Connecticut state contractors, who are prohibited from making contributions to party committees registered with the SEEC. It is a matter of great importance to the integrity of Connecticut elections that funds that are generally prohibited from being used in Connecticut elections are not, in fact, used to make expenditures in Connecticut elections.

In light of these developments, the Commission is taking this opportunity to clarify and publish advice on the use of money and assets of the federal account in Connecticut elections, which has been issued consistently by SEEC staff since the inception of the Citizens' Election Program and before.

Legal Background

As an initial matter, the federal account cannot make a contribution to the state account. General Statutes § 9-617 sets forth the permissible contributors to a Connecticut party committee and lists as one of them the national party committee (a committee registered with the FEC), but does not list state party committees registered with the FEC. General Statutes 9-617 (d) provides that "[a] party committee may receive contributions from a federal account of a national committee of a political party, but may not receive contributions from any other account of a national committee of a political party or from

federal candidates. The first and third listed activities can also be paid for, in whole or in part, with Levin funds, a particular type of funds permitted to be raised by federal committees in keeping with state law restrictions.

The major issue of contention addressed by this Opinion, is whether, because certain activities benefitting federal candidates *cannot* be paid for by the state account, activities promoting, attacking, supporting or opposing state candidates may therefore be paid for outside of the Connecticut campaign finance laws with no reporting or source restrictions under Connecticut law. The answer is that they may not. Connecticut committees must pay for their expenses for state candidates with money raised within the Connecticut campaign finance system, i.e. from permissible contributions or public financing grants, properly reported under Connecticut law. They should structure their activities to allow for compliance with both state and federal law.

Analysis

The issue then is the extent to which expenditures can be made from the federal account that benefit Connecticut candidates, directly or indirectly, and who ultimately must pay for them. Borrowing from the categories listed above, we analyze these various types of expenditures specifically.

Communications that Identify Specific Candidates

The issue of communications that identify both state and federal candidates was one of the earliest issues that arose in the context of state and federal committees following the adoption of public financing and the other sweeping campaign finance reforms in 2005. Following those major reforms, Connecticut law became, in many ways, more restrictive than federal law, as with restrictions on state contractor and lobbyist contributions. This created an apparent overlap between state and federal law, which in turn created some confusion as to how to comply with both laws simultaneously.

As an initial matter, we note that both federal and state laws provide exemptions from their respective definitions of contribution for particular types of communications, such as slate cards and sample ballots. 2 U.S.C. 431 (8) (B) (v) and General Statutes § 9-601b (b) (8). These exemptions indicate that lawmakers at both the federal and state level contemplated that certain communications naming both federal and state candidates should be permissible, and that the lawmakers know how to craft such exemptions when they choose to do so. This opinion addresses other types of joint communications, such as promotional or oppositional pieces, for which there are no exemptions.

When there are no exemptions under Connecticut law, the rule is simple: Communications that support or oppose or, within a certain timeframe, identify specific state candidates are, by definition, expenditures under Connecticut law, and when not done independently, are also, by definition, contributions. General Statutes §§ 9-601b (a) (2), 9-601a (a) (4). Expenses associated with such communications must be properly allocated and reported. Declaratory Ruling 2011-03: Candidate Committees and Joint

a committee of a candidate for federal or out-of-state office, for use in the election of candidates subject to the provisions of this chapter."

Similarly, the federal account cannot make contributions to Connecticut candidate committees. General Statutes 9-616 (b) provides that "[a] candidate committee shall not receive contributions from any national committee or from a committee of a candidate for federal or out-of-state office." Of the permissible sources of contributions for candidate committees, state party committees registered with the FEC are not among them.

Generally speaking, the federal account cannot spend its funds to make expenditures with the state account for Connecticut candidates for statewide office or the General Assembly (i.e. non-federal offices). To be clear, this does not contravene longstanding advice given by the Commission's staff that federal committees, in some circumstances, may act as vendors to Connecticut party and candidate committees, which must in turn pay market value for services, products or facilities, such as headquarter space, purchased from a federal committee acting as a vendor. The overarching principle to be followed is simple: Connecticut committees pay for their expenses with money raised within the Connecticut campaign finance system, i.e. from permissible contributions or public financing grants, properly reported under Connecticut law.

