

CGC 8896



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

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December 7, 1990

Jonathan Levin, Esq.
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

REPLY TO:
410 ASYLUM STREET
SUITE 513
HARTFORD, CONNECTICUT 06103
(203) 566-7106

RE: Request For Advisory Opinion by Connecticut
Republican Party dated November 26

Comments To
AOR 1990-27

Dear Attorney Levin:

Thank you for providing the Connecticut Elections
Enforcement Commission with an opportunity to comment on the
above referenced request for an Advisory Opinion.

I have enclosed a copy of the Conciliation Agreement
between this Commission and the Respondents to a complaint
filed by Thomas J. D'Amore, Jr. and Peter W. Gold, (Our file
No. 90-181). The Commission unanimously adopted this
Agreement at its regular meeting on October 31, 1990. One of
the Respondents to this complaint was the Connecticut
Republican party. We agree with the statements made by
Republican party counsel, Ralph Elliot, concerning this case,
except with his position that there was no state law or
regulation which proscribed the use of funds from a federal
candidate in a campaign for state or local office in
Connecticut. (See paragraphs 15-18 of the "Agreement").

The monetary equivalent of the surplus of "Rowland
Congress" has been placed into an escrow account at the
direction of this Commission with the agreement of all
necessary parties. The Connecticut Republican party could
have clearly deposited those funds in its federal account in
July, 1990 pursuant to 2 U.S.C. §439a, 11 CFR 113.2. A
clerical error was made when the funds were deposited in the
state account.

This Commission supports the approval of the contemplated
transfer of these funds into the federal account of the
Connecticut Republican party.

If you need further information concerning this matter or
Connecticut election law, please don't hesitate to contact me.

Very truly yours,

Jeffrey B. Garfield
Executive Director & General Counsel

Encl.
xc: Ralph G. Elliot, Esq.
Richard Foley, Republican State Chairman

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STATE OF CONNECTICUT

ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint
by Thomas J. D'Amore, Jr. and
Peter W. Gold

File No. 90-181

CONCILIATION AGREEMENT

This agreement, by and between the Republican State Central Committee, hereinafter "State Republican party", Rowland Congress Committee-1990, hereinafter "Rowland Congress", Rowland Governor Committee, hereinafter "Rowland Governor", as Respondents to the above captioned complaint, and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(d) of the Connecticut General Statutes.

The parties agree that:

1. Respondent State Republican party is a party committee within the meaning of Section 9-333a(2), General Statutes. Respondent State Republican party maintains a separate checking account for federal elections to comply with its obligations under the Federal Election Campaign Act of 1971, as amended, and a separate checking account for state and municipal elections to comply with its obligation under Chapter 150, General Statutes. Richard Foley, Jr. was, at all times mentioned herein, the State Chairman of the Respondent State Republican party.
2. Respondent Rowland Congress was the principal campaign committee designated by Congressman John Rowland to promote his re-election to the U.S. Congress in 1990, and to comply with the Federal Election Campaign Act of 1971, as amended, Garrett M. Moore served as treasurer of Rowland Congress at all times mentioned herein and until the committee filed its termination report with the Federal Election Commission on or about July 31, 1990.
3. Respondent Rowland Governor is the candidate committee established by Congressman John Rowland on October 16, 1989 pursuant to Sections 9-333d and 9-333f, General Statutes, to promote his nomination and election as Governor of Connecticut in 1990.
4. Rowland Congress made no solicitations of contributions subsequent to the filing by Congressman Rowland of his candidate committee for Governor on October 16, 1989. A review of reports filed with the Federal Election Commission and other documents indicates that a relatively small number of contributions were received by Rowland Congress on and after October 16, 1989. The only individuals who made contributions to Rowland Congress which were received on or about that time were the three

members of the Ohnell family in Greenwich, who each contributed \$1,000.00, for a total of \$3,000.00. There is no evidence that the Ohnells made their contributions to Rowland Congress with the understanding, expressed or implied, that the contributions would be provided to Respondent State Republican party or be donated to or used for the benefit of Respondent Rowland Governor.

