

## NOTICES OF CONNECTICUT STATE AGENCIES

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### STATE ELECTIONS ENFORCEMENT COMMISSION

*State Elections Enforcement Commission advisory opinions are published herein pursuant to General Statutes Section 9-7b (14) and are printed exactly as submitted to the Commission on Official Legal Publications.*

#### ADVISORY OPINION 2018-02:

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##### **Treatment of Replacement Candidates under the Citizens' Election Program and Grant Amounts**

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At its regular meeting on October 19, 2018, the State Elections Enforcement Commission (the "Commission") voted to issue this Advisory Opinion to provide clarification regarding the deadlines by which a replacement candidate may submit paperwork to obtain a replacement grant under the Citizens' Election Program ("CEP" or the "Program") and the appropriate grant amount to award that candidate in light of the grant reduction schedule imposed by Public Act 17-2 (June Special Session).

The CEP is a voluntary clean elections program which allows participants who meet strict program requirements and demonstrate an adequate level of support to forego special interest money and large dollar contributions in favor of a grant from the Citizens' Election Fund. Generally speaking, in order to be eligible for a grant, candidates must raise an aggregate amount of small-dollar monetary contributions from individuals, a certain number of whom must reside in the district, in the case of General Assembly candidates, or within the state, in the case of candidates for statewide office. The candidates must also have ballot access and agree to stay within prescribed expenditure limits.

The statutes contemplate the possibility that a candidate who has qualified for and received a grant under the Program is replaced. General Statutes § 9-706 (f) provides:

If a nominated participating candidate dies, withdraws the candidate's candidacy or becomes disqualified to hold the office for which the candidate has been nominated after the commission approves the candidate's application for a grant under this section, the candidate committee of the candidate who is nominated to replace said candidate pursuant to section 9-460 shall be eligible to receive grants from the fund without complying with the provisions of section 9-704,<sup>1</sup> if said replacement candidate files an affidavit under section 9-703 certifying the candidate's intent to abide by the expenditure limits set forth in subsection (c) of section 9-702 and notifies the commission *on a form prescribed by the commission*.

That form is the SEEC Form CEP 14 (Citizens' Election Program Certification by Replacement Participating Candidate).

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<sup>1</sup> General Statutes § 9-704 pertains to raising the qualifying contribution threshold.

The Commission issued guidance on the CEP replacement candidate provision in Advisory Opinion 2010-06: *Treatment of Replacement Candidates under the Citizens' Election Program*. The Opinion detailed three ways a replacement candidate may finance her campaign:

1. The candidate may run as a nonparticipating candidate, outside of the Program;
2. The candidate may apply for a grant under the standard application process, raising qualifying thresholds and filing an application on a SEEC Form CEP 15; or
3. If the candidate who they are replacing has already received a grant, the replacement candidate may step into the shoes of the candidate and receive her own grant.

The 2010 Advisory Opinion did not address the deadline, if any, by which a SEEC Form CEP 14 must be filed. The Opinion was also written before the law was modified to impose a grant reduction schedule and the question has been raised as to whether that schedule applies to the grant awarded to a replacement candidate. This Opinion will answer these questions.

**ISSUE 1: Is a replacement candidate permitted to file a SEEC Form CEP 14 after the final deadline for a grant application (the SEEC Form CEP 15)? And if so, is there a deadline by which the SEEC Form CEP 14 must be filed?**

General Statutes § 9-706 (g) (1) sets forth the grant application schedule and the deadline by which the Commission must issue funds:

Any application submitted pursuant to this section for a primary or general election shall be submitted in accordance with the following schedule: (A) By five o'clock p.m. on the third Wednesday in May of the year that the primary or election will be held at which such participating candidate will seek nomination or election, or (B) by five o'clock p.m. on any subsequent Wednesday of such year, provided *no application shall be accepted by the commission after five o'clock p.m. on or after the fourth to last Friday prior to the primary or election at which such participating candidate will seek nomination or election. . . . For any such application that is approved, any disbursement of funds by the commission shall be made not later than twelve business days prior to any such primary or general election. . . .*

(Emphasis added).

