# NOTICES OF CONNECTICUT STATE AGENCIES

## CHEFA Community Development Corporation

### Notice of Intent to Adopt Operating Procedures

In accordance with the provisions of Conn. Gen Stat. § 1-121, notice is hereby given that the CHEFA Community Development Corporation (the ''Corporation'') intends to adopt Operating Procedures (''Procedures''), for purposes of having written procedures for (1) adopting an annual budget and plan of operations; (2) hiring, dismissing, promoting and compensating employees, including an affirmative action policy and a requirement that the Corporation's Board of Directors (the ''Board'') approve the creation of a position or the filling of a vacant position; (3) acquiring real and personal property and contracting for services, including a requirement for Board approval of any non-budgeted expenditure in excess of five thousand dollars; (4) contracting for financial, legal, and other professional services, including a requirement that the Board solicit proposals at least once every three years for each such service which it uses; (5) awarding loans, grants and other financial assistance, including eligibility criteria, the application process and the role played by the Corporation's staff and Board; and (6) using surplus funds.

Such Procedures shall be deemed adopted and effective thirty days after this notice has been published in the Connecticut Law Journal, unless the Executive Director in her sole discretion, shall determine based on comments received from members of the public, during such thirty day period, that it would be desirable or appropriate to defer such adoption and effectiveness so that the Board may reconsider the proposed Procedures in light of such comments, such determination to be conclusively evidenced by the Executive Director's written notice thereof to the Board.

A copy of the proposed Procedures is available upon request by contacting Jeanette W. Weldon, Executive Director, CHEFA Community Development Corporation, 10 Columbus Boulevard, 7th Floor, Hartford, CT 06106, via email at jweldon@chefa.com or by telephone at (860) 520-4700.

All written comments, questions, and concerns regarding the proposed Procedures may be submitted within thirty days of the publication of this notice to Jeanette W. Weldon, Executive Director, CHEFA Community Development Corporation, 10 Columbus Boulevard, 7th Floor, Hartford, CT 06106 or via email at jweldon@chefa.com.

## DEPARTMENT OF HOUSING

### Notice of Issuance of a Certificate of Affordable Housing Completion in the Town of Westport

In accordance with C.G.S. 8-30g, the Department of Housing (DOH) has issued a Certificate of Affordable Housing Completion. This certificate entitles the Town of Westport to a Moratorium of Applicability with regard to said statute. The effective date of this moratorium is on the date of publication in the Connecticut Law Jour-

nal, and will remain in effect, unless revoked in accordance with the statute for a four year period. For additional information, please call or write to Laura Watson, Economic and Community Development Agent, DOH, 505 Hudson Street, Hartford, CT 06106, (860) 270-8169.

## DEPARTMENT OF HOUSING

### Notice of Availability of List of Municipalities Exempt from the Affordable Housing Appeals Procedure

In accordance with § 8-30-g of the Connecticut General Statutes, the Department of Housing (DOH) has prepared the list of municipalities that are exempt from the affordable housing appeals procedure and those municipalities that are not exempt. This list is effective March 1, 2019. A copy of this list is available on the agency website at www.ct.gov/doh For additional information please write to Laura Watson, Economic and community Development Agent, 505 Hudson Street, Hartford, CT 06106 or call at (860) 270-8169.

# 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.*

## DECLARATORY RULING 2019-01:

### *The State Contractor Status of Medical Marijuana Industry Licensees*

On October 25, 2018, the State Elections Enforcement Commission (the ''Commission'') received a request for a Declaratory Ruling by Attorney Andrew C. Glassman of Pullman & Comley LLC concerning whether medical marijuana industry licenses would be considered state contracts. At its regular meeting on November 14, 2018, the Commission voted to initiate a declaratory ruling proceeding responsive to this petition.

