STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

TESTIMONY PRESENTED BEFORE THE GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE

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House Bill 5011 - An Act Concerning the Valuation of Materials Used in Prior Elections

The State Elections Enforcement Commission provides for the following information with regard to House Bill 5011.

During the 2008 election cycle, numerous candidates participating in the CEP asked the agency how to value prior assets, especially old lawn signs. After the CEP went into effect, valuation of prior assets became a more significant issue than it had been in the past. First, the law provides that participating candidates can provide limited personal funds to their campaigns. Prior assets retained by a candidate are considered personal property (and thus are subject to the personal fund limit). Second, CEP participating candidates are eligible for supplemental grant funds if opposed by a high spending nonparticipating opponent. Thus, the valuation (and reporting) of prior assets used by nonparticipants is necessary to calculate whether a participating candidate is eligible for supplemental grant money. Third, because incumbents are more likely to have prior assets than are challengers, the concern of not giving incumbents an unfair advantage must be considered.

In attempting to strike an appropriate balance that considers various factors such as incumbents' advantage, asset depreciation, the need for a bright line rule for treasurers, and a reasonable application of the spending limits, we issued an advisory opinion (attached), stating that such assets would be valued at their original purchase price. Some legislators responded by proposing an amendment late in the 2008 session that would have effectively allowed incumbents to use prior assets without *any* grant reduction or application to the CEP spending limits. We found this proposed amendment to be sharply at odds with the plain language of the law as well as the policies underlying its passage. The law expressly provides that the amount of a grant received is reduced by the amount of personal funds provided by the candidate, and the spending limits comprise a core element of the law. The law is very clear that anything of value received by a campaign must be accounted for and reported.

House Bill 5501 ascribes a valuation of 5% of fair market value to all prior assets. A review of the 2008 campaign finance reports indicates that candidates spent $450,000 on new lawn signs alone; approximately $1,400 per State Representative and $3,200 per State Senator. To apply this extremely low valuation percentage would provide a significant and unfair advantage to prior candidates (most of whom are incumbents). It could also inhibit participation in the Citizens' Election Program. First-time candidates who are thinking about whether to participate in the CEP will need to spend a significant amount of funds on lawn signs (and other similar types of materials), while their incumbent opponents will have the advantage of using valuable prior assets without having to pay a penny.

We continue to believe that the valuation method set forth in our advisory opinion strikes the correct balance, and provides a bright-line rule to treasurers. However, another reasonable suggestion would be to allow campaigns to depreciate lawn signs by 10% of the original purchase price in each subsequent campaign cycle, and to set forth a floor of 30% (meaning that regardless of how old the lawn signs are, the value ascribed and reported cannot be lower than 30% of the original purchase price).

Thank you for your consideration of the Commission's views on the bill.

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Advisory Opinion 2008-02: Treatment of Prior Assets Used by Candidate Committee in Current Election Cycle

The advice of the Commission has been sought by various candidates and campaign treasurers participating in the Citizens' Election Program regarding the use and reporting during the 2008 election cycle of assets previously purchased by the same candidate's prior candidate committee for use in earlier election cycles. Such assets include items with the candidate's name that, other than for use in a campaign, have little or no value such as lawn signs, banners, stationery, palm cards, thank you notes, buttons, t-shirts and other campaign paraphernalia ("prior assets"). This advisory opinion applies to all committees, including candidate committees of candidates who are not participating in the Citizens' Election Program.

Specifically, the Commission has been asked to address the following questions relating to a prior candidate committee's assets:

- When a candidate who intends to participate in the Program is seeking qualifying contributions and conducting other activity to gain ballot access, if the candidate committee wishes to use prior assets, how are such assets to be reported?

- After receiving public grant money, a qualified candidate committee wishes to use prior assets not previously reported in connection with the 2008 election period, how does the campaign treat and report this transaction?

- If the candidate has prior assets valued at more than the personal funds limit, do the prior assets become unusable during the 2008 election cycle?

- If a campaign volunteer repairs and touches up prior assets from a prior campaign, how does the campaign treat and report this?

- If a candidate committee gives its assets away at the end of an election cycle, and then the assets are used for the candidate's benefit in a subsequent election, does the candidate have any responsibility?

This Opinion will address each of the questions by area of concern, considering the application of Connecticut Campaign Finance Laws, Chapters 155 and 157 of the General Statutes, to the questions posed above. The advice provided is prospective and does not address whether past activities undertaken were or were not in compliance with the above statutes.