General Statutes § 9-706 (g) (1) pertains to the deadlines for *applications*. The CEP Form 14 process is different from the application process implemented through the SEEC Form CEP 15 (Citizens' Election Program Application for Public Grant Dollars). The 2010 Advisory Opinion and the CEP replacement candidate statute give no indication that the SEEC Form CEP 14 is an "application." In fact, in the section of the Advisory Opinion pertaining to replacement candidates who want to start fresh and do their own application, it explained:

*If time allows*, a replacement candidate may also choose to apply for grant monies as if the candidate he or she has replaced never participated – in other words the replacement candidate may choose to start with a clean slate, file a SEEC Form CEP 10, raise qualifying contributions pursuant to the requirements in General Statutes § 9-704, and meet all of the grant application requirements set forth in General Statutes § 9-706. *A replacement candidate choosing this route must apply within the applicable time limit set forth in General Statutes*

**§ 9-706 (g) (1) by filing a SEEC Form CEP 15 - Grant Application Form.**

Upon Commission approval of the grant application, the replacement candidate would receive a grant and the expenditure limits that apply to all participating candidates will of course apply. Note that once a replacement candidate files a SEEC Form CEP 15, he or she is no longer able to file the SEEC Form CEP 14 and receive grant funds using that process.

(Emphasis added). This is in contrast to the Advisory Opinion's section on replacement candidates opting to file the SEEC Form CEP 14 which makes no mention of any time limits for submission.

In light of the foregoing, the Commission concludes the deadlines laid out in General Statutes § 9-706 (g) (1) by which the application must be submitted and by which the Commission must disburse funds after approving such application apply to the application process during which the Commission reviews and qualifies contributions in order to ensure that public support thresholds have been met. They do not apply to the process for allowing a replacement candidate to step into the shoes of a grant recipient whom they are replacing. A replacement candidate may file a SEEC Form CEP 14 at any time before the election and the Commission may award funds after that submission is received.

**ISSUE 2: How much of a grant is a replacement candidate eligible to receive if she submits the SEEC Form CEP 14 when the grant reduction schedule has gone into effect?**

In 2017, the legislature passed a law to impose a grant reduction schedule, effective for the first time this election cycle. For candidates running for state representative, the applicable statute is as follows:

The qualified candidate committee of a candidate for the office of state representative who has been nominated, or has qualified to appear on the election ballot in accordance with subpart C of part III of chapter 153, shall be eligible to receive a grant from the fund for the general election campaign in the amount of twenty-five thousand dollars, provided (A) any such committee shall receive seventy-five per cent of said amount if such committee applies for such grant, in accordance with section 9-706, on or after the seventieth day but before the fifty-sixth day preceding the election, (B) any such committee shall receive sixty-five per cent of said amount if such committee so applies on or after the fifty-sixth day but before the forty-second day preceding the election, (C) any such committee shall receive fifty-five per cent of said amount if such committee so applies on or after the forty-second day but before the twenty-eighth day preceding the election, (D) any such committee shall receive forty per cent of said amount if such committee so applies on or after the twenty-eighth day preceding the election, and (E) in the case of an election held in 2010, or thereafter except for in 2018, said amount shall be adjusted under subsection (h) of this section.

General Statutes § 9-705 (f) (2) (A) (as amended by P.A. 17-2) (June Special Session).<sup>2</sup>

For a campaign that submits its paperwork after the 28<sup>th</sup> day preceding the election, the grant reduction schedule statute reads, “any such committee shall receive forty

<sup>2</sup> General Statutes § 9-705 has comparable sections for candidates for Governor (subsection (a) (2)), Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State, and State Treasurer (subsection (b) (2)), and state senator (subsection (e) (2) (A)). This Opinion applies to such candidates and provisions as well.

per cent of said amount if such committee so applies on or after the twenty-eighth day preceding the election.’’

In Advisory Opinion 2010-06, the Commission stated, ‘‘Such replacement candidates are eligible to receive a Program grant in an amount equal to the amount for which the withdrawn participating candidate was eligible pursuant to General Statutes § 9-705.’’ That Opinion, however, was issued prior to the enactment of the grant reduction schedule provisions. The CEP statutes do not have a section which explicitly addresses whether or not the grant reduction schedule applies to replacement candidates.