In September 2018, Mr. Glassman verbally inquired of staff whether a company that has a license issued by the State of Connecticut to produce medical marijuana in the state is considered a state contractor. Given that the monetary thresholds in this licensing arrangement appear to have been met since the payment for the license exceeded $50,000 per year and the definition of ''state contract'' includes an ''agreement'' for ''a licensing arrangement,'' staff advised that such licenses would likely be covered.

Mr. Glassman now seeks a formal ruling from the Commission, arguing that ''licensing arrangement'' is not meant to include ''[licensees] operating a trade or business within the state'' because such a license is not a bilateral agreement between two parties and the state contractor restrictions are only meant to cover contracts in which the State is paying the party for services rather than the party paying the State. He further contends that such an interpretation would lead to the absurd result that occupational licenses such as those for barbers, doctors, and lawyers, would be covered by the state contractor ban.

**Executive Summary**

The plain language of General Statutes § 9-612 (f) (1) (C) clearly indicates that the medical marijuana industry licenses would be considered state contracts. Even if the language of the statute itself was not clear, the legislative history of the 2007 changes to the definition of state contract favors this reading: ''[O]ne of the things that this bill does is it expands the application of the prohibitions on contributions and solicitations by principals of state contractors to cover virtually any agreement, contract, or arrangement with the state for which the value is at least $50,000 in a calendar year, which includes fees, compensation, or remuneration of any kind.'' S. Proc., 2007 Sess., pp. 51-52, remarks of Senator Slossberg on Public Act 07-01.

**I. Background**

In 2012, Public Act 12-55, An Act Concerning the Palliative Use of Marijuana, became law. This Act permits the medical use of marijuana statewide for certain medical conditions, making Connecticut the seventeenth state to enact such a law. *See* Chapter 420f of the General Statutes (as amended by Public Act 12-55). The Act tasked the Department of Consumer Protection (''DCP'') to run the medial

marijuana program. There are three types of licenses issued by the State under the Program: (1) dispensary licenses; (2) dispensary facility licenses; and (3) producer licenses.[1] All licenses issued under the Program expire one year after the date of their issuance and annually thereafter if renewed. Regs., Conn. State Agencies § 21a-408-25 (b). Licensees are required to file a renewal application and the proper fees, as set forth below, 45 days prior to the expiration of the license. Regs., Conn. State Agencies § 21a-408-28 (a).

**A. Dispensary Licenses**

A dispensary license is given to individuals who are qualified to acquire, possess, distribute, and dispense marijuana. The individual must have both an active pharmacist license in good standing issued by DCP and have a position with a medical marijuana dispensary facility that has been awarded a license by DCP. The initial license fee is $100 and the annual renewal fee is $100, all of which are nonrefundable. General Statutes § 21a-408h; Regs., Conn. State Agencies § 21a-408-29 (6).

**B. Dispensary Facility Licenses**

A dispensary facility license is given to a place of business that qualifies to dispense or sell at retail marijuana to qualifying patients and primary caregivers. Only a dispensary facility that has obtained a license from DCP may dispense marijuana to such individuals.

The initial application fee is $5,000 with a $5,000 license fee, if approved, and a $5,000 renewal fee, all of which are nonrefundable. General Statutes § 21a-408h; Regs., Conn. State Agencies § 21a-408-29 (7) & (8).

**C. Producer Licenses**

A producer license allows the holder to operate a secure, indoor facility in which the production of marijuana occurs.

The initial application fee is $25,000 with a $75,000 license fee, if selected to be a producer, and a $75,000 annual renewal fee. All of these fees are nonrefundable. General Statutes § 21a-408i; Regs., Conn. State Agencies § 21a-408-29 (13).

After the 2012 legislation passed legalizing medical marijuana and DCP's regulations for the program were approved, consistent with its charge of administering the program, DCP issued a request for applications for producer licenses, seeking to award three, with an application deadline of November 15, 2013. There were 16 applications and the State awarded four licenses after two tied for third.[2]

As of April 2018, the number of producers has remained at four, and the number of dispensary facilities has increased from six to nine.[3] In addition, DCP awarded nine more dispensary facility licenses in December 2018.

