



## STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

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### ***Advisory Opinion 2010-02: Propriety of Placing Campaign Banners or Signs on Commercial Property without Charge***

The advice of the Commission has been sought by various candidates and campaign treasurers regarding the placement of campaign signs or banners on commercial property without paying the owner of the property for use of said sign space. Essentially, these campaigns have asked whether the provision of sign space by a business entity to a candidate committee without charge constitutes an in-kind contribution to the campaign. Although Commission staff has provided guidance to campaigns on this issue, the Commission itself has not spoken on this issue. As is discussed below, the Commission finds that, absent certain facts, such an arrangement may constitute an impermissible in-kind contribution from the business entity.

As an initial matter, Connecticut election law prohibits business entities from making contributions to or for the benefit of any candidate's campaign for election. See General Statutes § 9-613 (a). The term "contribution" is defined broadly in the General Statutes to include "anything of value, made for the purpose of influencing the nomination for election, or election, of any person." General Statutes §§ 9-601a (a). Based on these provisions, a business entity's provision of property to a committee for free or at less than the usual and normal price charged to commercial customers constitutes an impermissible in-kind contribution. See *In the Matter of a Complaint by Ed Jekot*, Somers, File No. 99-226 ("A business entity therefore is required to charge a usual and normal rate for the use of real property by any committee organized under Chapter 150 [now Chapter 155] or it would be making a political contribution in violation of Conn. Gen. Stats. § 9-333o [now § 9-613]"); *In the Matter of a Complaint by Mike Lawlor*, East Haven, File No. 96-142 ("A charge to a political committee holding an event at a facilities' room, owned and operated by an individual or entity, at less than the usual and normal price charged to commercial customers would constitute an in-kind contribution from such individual or entity. Such an in-kind contribution would be measured by the difference between the price charged to the recipient committee and the usual charge normally given to business customers.").

The Commission has specifically addressed the issue of a business entity providing free sign space in *In the Matter of a Complaint by William Curry*, Somers, File No. 90-184.<sup>1</sup> In that case, Commission found that a candidate committee had received an

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<sup>1</sup> Similarly, the Commission has routinely assessed civil penalties where committees have accepted in-kind contributions from business entities in the form of free or discounted office space. See *In the Matter of a Complaint by Peter Tracey*, Vernon, File No. 2003-179 (finding town committee violated General Statutes § 9-613(a) [then § 9-333o] by receiving and failing to disclose free use of office space provided by a business entity); *In the Matter of a Complaint by John W. Olsen*, Hartford, File No. 2002-251 ("It is concluded that Chamard Vineyards, Inc. made a prohibited contribution to the Committee to Elect Sid

impermissible business entity contribution when a limousine company owned by the candidate applied 8 inch by 22 inch “bus decals” advocating the election of the candidate to the side of its vehicles at no charge to the candidate committee. Although the Commission found that the limousine company was not in the business of selling advertising space on its vehicles and acknowledged that determining a precise valuation was problematic given this fact, it determined a fair market value for the use of the sign space. *Id.* at ¶ 11. The Commission considered a number of factors to determine the fair market value including: “the size of the ‘bus decal,’ the location and speed travel[ed] by the vehicles, and the rates charged for city buses in the locale.” *Id.* The Commission rejected the complainant’s suggestion that it should look to the cost of commercial billboards finding that “a comparison between the instant ‘bus decal’ displayed on a high speed moving vehicle and a large stationary billboard is inappropriate.” *Id.* Ultimately, the Commission ordered the respondent treasurer to pay the limousine company a sum of eighteen hundred and seventy-six dollars for the sign space. This is consistent with the approach taken in other similar jurisdictions.<sup>2</sup>

Although, as a general rule, a business entity’s provision of free sign space would be considered an in-kind contribution, the Commission advises that some facts, if evident, would take such provision of sign space outside of the definition of contribution. A business entity might be able to demonstrate that the sign space was not provided to promote the candidate’s nomination or election to office and was thus not a “contribution” or “expenditure” subject to campaign finance law. If, for example, a business entity demonstrated that it made its sign space available to anyone upon request (including any candidate from any party) on the same terms (as applicable here, for no charge) then it is the Commission’s position that such provision would not be considered an in-kind contribution as it would not be provided *for the purpose of* influencing the nomination for election or election of a given candidate and would thus fall outside of the definition of contribution. This construction of the law has long been employed by agency staff. *See* Opinion of Counsel 1997-23 (noting that the provision of a free website

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Holbrook in the form of wine, sparkling water and by allowing the use of the tasting room, after normal business hours, free of charge, in violation of Conn. Gen. Stats. §9-333o.”); *In the Matter of a Complaint by Richard P. Roberts*, Wethersfield, File No. 2002-150 (holding a business entity’s provision of headquarters found that a business entity’s provision of meeting space at less than the usual and normal price charged to commercial customers constitutes an impermissible in-kind contribution).