A lack of clarity seems to have arisen due to the intersection of federal law and state law. Federal law prescribes when expenditures may be allocated between a federal account and another account, for example in the making of certain joint expenditures, and when expenditures may not be allocated but instead must be paid for in accord with federal law.[1] Unlike Connecticut law, which requires allocation, federal law declares certain areas to be "Federal Election Activity" (or "FEA") in order to avoid the circumvention of federal contribution limits through the use of state committees to provide certain services and goods that jointly benefit both the state and federal candidates, or disproportionately benefit federal candidates. While some activities that are FEA exclusively involve candidates in federal elections, certain FEA can also involve state candidates, such as for statewide office or the General Assembly. This is where confusion arises.

In preventing or limiting certain types of allocation, federal law focuses on the several types of activities, defined by federal law as FEA, which must be paid for out of funds raised, spent and disclosed in compliance with federal limits, i.e. funds from the federal account. These activities include (but are not limited to) the following: 1) Communications that identify specific candidates; 2) Staff; and 3) Voter identification, including voter or contributor databases and mailing lists.

In short, under federal law, these types of activities must be paid for with federal funds, which are funds raised and reported subject to federal law, when they are at all related to

[1] This Commission does not regulate or interpret federal laws; however, in order to opine on the application of state law it is necessary to lay out generally the outline of the federal requirements. Any specific questions regarding federal law should be referred to the FEC.

Communications. This is a particularly important concept in a full public financing state such as Connecticut, where candidates voluntarily agree to abide by strict contribution and expenditure limits. There are narrow exceptions to this rule explicitly spelled out in the statutes such as for slate cards or when an unopposed candidate endorses a second candidate who pays for the entire advertisement. There is no such exception for any advertisement or communication by a federal account that, for example, promotes or opposes a state candidate but is paid for exclusively with federal funds.

To the extent, for example, that the federal committee may not accept payment from a state committee for that committee's share of the cost for communications promoting both state and federal candidates from non-federal funds, it should choose to design the communications differently. For example, creating a communication promoting a federal candidate to be paid for out of a federal account and designing a communication promoting a state candidate to be paid for out of a state account. Committees must structure communications to comply with both state and federal law.

Staff

Similarly, committees must structure their staffing and assignments to comply with both state and federal law. When a federal committee hires staff, that staff presumably will conduct some federal election activity. If the staff spend more than 25% of their time performing such activity, then the staff's wages must be paid for entirely with federal funds. Applying the principles outlined above, this would lead to several conclusions.

First, if the staff were conducting *only* federal election activity and none of the staff time was dedicated to supporting state candidates, then no allocation between state and federal accounts would be necessary under Connecticut law; there would be no contribution, to the state committees. This also would be true if, for example, the staff were conducting truly generic campaign activity or get-out-the-vote activity that did not reference or target state candidates.

Second, if the staff paid by the federal account were working with state committees to support and benefit state candidates, those candidates would be required to reimburse the federal committee for such time. If the federal committee may not accept such funds, then the arrangement would result in an impermissible contribution. The staffing must be structured to accommodate both state and federal law.

Staff that are working for the federal committee are not precluded from also being hired by a state committee to perform different (state permissible) activities such as designing communications that promote state candidates, oppositional research, or organizing door knocking campaigns for state candidates.

If the staff paid out of the federal account are spending their time compiling enhanced voter lists, mailing lists, contributor lists or similar databases, then this would result in the production of an asset (e.g. a database) that could then be sold or leased to a Connecticut

committee at fair market value, at the usual and normal charge, if such committee were interested in utilizing it.

Voter identification activity

Voter identification under the FEA provisions means acquiring information about potential voters, including obtaining voter lists and creating or enhancing voter lists by verifying or adding information about the voters and their inclination to vote for specific candidates.

Voter identification activity done for the purpose of aiding federal candidates may be paid for by the federal account. The result of a voter identification activity however is likely to be a valuable resource to other candidates, including candidates for state office. For example, it may result in an enhanced voter database or mailing list. Under Connecticut law such resources are assets of the federal committee that cannot be contributed to the Connecticut state party committee or Connecticut candidates. Connecticut law does contemplate voter lists being distributed to candidates, either under the CEP (see General Statutes § 9-715), or as an organization expenditure (see General Statutes § 601 (25) (b)). Voter lists given by a federal committee to a state committee, however, would be an impermissible contribution.