[1] All of the information in this Background section is taken from DCP's website, https://portal.ct.gov/DCP/Medical-Marijuana-Program/Medical-Marijuana-Program, unless otherwise noted, and confirmed in discussions with its staff.

[2] Ken Dixon, ''Four companies win marijuana-growing licenses,'' Connecticut Post, January 28, 2014, https://www.ctpost.com/news/article/Four-companies-win-marijuana-growing-licenses-5183225.php.

[3] Matthew Ormseth, ''Medical Marijuana Patients Say There's a Pot Shortage In Connecticut,'' Hartford Courant, April 20, 2018, http://www.courant.com/news/connecticut/hc-news-marijuana-grower-shortage-20180326-story.html; https://portal.ct.gov/DCP/Medical-Marijuana-Program/Connecticut-Medical-Marijuana-Dispensary-Facilities.

**II. Relevant Statutes**

General Statutes § 9-612 (f) (1) (C) defines ''state contract'' as ***any agreement*** or contract:

- ***with the state or any state agency*** or any quasi-public agency,
- let through a procurement process ***or otherwise***,
- having ***a value of fifty thousand dollars or more***, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more ***in a calendar year***,
- for (i) the rendition of services, (ii) ***the furnishing of*** any goods, material, supplies, equipment or ***any items of any kind***, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) ***a licensing arrangement***, or (vi) a grant, loan or loan guarantee.[4]

The statute goes on to state that ''state contract'' does not include any agreement or contract with the state, any state agency or any quasi-public agency that:

- is exclusively federally funded,
- an education loan,
- a loan to an individual for other than commercial purposes
- or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

General Statutes § 9-612 (f) (1) (C).

If a given license qualifies as a state contract under the above language, then a company holding the license will be deemed a ''state contractor'' and a certain limited group of people within the company will be deemed ''principals of state contractor'' pursuant to

General Statutes § 9-612 (f) (1) (D) & (E). The designation as principal will result in limitations on contributions. General Statutes § 9-612 (f) (2) (B).

**III. Analysis**

The plain and broad language of General Statutes § 9-612 (f) (1) (C) indicates that the medical marijuana industry licenses would be considered agreements to enter a licensing arrangement and therefore state contracts. The legislative history further bolsters this interpretation, as more fully discussed below.

In his petition, Mr. Glassman essentially makes four assertions as to why the medical marijuana producer license should not be considered a state contract. The Commission does not find any of these arguments persuasive and will address them in turn.

[4] The statute provides in full: ***''State contract'' means an agreement or contract with the state or any state agency*** or any quasi-public agency, let through a procurement process or otherwise, having ***a value of fifty thousand dollars or more***, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more ***in a calendar year***, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) ***a licensing arrangement***, or (vi) a grant, loan or loan guarantee. ''State contract'' does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense. General Statutes § 9-612 (f) (1) (C) (emphasis added).

**Argument 1 – The definition of a ''state contract'' requires that the State is the party giving money and receiving products or services in return, which is not the case in the context of a medical marijuana industry license.**

The Petitioner argues that in order to be a ''state contract,'' there must be a bilateral negotiated written agreement wherein the contractor is *receiving* $50,000 or more from the State rather than the State being the party receiving payment. According to the Petitioner's preferred definition, the State must be receiving products or services and giving money.

While this might be a fine statutory definition of ''state contract'', it is not *the* definition in Connecticut's state contractor provisions. There is nothing in the plain language of General Statutes § 9-612 (f) that indicates the state contractor provisions are only triggered when the State is the party paying over $50,000 for something of value provided by the contractor as opposed to the contractor paying over $50,000 for something of value provided by the State.