<sup>2</sup> For example, the State Ethics Commission of Georgia has held:

The permission to place campaign signs on private property is a contribution to a political campaign if the use of such property has ascertainable value. If such signs can be observed by anyone from public rights-of-way or roadways, it will be deemed that such allowance of the use of any property which is zoned Commercial or which would be traditionally considered Commercial in nature to be of some ascertainable value. Therefore, permission to place such campaign signs on “Commercial” property should be reported as an “in kind” contribution.

State Ethics Commission of Georgia, Advisory Opinion 1990-24 (Jan.19, 1991). Note, like Connecticut campaign finance law, Georgia law also considers contributions to include “anything of value.” *See* O.C.G.A. § 21-5-3 (7).

to a candidate committee, if provided to anyone else on the same terms, would not result in a contribution as it would not be for the purpose of influencing a candidate's nomination or election or made on behalf of a political party). This treatment is also consistent with that of the Federal Election Commission in the context of a corporation or labor organization's provision of free or discounted meeting rooms. *See* 11 C.F.R. § 114.13 (providing that a corporation or labor organization can make available meetings rooms to a candidate for free or at a discount if the entity (1) customarily makes its meeting rooms available to civic and community groups; (2) makes the rooms available to other candidates upon request; and (3) makes the rooms available to the candidates on the same terms given to other groups). The question of whether or not a business entity has met these qualifications would be one of fact for the Commission. Accordingly, the Commission advises that any candidate wishing to utilize a business entity's sign space free of charge should verify that the business in question would provide the space to anyone on the same terms including any candidate from any party.

In sum, the Commission advises that as a general rule, absent facts indicating that a business entity<sup>3</sup> would provide the sign space to anyone on similar terms, its provision of free sign space on the exterior of its building would constitute an impermissible in-kind contribution. As is noted *supra*, the Commission treats a business's selective provision of sign space as something of value, i.e. a contribution. *See In the Matter of a Complaint by William Curry*, Somers, File No. 90-184. Although the *Curry* matter involved sign space on the side of commercial vehicles rather than on the side of commercial real property, the Commission finds this distinction is irrelevant and it will apply the same principles espoused in *Curry* to determine whether an impermissible in-kind contribution was made by a business providing sign space. Accordingly, to avoid the receipt of an impermissible in-kind contribution, a candidate committee must pay a business entity fair market value for the use of its sign space. In determining fair market

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<sup>3</sup> The Commission notes that, if the property in question was owned by a sole proprietorship or solely-owned professional corporation, the provision of sign space would not constitute an impermissible business entity contribution as such entities are statutorily exempted from the definition of "business entity" and are considered "individuals" under the law. *See* General Statute § 9-601 (8) & (9). Such individuals may make in-kind contributions to candidates who are not participating in Connecticut's public financing program up to certain statutory limits. Candidates participating in the Citizens' Election Program have voluntarily decided to limit the contributions they may receive to small *monetary* contributions from human beings. *See* SEEC Declaratory Ruling 2007-03. Participating candidates also agree not to receive *any* "in-kind" or non-monetary contributions whether they are from human beings or other types of "individuals" under the law. *See* General Statutes §§ 9-704 (a); 9-702 (c); SEEC Declaratory Ruling 2007-03. Accordingly, if a candidate is participating in the Citizens' Election Program, the candidate committee cannot receive in-kind contributions – including the provision of free sign space – from a sole proprietorship or solely owned professional corporation even though these entities are not considered business entities under the law and are not subject to the general business entity contribution prohibition in General Statutes § 9-613 (a).

Furthermore, the Commission notes that the provision of commercial space by a business entity for display of a sign promoting the election of a candidate is fundamentally different under Connecticut campaign finance law from the dissemination or display by an individual volunteer of a message or lawn sign promoting a candidate on personal property. *Cf.* General Statutes §§ 9-611, 9-601a (b) (4) & (5) with General Statutes §§ 9-613 (a), 9-601a (a).

State Elections Enforcement Commission  
*Advisory Opinion 2010-02*

value, the Commission will look to the cost of similar sign space available in the open market as well as the location of the sign space and its proximity to roadways, in particular main thoroughfares, in determining fair market value for the use of the sign space. The Commission advises that campaigns should keep a record of how the campaign determined fair market value for use of a business entity's sign space.

The Commission recognizes that the provision of commercial space on billboards or other large areas has traditionally been conceived of by the general public as different from the placement on a property of one or more traditional lawn signs (free-standing signs of a temporary nature measuring not more than thirty-two square feet). The Commission also recognizes that this opinion represents this body's first articulation of a set of rules and principals guiding candidates with respect to a business entity's provision of commercial sign space on real property. In light of the Citizens' Election Program and the consequent changes in election laws which create additional consequences for participating candidates upon receipt of an impermissible in kind contribution in violation of Program rules, the Commission believes that there may be need for legislative clarification in this area. Accordingly, the Commission will factor the nature of this opinion and the need for such legislative action into the Commission's enforcement actions and complaint consideration with respect to the 2010 elections and until such legislative action regarding the allowance of lawn signs on property owned by a business entity can be proposed and decided upon by the legislature.

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

Adopted this \_\_\_th day of April, 2010 at Hartford, Connecticut by a vote of the Commission.

  
Stephen F. Cashman, Chairman