Understanding that voter databases are tools of the trade for campaigns, and that committees can and frequently do purchase such databases in the open market, the Commission staff has taken the position that the federal committee could act as a vendor to a state committee and sell the database (or a portion thereof) to such committee, so long as the sale was for fair market value.

Reviewing the FEC's Advisory Opinions on such sales, it would appear to be the FEC's position that the sale of mailings lists or databases is permitted provided that they have been developed by the committee in the normal course of its operation, and the asset is developed primarily for the committee's own use rather than for sale to others. FEC AO 1981-53. If such sale from federal to state committee occurs, proper valuation is of paramount importance. The FEC uses the "usual and normal charge" standard, which is defined as the price of goods or services in the market from which they ordinarily would have been purchased at the time of their contribution. Failure to properly value the database could result in a contribution. FEC AO 1979-18. The amount of the contribution would be the difference between the usual and normal charge at the time of sale for a list of potential contributors in the appropriate market and the amount actually paid for the list. *Id.* The FEC opines that it would view an appraisal by an expert using acceptable appraisal methods as *prima facie* evidence of the property's usual and normal market price, but it does not rule out the use of other valuation methods that would reliably establish such price or value. FEC AO 1984-60. In the opinion of the FEC, lists have a readily ascertainable fair market value, due to the existence of a broad and open market for such lists. FEC AO 2002-14.

The FEC's position on the sale of mailing and similar lists mirrors previous SEEC advice in regard to transactions between the federal and state accounts that has been given over the past years, and which is restated in this Opinion. If lists created to be used in federal elections---whether they are enhanced voter lists, mailing lists, or contributor lists or similar databases---are developed and paid for with federal funds, then access to those lists must be paid for at the usual and normal market price by any Connecticut committee desiring to use them, or else it will be considered an impermissible contribution. Again, committees must structure their activities to comply with both state and federal law.

Other Unrestricted Campaign Activity

The federal scheme for federal election activity omits certain election activities that do not appear to be restricted to being paid for entirely by federal funds. A partial list of such activities would include expenditures for headquarters space, petition drives, utilities, other overhead, etc. If not proscribed by the guidance given in this Opinion, and subject to federal law, expenditures for these unenumerated activities could be allocated between federal committees and state committees as joint expenditures, if a state candidate or committee obtained a benefit.

In conclusion, federal law does not create a loophole in the Citizens' Election Program and other Connecticut campaign finance laws that would allow federal committees to make expenditures that are also contributions regarding Connecticut candidates. This remains true even after the passage of Public Act 13-180. State committees should structure their plans to comply with both state and federal law. In some instances this may mean, for example, that they cannot support state and federal candidates within the same communication, that they have to compartmentalize staffing arrangements, or that they must purchase assets from the federal committees if they wish to utilize them.

This constitutes an Advisory Opinion pursuant to General Statutes § 9-7b (a) (14). This Advisory Opinion is only meant to provide general guidance and addresses only the issues raised. Additional questions about the specific requirements for a joint activity between federal and state committees should be directed to the Commission staff.

Adopted this 11th day of February, 2014 at Hartford, Connecticut by a vote of the Commission.

Anthony J. Castagno, Chair

STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of Complaint by Andreas Duus, III File No. 2013-176
Riverside (Greenwich)

FINDINGS AND CONCLUSIONS

Complainant Andreas Duus, III filed this complaint with the Commission pursuant to General Statutes §9-7b, alleging that President and CEO of Northeast Utilities Thomas J. May (hereinafter "Respondent") solicited contributions from employees to benefit Governor Dannel Malloy in violation of campaign finance laws, which prohibit contributions from business entities, labor unions and state contractors to gubernatorial campaigns. After an investigation, the Commission makes the following findings and conclusions:

1. Complainant alleged that Respondent solicited contributions from Northeast Utilities (hereinafter "NU") officers, agents or employees in support of the re-election of Governor Dannel Malloy, that resulted in prohibited contributions from a state contractor, a business entity and a labor union and therefore violated campaign finance laws. The complaint was filed with the Commission on December 11, 2013 which provides the relevant time period for review. Accordingly, the relevant timeframe for investigation of the conduct in this matter is between the date of the September 27, 2013 solicitation and the date of filing this complaint on December 11, 2013.