Arrangements resulting in payments to the State rather than from the State also fall within the definition of state contract. The Commission has long advised this. For example, the Commission's Frequently Asked Questions webpage for the state contractor provisions provide:

> **Question**: Is a contract with a state agency that produces revenue to the state included in the definition of a state contract and therefore subject to the contribution and solicitation ban?
>
> **Answer**: Yes. Contracts that result in revenue to the state of Connecticut, ***such as payments paid by airlines*** to Bradley International Airport for use of communication towers, are considered state contracts for purposes of the ban.

SEEC Website, ''Frequently Asked Questions for State Contractor Provisions,'' https://www.ct.gov/seec/cwp/view.asp?a=3563&q=505580.

In 2008, staff advised that a sales tax emption program would be considered a state contract even though under the program, the quasi-public agency would be the party selling the goods – specifically, in that case, it was the Connecticut Development Authority purchasing construction materials and selling them to program participants to essentially pass on its sales tax exemption. In 2016, Commission staff members advised a nonprofit that had hired a local community college to provide services to them for over $50,000 that the arrangement would be considered a state contract even though the state was the party providing services and getting paid. The statute is written broadly and works both ways. Staff also advised that year that the state's deal with Sikorsky Aircraft, where it offered the company millions of dollars in sales tax exemptions and grants, would also be covered because, again, the provisions work in both directions.

While the Commission itself has not yet had occasion to opine this in formal, written guidance until now, it agrees with its staff's longstanding advice. There is simply nothing in the statute that indicates it only covers contracts where the money is going in one direction but not the other.

It is also worth noting that the original state contractor ban enacted with Public Act 05-5 included in the definition of ''state contract'' the ''rendition of ***personal*** services'' rather than ''rendition of services'' and included no definition of the phrase ''rendition of personal services.'' In Opinion of Counsel 2006-6, Commis-

sion staff construed this phrase to mean: ''*any* agreement for *any* service rendered to the state, a state agency, or quasi-public agency for which the provider receives a fee, remuneration, or ***any compensation of any kind, either directly from the state or through the contractual arrangement with the state,*** unless otherwise specifically exempted.''

The legislature agreed with this broad interpretation and actually amended the statute to make sure that the broad application was clear. In Public Act 07-1, the definition of state contract was modified to include the phrase ''rendition of services'' rather than ''rendition of personal services'' and a definition of this phrase tracking that from Opinion of Counsel 2006-6 was also added to General Statutes § 9-612 (g) (1) (I) (now General Statutes § 9-612 (f) (1) (I)). The legislature went on to further broaden other areas of the definition of state contract as well by amending the language we must now interpret as follows:

> (C) ''State contract'' means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a [fiscal] calendar year, for (i) the rendition of [personal] services, (ii) the furnishing of any goods, material, supplies,[or] equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. ''State contract'' does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

The bill also added to the definition exceptions to the definition for education loans and for loans to an individual that were not for commercial purposes; thus, making it clear that all other loans are covered.

The legislative history of the 2007 changes to the definition of state contracts includes this description of the legislature's intent in doing so: ''[O]ne of the things that this bill does is it expands the application of the prohibitions on contributions and solicitations by principals of state contractors ***to cover virtually any agreement, contract, or arrangement with the state for which the value is at least $50,000 in a calendar year***, which includes fees, compensation, or remuneration of any kind.'' S. Proc., 2007 Sess., pp. 51-52, remarks of Senator Slossberg (emphasis added).

Individuals and entities who receive commercial loans, grants and tax incentives with large payments involved also have a motivation to protect that relationship and to endear themselves to the very people who control the award of such benefits.[5] So do those whose business receives a lucrative license in return for a payment of $50,000 or more. It is precisely this type of licensing arrangement that the state contractor provisions are designed to prevent from influencing campaign finance.

[5] The Petitioner, in a February 1, 2019 comment to the Commission's proposed draft, then argued that the language covers only situations where the state is acting as either a buyer or a seller for an item being sold. This argument ignores the explicit statutory language covering grants, loans, loan guarantees and licensing arrangements. The legislature recognized the breadth of its language when it specifically exempted out education loans and loans to an individual for other than commercial purposes. It did not choose to exempt out all occupational licenses or permits issued by the state, even those with a fee of over $50,000, although it certainly could have done so.