When interpreting a statute, the Commission applies basic tenets of statutory interpretation under Connecticut law. General Statutes § 1-2z provides that:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extra-textual evidence of the meaning of the statute shall not be considered.

When a statute is ambiguous, courts look for ‘‘interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation.’’ *State v. Acordia, Inc.*, 310 Conn. 1, 18-19 (2013) (internal citation omitted). Moreover, ‘‘it is an elementary rule of statutory construction that we must read the legislative scheme as a whole in order to give effect to and harmonize all of the parts . . . . When statutes relate to the same subject matter, they must be read together and specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling.’’ *Langello v. West Haven Bd. of Educ.*, 142 Conn. App. 248, 258 (2013) (citation omitted; internal quotation marks omitted).

There is no legislative history or public hearings from which to draw clarity as to whether the legislature intended to extend the grant reduction schedule to the grants awarded to replacement candidates. The apparent policy behind the statutory change, however, was to avoid a large amount of money from being released right near the election when there is little time to spend it. Applying the grant reduction schedule to replacement grants effectuates this policy.

Moreover, the legislature knows how to clarify the application of the grant reduction schedule and has not done so in the case of replacement candidate grants. Notably, several weeks after Public Act 17-2 (June Special Session) was passed, the legislature passed Public Act 17-4 (June Special Session) which modified the grant reduction provisions to clarify that they do not apply in the case of special elections. Should they have intended that the grant reduction schedule not apply in the case of replacement grants, they could have clarified so or may do so in a future legislative session.

Applying the statutes as a whole and with the above considerations in mind, the Commission concludes that the grant awarded to a replacement candidate shall be subject to the grant reduction schedule set forth in General Statutes § 9-705 (as

amended by Public Act 17-2 (June Special Session)).<sup>3</sup> The determinative date is the date on which the SEEC Form CEP 14 is filed.<sup>4</sup>

In summary, the Commission concludes that (1) there is no deadline by which a SEEC Form CEP 14 must be submitted or the corresponding grant monies be released so long as they occur before the date of the election; and (2) the grant awarded to a replacement candidate shall be equivalent to the base amount awarded to the candidate he replaced but subject to the grant reduction schedule set forth in General Statutes § 9-705 (as amended by Public Act 17-2 (June Special Session)) with the date of the SEEC Form CEP 14 submission being the operative date.

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.

Adopted this 19th day of October, 2018 at Hartford, Connecticut by a vote of the Commission.

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Salvatore Bramante, *Vice Chair*

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<sup>3</sup> Notably, the statute does not say “if such committee so applies on or after the twenty-eighth day preceding the election but before the twenty-fifth day preceding the election,” or “if such committee so applies on or after the twenty-eighth day preceding the election but before the final grant application deadline,” so there is no indication there is a cut-off as to when that forty percent goes even further down or ceases to nothing. The Commission therefore concludes that the minimal grant reduction of 40 percent of the applicable base grant amount shall apply to SEEC Form CEP 14 submissions received on or after the 28<sup>th</sup> day preceding the election up through the day before the election.

<sup>4</sup> In the particular case at issue during the 2018 election cycle, the replacement candidate had registered his candidacy on April 16, 2018 with a SEEC Form 1/1B (exemption from forming a candidate committee), a SEEC Form 1/1A (candidate committee registration) to register a candidate committee on October 16, 2018, and a SEEC Form CEP 14 on October 17, 2018 to request a replacement grant after his certificate of party endorsement was filed with the Secretary of the State’s Office on October 16, 2018. Campaign grants were reduced to 40% of the base grant amount for those campaigns that applied on or after October 9, 2018. Therefore, the replacement candidate was entitled to a 40% grant based on the October 17, 2018 SEEC Form CEP 14 submission date. Note that only replacement candidates who have obtained ballot access through a timely filing with the Secretary of the State’s Office are eligible to submit a SEEC Form CEP 14 to receive a replacement grant.