2. Specifically, Complainant, citing a December 4, 2013 report in the *Hartford Courant*, alleged that:

> *[Respondent], 'has asked about 50 of his managers throughout New England to give money to help re-elect (Gov. Daniel [sic]) Malloy next year.' The request has raised $46,500 thus far. The Courant further states that the NU [spokeswoman] stated that [Respondent] 'had carefully checked that his fundraising request was legal before sending it to 48 managers' because [Respondent] asked his employees to donate to the CT Democratic Party's federal account and not to Malloy's campaign directly.*
>
> *Because May's request of his employees focused solely re-electing Malloy, I believe that the substance of his actions violates Connecticut's campaign funding laws, which prohibit contributions from a business entity, labor union o other organizations doing business with the State.*

3. The Commission docketed this complaint pursuant to General Statutes § 9-7b (a) to determine whether Complainant's allegations pertaining alleged violations of campaign finance laws by Respondent, were supported by the facts after investigation. State contractors are prohibited from soliciting contributions for or making contributions to either a gubernatorial candidate or a state party committee pursuant to General Statutes § 9-612 (f).

4. The email that is subject of this complaint was sent on September 27, 2013 using Respondent's "Gmail" email account and read as follows:

> *[Subject] Contribution Request – CT Governor Malloy*
>
> *The next gubernatorial election is upon us, and I am asking each of you to join me in financially supporting Connecticut's Governor Dannel P. Malloy.*
>
> *During Governor Malloy's first term, he battled through issues of historic proportions- from nature's wrath to one man's horrific actions – from record economic security to growing jobs and opportunity. Through it all, the Governor as shown decisive leadership, skillful collaboration and a keen ability to keep Connecticut moving forward.*
>
> *Additionally, Governor Malloy has clear energy goals that align with our corporate mission and initiatives. He wants clean, reliable and affordable energy – so do we. He brought all appropriate stakeholders together to develop the state's first comprehensive energy policy. He understands the value of and is supportive of expanding access to natural gas. He is supportive of brining clean, affordable carbon neutral large scale hydro power into New England. And, he has been a supportive partner in our system hardening efforts and storm preparation initiatives.*
>
> *While he has accomplished much, there is more to do. Please join me in providing support to continue the work begun, providing new opportunities, and securing the leadership to make it happen.*
>
> *Thank you for your consideration I have asked Peg Morton to personally follow up with each of you. Please make contributions payable to: Democratic State Central Committee – Federal.*
>
> *Tom*
>
> [Original Emphasis]

5. General Statutes § 9-612, provides in pertinent part:

> (f) (2) (A) ***No state contractor***, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or a state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder, of a valid prequalification certificate, ***shall make a contribution to***, or, on and after January 1, 2011, ***knowingly solicit contributions from the state contractor's or prospective state contractor's employees or from a subcontractor or principals of the subcontractor on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor***, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, ***or (iii) a party committee***; ...
> [Emphasis added.]

6. General Statutes § 9-613, provides in pertinent part:

> (a) ***No business entity shall make any contributions or expenditures to, or for the benefit of, any candidate's campaign for election to any public office*** or position subject to this chapter or for nomination at a primary for any such office or position, or to promote the defeat of any candidate for any such office or position. ***No business entity shall make any other contributions or expenditures to promote the success or defeat of any political party***, except as provided in subsection (b) of this section. ....
> [Emphasis added.]

7. General Statutes § 9-614, provides in pertinent part:

> (a) ***An organization may make contributions or expenditures***, other than those made to promote the success or defeat of a referendum question, ***only by first forming its own political committee***. The political committee shall then be authorized to receive funds exclusively from the organization's treasury or from voluntary contributions made by its members, but not both, from another political committee or, from a candidate committee distributing a surplus and (1) to make contributions or expenditures to, or for the benefit of, a candidate's campaign or a political party,

> or (2) to make contributions to another political committee. No organization shall form more than one political committee. .... [Emphasis added.]

8. General Statutes § 9-612 (f) does not prevent a Connecticut state contractor from contributing to the federal account of a state central party committee. However, the Commission notes there could be scenarios where the Commission might consider such contributions by a state contractor to a state central committee's federal account in connection with subsequent expenditures as problematic under Connecticut's campaign finance laws. See General Statutes §§ 9-601c, 9-612 (f) and 9-622 (5). *See* also Advisory Opinion 2014-001, *The Use of Federal and State Accounts of Party Committees* advising that Connecticut state party committees with state and federal accounts must pay for their expenses for state candidates with money raised within the Connecticut financing system, i.e. from permissible contributions properly reported under Connecticut law. Federal law does not create a loophole in Connecticut campaign finance laws that would allow federal committees to make expenditures that are also contributions regarding Connecticut candidates. State Committees should structure their plans to comply with both state and federal law. In some instances this may mean, for example, that they cannot support state or federal candidates within the same communication, that they have to compartmentalize staffing arrangements, or that they must purchase assets from the federal committees if they wish to utilize them.