Background

In 2005, the Connecticut legislature recognized the need for reform, enacting Public Act 05-5 to combat corruption and the appearance of corruption in this State's electoral process. The Citizens' Election Program forms the cornerstone of this effort, allowing candidates who choose to participate in the Program to eschew endless fund-raising from sources including special interests and political committees; and, instead, rely on small dollar contributions and a public grant to fund their campaigns.

Expenditure limits constitute a core principle of the Program. Candidates who choose to participate in the Program agree to abide by these spending limits as well as to refuse non-monetary contributions or contributions from political committees. In return, participating candidates who meet Program eligibility thresholds and follow the Program's requirements, receive public grant money to finance their campaigns.

Because the Program is voluntary, the Commission believes that the success of Connecticut's effort to curb abuses and the appearance of untoward influence in Connecticut's electoral process is highly dependent upon the perception among candidates that the Program's expenditure limits are enforced consistently.

As an initial matter, we note that the Program limits the amount of personal funds that a candidate can provide to his or her campaign. General Statutes § 9-710 (c).[1] Personal funds in the form of money can only be given before the grant application and the initial grant received by a participating candidate is reduced by the amount of personal funds provided by the candidate. *See* General Statutes §§ 9-707 and 9-705.[2]

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[1] Section 9-710 (c) of the General Statutes provides that:

> A candidate who intends to participate in the Citizens' Election Program may provide personal funds for such candidate's campaign for nomination or election in an amount not exceeding: (1) For a candidate for the office of Governor, twenty thousand dollars; (2) for a candidate for the office of Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, ten thousand dollars; (3) for a candidate for the office of state senator, two thousand dollars; or (4) for a candidate for the office of state representative, one thousand dollars.

[2] Specifically, General Statutes § 9-707 provides that:

> Following the initial deposit of moneys from the Citizens' Election Fund into the depository account of a qualified candidate committee, no contribution, loan, amount of the candidate's own moneys or any other moneys received by the candidate or the campaign treasurer on behalf of the committee shall be deposited into said depository account, except (1) grants from the fund, and (2) any additional moneys from the fund as provided in sections 9-713 and 9-714.

General Statutes § 9-705 (j) (1) provides that:

> The initial grant that a qualified candidate committee for a candidate is eligible to receive under subsections (a) to (i), inclusive, of this section shall be reduced by the amount of any personal funds that the candidate provides for the candidate's campaign for nomination or election pursuant to subsection (c) of section 9-710.

At the end of a campaign, campaign materials such as lawn signs and stationery may have nominal value to anyone other than the candidate, and no value if they are specific to a particular election cycle or so damaged that they are discarded as trash. However, if a candidate committee decides to re-use old campaign materials in a subsequent campaign, such materials have a value. Before the Program was adopted, prior assets had been treated by the SEEC as non-monetary contributions[3] of personal property from the candidate (or town committee, if the town committee retained the old campaign material) to the new campaign. See e.g. *SEEC Opinion of Counsel 1997-22.*

Various candidate committees have indicated that it is common practice to re-use prior assets.. Numerous candidates and campaign treasurers have asked questions concerning the valuation and reporting of such prior assets received and used by a candidate committee during the 2008 General Assembly elections. The Commission has been presented with two somewhat opposing concerns: 1) the need to allow materials to be re-used rather than wasted or abandoned due to Program limitations; and, 2) the need to ascertain that all participants in the Program are abiding by the same expenditure limits. In the guidance provided below, the Commission has sought to recognize and react to expressed concerns, and to balance the importance of environmentally friendly and fiscally responsible policy with the need to fairly administer the Program's expenditure limits by which the candidates have agreed to abide.

Clear requirements for how the assets of a prior candidate committee are to be valued and reported, as well as how any personal property provided by a candidate after the candidate committee receives a grant, are important not only to ensure that spending limits are applied equally among all participating candidates, but also to ensure that participating candidates receive supplemental grant funds when appropriate.

Candidates who choose not to participate in the Program ("nonparticipating candidates") are not bound by expenditure limits, nor are they limited in the amount of personal funds that they may give to their campaign committees. General Statutes § 9-601a (b) (11) ("The payment of money by a candidate to the candidate's candidate committee" is not a contribution). However, since a participating candidate may be eligible to receive supplemental grant money if opposed by a high-spending[4] nonparticipating opponent, the issue of valuing and reporting prior campaign assets affects all committees.