5. From October 16, 1989, through July 31, 1990, Rowland Congress received contributions of \$8,100.00 in the aggregate in varying amounts from 7 political committees registered under Federal election laws. There is no evidence that these contributions were made with the understanding, express or implied, that they be provided to Respondent State Republican party or be donated to, or used for the benefit of Respondent Rowland Governor.
6. No violations of either Sections 9-333m(a) or 9-333d, General Statutes, were committed by the contributors referred to in paragraphs five (5) and six (6) above, or by the Respondents Rowland Congress and Rowland Governor.
7. Respondent State Republican party is barred by its own rules from making contributions to any candidates competing for the party's nomination prior to the State party convention.
8. In the latter part of June, 1990, the Republican candidate for Governor, Joel Schiavone, decided to withdraw from the contest for the party's nomination for the office of Governor. He made a public declaration of his withdrawal and instead decided to seek the party's nomination for the office of State Comptroller. On or about July 5, 1990, the only remaining Republican candidate for nomination to the office of Governor was Congressman John Rowland.
9. On July 5, 1990, Respondent State Republican party made a contribution of \$50,000.00 to Respondent Rowland Governor. Respondent State Republican party had sufficient funds in its state account to make such contribution. Several prior events were conducted by Respondent State Republican party in an effort to raise funds for the 1990 State elections.
10. There is no evidence to support a finding that this contribution was made with the understanding that Respondent Rowland Congress would provide its excess campaign funds to the Respondent State Republican party.
11. The \$50,000.00 contribution by Respondent State Republican party to Rowland Governor was permitted by Section 9-333s(a), General Statutes. Similarly, Rowland Governor was permitted to receive such contribution.
12. On or about July 10, 1990, Respondent Rowland Congress transferred its excess campaign funds as follows: a)

\$3,000.00 to St. Margaret's School in Waterbury, b) \$1,000.00 to Holy Cross High School in Waterbury, c) \$1,000.00 to the Cystic Fibrosis Foundation in West Haven, and d) \$103,765.12 to the Respondent State Republican party. Respondent Rowland Congress reviewed the provisions of Federal and Connecticut election laws prior to making such transfers.

13. Federal election law regulates the manner in which campaign surplus of a federal candidate may be distributed. The distributions made by Rowland Congress were within the options provided by 2 U.S.C. 434a and 11 CFR 113.2.
14. The receipt of such funds for use in state and municipal elections in Connecticut is regulated by Chapter 150, General Statutes. In its Advisory Opinion No. 1986-5, the Federal Election Commission acknowledged that a proposed transfer of funds from a federal campaign committee to a local campaign committee would be permissible if it is permissible under the State's laws.
15. Section 9-333s(b), General Statutes, prescribes in pertinent part that
"A party committee may...not receive contributions from a committee of a candidate for federal... office, except in the distribution of a surplus as provided in subsection (c) of Section 9-333j."
Respondent State Republican party reviewed this provision prior to acceptance of the transfer from Respondent Rowland Congress. Respondent Rowland Congress also reviewed this provision prior to making the transfer. Respondents reasonably believed that this provision permitted acceptance of the transfer by Respondent State Republican party. None of the Respondents consulted with the Commission prior to effecting this transfer.
16. While the Commission agrees that the Respondents construction of Section 9-333s(b) is reasonable from the face of the statute, a close examination of the provisions, especially when considered together with other provisions of Chapter 150, General Statutes, leads to a different construction. The reference to subsection (c) of Section 9-333j has no meaning inasmuch as that provision does not prescribe distribution of campaign surplus. Further, the surplus provisions of Chapter 150 only regulate distribution of surplus of state and municipal (non federal) candidates. The Commission concludes that there is an ambiguity in the cited provisions of Section 9-333s(b), General Statutes, and that the better construction is that the surplus of a federal candidate may not be deposited in the state account of a party committee to be used for state and municipal elections. To rule otherwise would frustrate the intent and purpose of Sections 9-333r(a) (which prohibits contributions from a federal candidate committee to a state or municipal candidate committee), 9-333d (which prohibits contributions by committees for use in state and municipal elections unless they are

registered with the appropriate state or municipal repository), and 9-333n (which prescribes limits on contributions by individuals to a candidate's campaign for state and municipal office). If the Commission were to construe Section 9-333s(b) to permit the party committee to use such federal contributions in state and municipal elections, the above cited provisions could be so easily circumvented that they would be meaningless.