9. By way of example, if state contractor contributions were solicited for the benefit of Connecticut statewide candidates and were later to be used to make expenditures for such purposes and coordinated with the state party's state account, the Commission would conclude that they were disguised contributions from the state contractor to the state central committee's state account and therefore be prohibited by Connecticut campaign finance laws. See General Statutes §§ 9-601c, 9-612 (f) and 9-622 (5).

10. After investigation, the Commission finds that there were 28 individual contributions from NU employees to the Democratic State Central Committee (hereinafter "DSCC") federal account made *after* Respondent's September 27, 2013 email solicitation. Further, the Commission finds that the subject email was sent to 36 individuals using their NU email accounts. Finally, the Commission finds that the contribution amounts ranged from $250.00 through $10,000 and totaled $50,750 in contributions from NU officers and employees to the DSCC. Based upon the evidence, there is no violation of General Statutes § 9-613 as there are no prohibited business entity contributions. The solicitation was for contributions from employees of Northeast Utilities not the business entity itself so there was no violation of General Statutes § 9-613.

11. References to a labor union in the complaint notwithstanding, the investigation did not reveal that contributions were made by a labor union in violation of General Statutes § 9-614 and therefore this allegation is dismissed.

12. Respondent denies that he drafted the email solicitation that is subject of this complaint or that he solicited NU employees at the behest of either the DSCC or its agent or Governor Malloy or his agents. Further, Respondent asserted that his September 27, 2013 email solicitation was drafted by NU Government Affairs staff for his approval and was based on and consistent with NU's business strategy and past charitable and political giving. After investigation, the Commission finds that Respondent utilized the NU Government Affairs staff to develop and implement the email solicitation that resulted in this complaint.

13. Upon investigation, Margaret Morton, Vice-President, Government Affairs at NU, explained that she conceived of and drafted the email solicitation disseminated under the name of Respondent and ultimately received Respondent's approval for its use. Further, Ms. Morton claims that the solicitation was an effort to further NU's business strategy and concedes it was in support of Governor Malloy and his policies. She readily admits that she greatly admires Governor Malloy. However, Ms. Morton insisted that she was aware of various Connecticut campaign finance laws and the intent of the solicitation was to support the DSCC *federal account* and not the campaign of Governor Malloy.

14. Additionally, Ms. Morton denied that the DSCC and its agents assisted her with the drafting of the email or solicited funds, other than for its *federal account*, in relation to NU or its officers, agents and employees. Ms. Morton identified Mr. Ben Josephson as her contact at the DSCC and stressed that political giving is a standard business outreach strategy of NU that is handled by NU Government Affairs.

15. According to Ms. Morton, Mr. Josephson and she had a telephone conversation regarding fundraising from NU for the DSCC federal account. That conversation, according to Ms. Morton, resulted in her designing the email solicitation that is subject of this complaint. Ms. Morton denied that she was ever solicited for funds for the DSCC from the state party for its state or federal account for the purpose of supporting a statewide candidate. There is no evidence to support her coordinating or consulting with either the DSCC or its agents or with Governor Dannel Malloy and his agents regarding the message on behalf of Governor Malloy in the email solicitation itself.

16. Upon investigation, Mr. Ben Josephson, explained that he is an employee of O'Neil and Associates, a public relations firm. Further, Mr. Josephson was assigned to the DSCC by his firm who has a contract with them and he reports to the DSCC Executive Director Jonathan Harris. Mr. Josephson explained that he was aware of Connecticut campaign finance laws and denied that he solicited any contributions on the behest of the DSCC from Respondent,

NU employees or agents or Ms. Morton, other than for its *federal account*. Further, Mr. Josephson denied that he requested any contributions from Respondent, Ms. Norton, NU employees or agents on behalf of or for the benefit of Governor Dannel Malloy or his agents.