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[3] A contribution is "[a]ny gift, . . . loan, . . . payment or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person." General Statutes § 9-601a (a) (1).

[4] Within the context of the Program, a "high-spending" non-participating candidate is one whose candidate committee raises, spends or obligates to spend amounts in excess of the expenditure limit his or her participating opponent has agreed to abide by.

Question 1: "When a candidate who intends to participate in the Program is seeking qualifying contributions and conducting other activity to gain ballot access, if the candidate committee wishes to use prior assets, how are such assets to be reported?"

Before a candidate has received any public grant money, a candidate who intends to participate in the Program is allowed to provide a limited amount of personal funds to his or her candidate committee. General Statutes § 9-704 (c). The maximum allowable amount of personal funds varies depending on the office being sought. General Statutes § 9-704 (c). Any allowable personal funds provided reduce the grant by a corresponding amount. General Statutes § 9-705 (j) (1).

Prior to receiving a grant, a participating candidate's provision of prior assets may be treated as the provision of non-monetary personal funds to the subsequent candidate committee. Following such reasoning, a participating candidate would be able to provide his or her current candidate committee with prior assets, so long as the value of such items does not exceed the personal fund limit. The amount of the initial grant will be reduced by the value of the prior assets provided as personal funds.

The value of the lawn signs, envelopes, stickers, or other prior assets provided, along with a description of the asset or assets, must be reported pursuant to campaign finance disclosure requirements. The value of these assets is an amount equal to the original purchase price of the assets.[5] The candidate committee must maintain and preserve internal records to demonstrate the amount of the reported value. General Statutes § 9-607 (f).

A nonparticipating candidate may provide unlimited personal monetary funds to his or her candidate committee without it being considered a contribution and may make direct expenditures provided that they are reported to the campaign treasurer for inclusion on campaign financial disclosure reports. General Statutes §§ 9-601a (b) (11), 9-607 (k) and 9-610 (c). Treasurers of campaigns for nonparticipating candidates should value and report the use of prior assets in this same manner.

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[5] The Commission notes the wide variety of prior assets stored by candidates and recognizes that some of these assets depreciate in value over time. For example, some signs remain useful for over twenty years with only minor touch-ups while others last only a few campaign cycles. While some formula for depreciation may be reasonably established in the future, at this point in the 2008 election cycle, the Commission declines to re-visit the SEEC's current valuation formula. The Commission does however plan to seek comments following the 2008 cycle and will entertain any suggestions regarding depreciation then.

Question 2: "After receiving public grant money, a participating candidate's qualified candidate committee wishes to use lawn signs, banners, and other similar assets from a prior campaign, how does the campaign treat and report this transaction?"

It has come to the Commission's attention that many candidate committees that have received grants did not provide for the use of prior assets as indicated above. Numerous candidate committees have asked how they may adjust their strategic planning within Program parameters to allow for the use of such assets after the grant has been received.

As an initial matter, in addition to the statutory provisions discussed above, we note that Section 9-706-2 (b) (3) of the Regulations of Connecticut State Agencies prohibits the use of grant monies for payments to the participating candidate or the participating candidate's family members, except in specific circumstances not applicable here. The Commission also recognizes the need to administer the spending limitations and prevent participating candidates who have possession of prior assets from having an advantage over participating candidates who do not have such prior assets while minimizing the impact of the Program on strategic planning.

Therefore, a participating candidate who has received grant money may turn over prior assets to his or her 2008 candidate committee and the candidate committee's treasurer must write a check to the Citizens' Election Fund equal to the value of the non-monetary assets provided. In the description field of the check, the treasurer should include a brief description of the assets provided (i.e. "signs," "stationery").

The value of these assets remains an amount equal to the original purchase price of the assets. The prior assets are deemed as having been received by the candidate's present candidate committee at the date on which the committee decided to use the prior assets and must be reported in the campaign finance disclosure statement that covers the period in which the campaign made its decision to use the prior assets. The expenditure check to the Program should be made contemporaneously and reported in the same itemized disclosure statement.

Question 3: If the candidate has prior assets valued at more than the personal funds limit, do the prior assets in excess of the personal funds limits become unusable during the 2008 election cycle?

It has come to the Commission's attention that some participating candidates have collected over the course of previous elections prior assets for which the original purchase price amounts to substantially more than the limit on personal funds. Treating the prior assets as identical to the cash or seed money limited in General Statutes § 9-704 (c) results in such participating candidates being forced to amass and abandon an increasing number of such assets over a period of election cycles.