**Argument 2 – The term ''licensing arrangements'' in General Statutes § 9-612 (f) (1) is only meant to include arrangements where there is a bilateral understanding or agreement between the parties.**

The Petitioner also argues that the term ''licensing arrangement'' is only meant to include those arrangements where there is a bilateral understanding or agreement between the party and the State and therefore does not include the acquisition of a license required to run a business within the State. He contends that ''licensing arrangements'' as used in the statute refers only to ''the use of real estate or facilities often called 'licenses' because licenses tend to be for shorter terms than leases and do not convey interests in real estate.''

He cites the 5th edition of Black's Law Dictionary (1979) for the following definition of ''license'' – ''permission accorded by competent authority to do an act which, without such permission, would be illegal, a trespass, or a tort.'' Under this definition that the Petitioner himself has cited, it is enough that the act would be illegal to make the permission by a competent authority conferring a right into a license. It does not have to be a trespass on real estate. The marijuana producer license is a permission accorded by a competent authority, conferring the right to produce pot products which without such authorization would be illegal.

The Petitioner further refers to the definition of ''license'' in Black's 5th edition in which the following statement and citation is made: ''A [state-granted] license is not a contract between the state and the licensee, but is a mere personal permit.'' *Rosenblatt v. California State Board of Pharmacy*, 69 Cal. App. 23, 158 P.2d 199, 203 (1945). He goes onto assert that a state-issued license cannot possibly be construed to be a contract between the state and the licensee.

The Commission is not required to determine that a medical marijuana dispensary facility license is a contract. Rather, it must determine whether, pursuant to General Statutes § 9-612 (f) (1)'s definition of ''state contract,'' such a license is a contract *or an agreement*. In the same 1979 edition of Black's, the definition of ''agreement'' states: ''Although often used as synonymous with 'contract', agreement is a broader term; e.g. an agreement might lack an essential element of a contract.'' The most recent 10th edition of Black's Law Dictionary further expands upon this in the definition of ''agreement'':

> The term ''agreement'' although frequently used as synonymous with the word ''contract,'' is really an expression of greater breadth of meaning and less technicality. Every contract is an agreement; but not every agreement is a contract. In its colloquial sense, the term ''agreement'' would include any arrangement between two or more persons intended to affect their relations (whether legal or otherwise) to each other. . . . [E]ven an agreement which is intended to affect the legal relations of the parties does not necessarily amount to a contract in the strict sense of the term. For instance, a conveyance of land or a gift of a chattel, though involving an agreement, is . . . not a contract; because its primary legal operation is to effect a transfer of property, and not to create an obligation.

Black's Law Dictionary (10th ed. 2014) (citing 2 *Stephen's Commentaries on the Laws of England* 5 (L. Crispin Warmington ed., 21st ed. 1950)).

With this context in mind, the Commission believes that there *is* an agreement between the State and the licensee in the context of a medical marijuana producer license. In order to have the license, the producers must agree to abide by a number of terms as laid out in the statutes and regulations. They must agree to not

produce or manufacture marijuana in any place except their approved production facility, to not sell, deliver, transport or distribute marijuana from any place except in their approved production facility, to not produce or manufacture marijuana for use outside of Connecticut, and to establish and maintain an escrow account in a financial institution in Connecticut in the amount of $2 million, to name a few. Regs., Conn. State Agencies § 21a-408-54. There are also requirements on how licensed producers keep records, which types of marijuana products they may sell, how they package, label, and transport their products, and how they maintain proper security at their facility. Regs., Conn. State Agencies §§ 21a-408-56 through 21a-408-57, 21a-408-62 through 21a-408-66. And of course they are required to hold the license they receive (in exchange for submitting an application and payment and then, if chosen, abiding by the terms laid out in the statutes and regulations) in order to sell marijuana to dispensaries legally.