17. Additionally, Mr. Josephson admitted that he requested contributions from Ms. Norton as an agent of NU Government Affairs on behalf of the DSCC because she was in Government Affairs. Mr. Josephson asserts that he specifically solicited her with clear instructions regarding the need that any resulting contributions be directed to the DSCC *federal account*.

18. Upon investigation, the Commission finds that the responses and assertions made by Respondent, Ms. Morton and Mr. Josephson, as detailed in paragraphs 11 through 17 above, are consistent with extensive witness interviews conducted and detailed records reviewed by Commission staff pertaining to this complaint. While the Commission does not have jurisdiction over the DSCC pertaining to its federal filings, a search of Federal Election Commission records confirmed the deposits and reporting of various contributions by NU officers and employees as detailed herein.

19. On September 27, 2013 the solicitation did not violate the state contractor ban prohibiting contributions to exploratory committees and candidate committees in General Statutes § 9-612 (f). Specifically, upon investigation and for the narrow purpose of this complaint, the Commission finds as a factual matter that Governor Malloy did not have either an exploratory committee or a candidate committee in existence at the time of Respondent's solicitation in this matter. Therefore, based upon the timing of such solicitation, the prohibitions in General Statutes § 9-612 (f) pertaining to these committees do not apply.

20. Because the contributions related to Respondent's solicitation in this matter were deposited into the DSCC's federal account which is generally outside the Commission's jurisdiction, and not to a state or local part committee as proscribed by General Statutes § 9-612 (f) (2) (A) (iii), the Commission lacks the authority pursuant to General Statutes § 9-7b to sanction the conduct . The Commission strongly condemns the use or attempted use of federal accounts to influence state elections.

21. While the Commission finds the evidence in this case does not support a legal finding of a violation of the General Statutes §§ 9-612, 9-613, or 9-614 as it relates to the Respondent Thomas May, the Commission does conclude that the content of the solicitation by Mr. May is both offensive and disturbing and violates the spirit and intent of the Connecticut State Contractor ban.

22. Although the Commission has no jurisdiction over contributions made to the federal account of the DSCC, the Respondent and the NU staff and its agents, which includes legal and governmental affairs personnel familiar with campaign finance law, should have been aware that the content of the solicitation to NU employees could be problematic in light of Connecticut's strong campaign finance laws.

23. The Commission would caution the Respondent to avoid possible violations of state campaign finance laws, or even the mere appearance of such possible violations in the future, and, in the strongest terms cautions and urges against the use of, or reference to, Connecticut candidates or campaigns in fundraising solicitations for federal accounts.[1]

24. As to the DSCC, which is not a Respondent in this case, although the Commission finds a lack of evidence to support the conclusion that the Respondent and/or its agents, coordinated with the state party to make disguised contributions violative of the law, the Commission, consistent with its advice in Advisory Opinion 2014-001 and as stated in paragraph 8 of this Findings and Conclusions, will continue to monitor the activities of the DSCC and any prohibited transactions pursuant to State Law will be investigated and prosecuted by the Commission.

25. The Commission stresses that if a case is brought in which contributions from state contractors were raised into the federal account of a state party and used to support a statewide candidate the Commission would prosecute the matter and find violations pursuant to the state contractor ban pursuant to General Statutes § 9-612 (f). Under these circumstances, the Commission would consider the fundraising for that account and possibly draw conclusions based on how such money was solicited and received. Specifically, there might be a case where a solicitation referencing Governor Malloy would be included in the mix of facts to determine whether the DSCC coordinated its activities with a prohibited contributor source to raise funds under the guise of contributions to a federal account to spend in coordination with the DSCC on a statewide candidate, which would be prohibited.

26. Therefore, to be very clear, the Commission stresses that if a case is brought in which contributions from state contractors were raised into the federal account of a state party and subsequent expenditures made to support a statewide candidate, the Commission would prosecute the matter and find violations pursuant to the state contractor ban pursuant to General Statutes § 9-612 (f).

[1] The Commission strongly urges the Legislature to review and strengthen the law to prohibit the use of the federal account as a bypass to the State Contractor Ban which improperly benefits party and candidate committees.

ORDER

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

That the Complaint be dismissed.