For example, a candidate who has acquired $4,000 worth of re-usable signs during past election cycles who is running for the office of state senator could claim and

report as personal funds $2,000 worth of signs, leaving $2,000 in storage. If the candidate purchases another $2,000 worth of signs during the 2008 election cycle with grant monies, then for 2010 that candidate would have $6,000 worth of re-usable signs in storage with only a third of them usable in the 2010 run for re-election to the senate seat by a participating candidate.

The Commission advises that participating candidates who have amassed prior assets valued at more than the personal funds limitations for the office that they seek may utilize those assets as follows: (1) before applying for a grant, claiming an amount valued at up to the personal funds limit so that the grant given is reduced by that amount, as instructed in response to Question 1; and/or (2) after receiving the grant, reporting the remaining portion or entire value and writing a check in the appropriate amount to the Citizens' Election Fund, as instructed in response to Question 2.

Question 4: "If a campaign volunteer repairs and touches up prior assets from previous elections, how does the campaign treat and report this?"

As noted above, the 2008 candidate committee should value prior assets in the amount of the original purchase price of those assets. If the original purchase price of prior assets purchased long ago is not recorded, treasurers should make a good faith estimate when reporting the value of those assets. The value of the supplies (i.e. paint, stencils) purchased during the current election cycle to repair or touch up the prior assets should also be reported.

The uncompensated services provided by a campaign volunteer who volunteers his or her time to repair old lawn signs or other prior assets is not a contribution and does not need to be reported. *See* General Statutes §§ 9-601a (b) (4) & 9-601b (b) (4). To the extent that such a volunteer provides any materials, such as paint or varnish or other supplies, the candidate committee should pay for such materials. The candidate committee can either purchase these materials directly, or the campaign volunteer can purchase the materials and seek reimbursement from the campaign.[6]

Treasurers for candidates not participating in the Citizens' Election Program must report the value of prior assets, including the cost of any touch-up or repair, as non-monetary funds provided to the campaign. If provided by the candidate, there is no limit on the provision of prior assets or cost of repairs. If provided by any other individual or committee, the contribution limits for that individual or type of committee apply.

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[6] The candidate committee must reimburse the campaign volunteer within a reasonable time. The Commission has previously held that, as a general rule, 45 days from the date the campaign volunteer purchased the materials will be considered reasonable. In re matter of a Complaint by Paul M. Carver, New Britain, File No. 2006-137 (July 19, 2006). Failure to timely complete the reimbursement may result in the campaign volunteer's expenditure being deemed a contribution. Timely completion of reimbursements is especially important for participating candidates' campaigns, since participating candidates cannot accept in-kind contributions.

Question 5: "If a candidate committee gives its assets away at the end of an election cycle, and then the assets are used for the candidate's benefit in a subsequent election, does the candidate have any responsibility?"

The Commission notes the realities of the campaign process: sometimes signs are not collected by candidates or their agents but are instead retained by individuals who may discard the signs or save and re-use them. Shirts and buttons are most often retained by their recipients and are rarely if ever collected. There are instances where prior assets will be sufficiently out of a candidate's control such that there are no reporting or other requirements relating to such items. Clearly shirts previously given to volunteers may be worn in years to come by those supporters and create no valuation or reporting requirements in later election cycles.

Conversely, when candidates or their agents take concerted action to assure that assets such as re-usable lawn signs are saved and reused on their behalf in subsequent election cycles, valuation and reporting requirements may arise. Thus, if for example, a participating candidate in 2008 arranged to have a friend pick up and store ten large signs purchased with grant money for $300 each during the 2008 election cycle and coordinated with the friend in 2010 to have the signs reassembled and re-posted at certain key locations, then those signs will be prior assets within the participating candidate's control during the 2010 election cycle and should be treated accordingly.

The proper treatment of the prior assets will be determined by the degree of control and coordination exercised by the candidate and/or the candidate's agents. The analysis is highly fact-specific and participating candidates are encouraged to seek advice should they have questions about the reporting and valuation of significant assets from a prior election cycle of which they are aware and over which they exercise some measure of control regarding use in the current election cycle.

The foregoing advice is an Advisory Opinion of the Commission. This Advisory Opinion is issued pursuant to the provision of General Statutes § 9-7b (a) (14).

Adopted this 4 th day of September, 2008 at Hartford, Connecticut by a vote of the Commission.

Stephen F. Cashman, Chairman