17. On several prior occasions when the question was asked by other federal candidates, the Commission staff has consistently orally advised against such use.
18. This is the first occasion that the Commission has had to formally consider the question and for the reasons cited herein, the Commission concludes that Section 9-333s(b) prohibits the Respondent State Republican party from depositing the surplus of Respondent Rowland Congress in its state account for use in state and municipal elections.
19. While Respondents disagree with the Commission's conclusion, they agree not to contest it or to otherwise challenge the validity of this Agreement.
20. Respondent State Republican party deposited the surplus of Rowland Congress into its separate state account in honest clerical error. To effect compliance with the Commission's construction of Section 9-333s(b), Respondent State Republican party has transferred \$71,565.12 from its state account to an escrow account and shall not use same for state and municipal elections. Respondent State Republican party will transfer these funds to its federal account to be used for federal elections upon approval of the Federal Election Commission. If the escrowed funds cannot be transferred to its federal account as determined by the Federal Election Commission, Respondent State Republican party agrees to make some other disposition of the funds which is not inconsistent with Chapter 150 and this Agreement.
21. Respondent State Republican party made an additional contribution of \$32,200.00 to Respondent Rowland Governor as permitted by Section 9-333s(a), General Statutes.
22. Respondent Rowland Governor has remitted \$32,200 to the Respondent State Republican Party which in turn has deposited that sum in the aforesaid escrow account under the same terms and conditions as set forth in paragraph 20 above.
23. No violations of Sections 9-333r(b), 9-333m(a) and 9-333d(a), General Statutes, were committed by any of the Respondents to this complaint.
24. Respondents admit all jurisdictional facts and agree that this agreement shall have the same force and effect as a final decision entered after a full hearing and shall become final when adopted by the Commission.

25. Respondents waive:

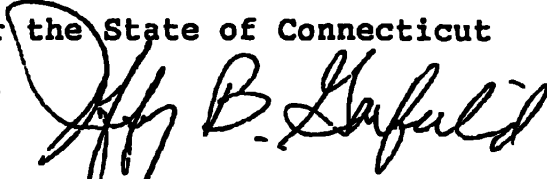
- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of this Agreement.

26. This Agreement shall not become final unless and until it is adopted by the Commission.

Dated 10-31-90

For the State of Connecticut

By:

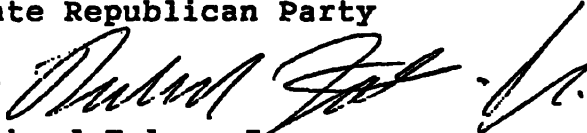


Jeffrey B. Garfield, Esq.
Executive Director &
General Counsel and
Authorized Representative of the
State Elections Enforcement
Commission
410 Asylum Street
Hartford, Connecticut

Dated 10/30/90

For the Respondent
State Republican Party

By:

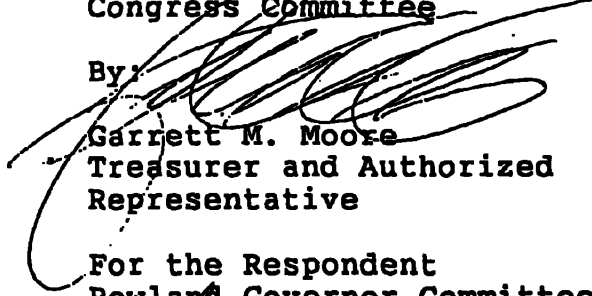


Richard Foley, Jr.
State Chairman and
Authorized Representative

Dated 10/30/90

For the Respondent Rowland
Congress Committee

By:

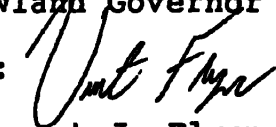


Garrett M. Moore
Treasurer and Authorized
Representative

Dated 10/30/90

For the Respondent
Rowland Governor Committee

By:



Vincent J. Flynn
Its Attorney and Authorized
Representative
Waterbury, Connecticut