Adopted this 16th day of September 2014 at Hartford, Connecticut

Anthony J. Castagno, Chairman
By Order of the Commission

1 of 1 DOCUMENT

Hartford Courant (Connecticut)

September 17, 2014 Wednesday
FINAL - 5 EDITION

PANEL CLEARS NU EXECUTIVE; CEO MAY'S SOLICITATION DEEMED 'OFFENSIVE,' BUT NOT A VIOLATION; ELECTIONS ENFORCEMENT COMMISSION

BYLINE: JON LENDER, jlender@courant.com

SECTION: CONNECTICUT; Pg. B1

LENGTH: 1349 words

The State Elections Enforcement Commission Tuesday found that Northeast Utilities CEO Thomas May didn't violate the law last year when he solicited more than $50,000 from subordinates to support re-election of Democratic Gov. Dannel P. Malloy ? but it also condemned the solicitation as an "offensive" violation of the law's "spirit and intent."

The commission voted 5-0 to dismiss a citizen's complaint against May on the basis that the NU chief's solicitation didn't violate state election laws' ban on contributions from state contractors' executives to state political campaigns.

"While the Commission finds the evidence in this case does not support a legal finding of a violation ... [it] does conclude that the content of the solicitation by Mr. May is both offensive and disturbing and violates the spirit and intent of the Connecticut State Contractor Ban," the commission said in its written decision.

May emailed dozens of NU managers in September 2013, asking them to support Malloy's re-election by donating funds to the state Democratic Party's "federal account." That account isn't regulated by the state enforcement commission, but by the Federal Election Commission, and is not supposed to be used to directly support a candidate for state office such as Malloy.

If May had asked his people to donate to the Democratic Party's account for state political operations, or directly to Malloy or any other candidate for state office, it would have violated the statutory ban on contractors giving money to state campaigns, the commission said.

However, "[b]ecause the contributions ... were deposited into the [Democratic Party's] federal account which is generally outside the Commission's jurisdiction, and not to a state [party] committee," the commission "lacks the authority ... to sanction the conduct," the commission said in its decision.

Commission members said they would be watching carefully how the Democrats spend the money in their party's federal account, to be sure that it is not misused to support any candidate for state office ? instead of for its legal purpose, which is to help elect candidates to federal office such as Congress. "[A]ny prohibited transactions pursuant to State Law will be investigated and prosecuted by the Commission," the decision said.

The commission added that it "strongly condemns the use or attempted use of federal accounts to influence state elections."

And, it said, "in the strongest terms [it] cautions and urges against the use of, or reference to, Connecticut candidates or campaigns in fundraising solicitations for federal accounts."

'CONTENT ... EGREGIOUS'

Enforcement commission Executive Director Michael Brandi said that "the content of the solicitation was egregious," and was "meant to ... circumvent" the law, because it mentioned support for a specific state candidate ? Malloy ? while asking that money be given to the state party's federal account.

Here is what May said in the email to 48 of his managers throughout New England: "The next gubernatorial election cycle is upon us, and I am asking each of you to join me in financially supporting Connecticut's Governor Dannel P. Malloy. ... Please make contributions payable to: CT Democratic State Central Committee -- Federal."

NU employees soon sent $50,750 into that account -- including $10,000 from May himself.

The calculated use of Malloy's name to draw money into the federal account showed an intention to bypass the law, Brandi and two members of the commission said at a meeting Tuesday in Hartford.

Their comments, and the vote to dismiss the complaint, came after the panel had deliberated behind closed doors for more than 90 minutes.

Tuesday's vote ended an eight-month investigation into a citizen's complaint that was filed last December, after The Courant disclosed May's September 2013 email to his subordinates.

The complaint was filed by Greenwich resident Andreas Duus III, who said at the time: "Because May's request of his employees focused solely on re-electing Malloy, I believe that the substance of his actions violates Connecticut's campaign funding laws, which prohibit contributions from a business entity ... doing business with the State."

The ban on contributions from contractors was enacted by the legislature after a 2004 corruption scandal drove then-Gov. John G. Rowland from office and into prison. Rowland had received more than $100,000 in benefits from businessmen to whom his administration gave contracts and tax breaks.

The SEEC keeps list of companies whose top executives are prohibited from contributing to state campaigns and state party committees ? and NU is on that list. However, contractors have found ways around that ban -- and one way is giving to the "federal accounts" of state party organizations.

Those accounts are mainly intended for use in electing candidates for Congress or president. But federal law leaves room for some of that money to help a candidate for governor. The money can be spent, for example, to get voters to the polls for a Democratic member of Congress, which also gets them there for Malloy.

It also can be used to pay state Democratic Party staff salaries.

'AN ABUSE'

"To direct money that on its face was being raised for the support of a statewide candidate" ? Malloy ? "and deposit that money into a federal account, is an abuse not only of what that federal account is intended for, but clearly seems to be an effort to bypass the workings of the Connecticut finance law," commission member Stephen T. Penny said.

Twice in the past month, the commission put off a decision in the case after deliberating on it behind closed doors. "At first blush the conduct of [May] appeared to be an egregious violation ... but after a careful review of state law, we were unable to find any specific violations," Penny said.

NU spokeswoman Caroline Pretyman has said in the past that "the federal account is one that all NU individuals are lawfully permitted to participate in."

On Tuesday, she said: "We want to thank the commission for their careful consideration and thorough review of this matter. We appreciate the conclusion that this was not a violation of the law. Northeast Utilities takes its legal obligations very seriously."

However, state Senate Minority Leader John McKinney responded to the commission's decision by saying: "Under Gov. Malloy, we have some of the highest electricity rates in the nation, and those rates may be hiked again soon. Meanwhile, we have witnessed this pay-to-play shakedown in which Northeast Utilities' CEO asked managers to contribute money to help Gov. Malloy win re-election. What an insult to ratepayers. The request revealed that our regulated energy market, which is supposed to serve the public's best interests, is up for sale."

McKinney lost a Republican gubernatorial primary in August to the party's current nominee, Tom Foley, and now is supporting him.

"Clearly, NU's CEO violated the spirit of our clean election law ? a law which was once a model for the country," McKinney said. "That historic legislation has become a mockery. Gov. Malloy now has a choice to make. He can keep the money he received from NU officials, or he can return it. If he keeps the money, he will place a cloud on our campaign finance system. If he returns it, he will restore some integrity to the system."

McKinney also called for changes in state campaign-finance laws "so that this cannot happen again."

State Democratic Party spokesman Devon Puglia responded: "We follow all rules, laws, and regulations, and while we do not comment on fundraising, it's important to recognize that Tom Foley is the only person in this race who's been found guilty of willfully violating election laws."

Puglia was referring to the settlement of a dispute last year between Foley and the elections enforcement commission over the legality of the financing of a poll he had commissioned. Foley has said there was no finding of wrongdoing in the matter, noting that the agreement states that it "does not constitute an admission of liability ... but rather the settlement of a contested matter."

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Connecticut Democratic Party Advisory Opinion
Neil P. Reiff to: arothstein@fec.gov, jselinkoff@fec.gov 10/02/2014 11:58 AM
Cc: "abell@fec.gov"

History: This message has been forwarded:

This email is a follow up to my conversation with Jessica Selinkoff from your office earlier today. Per our conversation, I just wanted to confirm and clarify a couple of issues raised during that conversation.

First, it is my understanding that the CDSCC maintains four federal accounts. Of the four accounts, only one of those accounts contain funds raised from persons who are considered state contractors in Connecticut. It is the intent of the CDSCC not to use the federal account which contains state contractor funds for any mailings described in the Advisory Opinion Request.

Second, the CDSCC in its request, did not ask that the Commission opine as to whether federal law preempts the state from requiring that the party use funds that comply with state law to pay for the mailings. Rather, the CDSCC seeks only to confirm that the State of Connecticut cannot compel the CDSCC to pay for the costs of the mailings directly from a non-federal account or otherwise compel the CDSCC to allocate the costs of the mailings between Federal and Levin Funds if the Commission determines that the mailings constitute Federal Election Activity.

In Advisory Opinion 2014-01 the SEEC view, while not clearly articulated, appears to be that any communication that advocates for a state or local candidate must be paid for directly from a non-federal account. Specifically, the SEEC addressed joint expenditures where it stated: "Generally speaking, the federal account cannot spend its funds to make expenditures with the state account for Connecticut candidates for statewide office or the General Assembly..." Thus, it is clear that they view the inclusion of state and local candidates in a federal communication as a violation of state law. Later in the opinion, they confirm this view by suggesting that joint federal/non-federal communications by party committees, to the extent that they cannot be paid for with a proper share of non-federal funds, must be avoided. See Opinion at p.4 (First full paragraph).

Let me know if you have any additional questions.

Neil P. Reiff

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