The Petitioner's offer of an alternative definition makes no sense. In order to argue that ''licensing arrangements'' are really short-term real estate leases, he ignores the structure of the statute and seems to be applying the interpretive principle of *noscitur a sociis* which basically says that you interpret items in a list to be similar. The problem with his argument, however, is that in order for it to work, the statute would have had to have been written with the following changes so that the term licensing arrangement really was part of the list that pertains to real estate:

> *''State contract'' means an agreement or contract with the state or any state agency* or any quasi-public agency, let through a procurement process or otherwise, having *a value of fifty thousand dollars or more*, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more *in a calendar year*, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, [(v)] or *a licensing arrangement*, or [(vi)] (v) a grant, loan or loan guarantee. ''State contract'' does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract. (Emphasis added).

The statute is not so written. Instead the term licensing arrangement stands alone and separate from the language regarding real estate. The Petitioner is attempting to subsume item (v) of the list into item (iv). Such a result would essentially render the term meaningless since the language used in item (iv) is already so broad as to cover short-term leases. *See Sylvan R. Shemitz Designs, Inc., v. Newark Corp.*, 291 Conn. 224, 235 (2009) (''It is a basic tenet of statutory construction . . . that the legislature does not intend to enact meaningless provisions.'' (internal quotation marks omitted)).

The statute, as written, simply does not support the Petitioner's argument that licensing arrangements are only real estate licenses.

> **Argument 3 – Determination of the $50,000 threshold should not be based on the income derived from the contract.**

The Petitioner maintains that Commission staff verbally advised him that it is the income derived by the licensee in the industry that is the operative amount considered in determining whether the $50,000 threshold has been met. He goes

on to assert that this would cover most licensees in the State because most of them generate an income and profit for the license holder greater than $50,000.

Staff never advised the Petitioner that the determination of the $50,000 threshold would be based on what a person or entity earned as a result of holding the license. Rather, the Petitioner was advised that the $50,000 threshold is determined by the payment exchanged. With respect to two of the three marijuana licenses, this means they are not covered because the payment involved with those two licensing arrangements is well below $50,000 per year. The payment for a dispensary license is $100-$200 annually and the payment for a dispensary facility license is $5,000-$10,000 annually. In the case of the medical marijuana provider license, however, the cost of obtaining and/or maintaining the license each year is easily determined and is well over the $50,000 threshold.

**Argument 4 – Deeming the medical marijuana industry licenses to be state contracts would mean that occupational licenses such as those for hairdressers, barbers, doctors, lawyers, liquor store operators, and restauranteurs would also be covered.**

The Petitioner also argues that ''the logical extension of [Commission staff's] position would result in everyone who needs an occupational permit or license to be considered a state contractor.''

As previously discussed, the legislature defined ''state contract'' to require, among other things, that payments involved between the state and contractor had to amount to $50,000 or more in a calendar year. Unlike the medical marijuana producer license, the licenses required of hairdressers, barbers, lawyers, and liquor store operators do not involve payments of $50,000 or more. In fact, while the Department of Consumer Protection issues over 200 types of licenses, permits and credentials, only one of them costs over $50,000 per year – the medical marijuana producer license.[6]

**IV. Conclusion**

Given that the cost of a medical marijuana producer license exceeds $50,000 per year and the definition of state contractor includes ''a licensing arrangement,'' the Commission concludes that the producer license is covered under the state contractor restrictions while the remaining two types of licenses issued under the program, dispensary and dispensary facility, are not given that they cost less than $50,000 per year.[7]

Adopted this __th day of February, 2019 at Hartford, Connecticut by a vote of the Commission.

Salvatore Bramante, *Vice Chair*

[6] Email from Department of Consumer Protection Commissioner Michelle Seagull, dated November 29, 2018. Commissioner Seagull noted in her email that sealed ticket distributors pay a license fee per year of only $2,500 but often pay over $50,000 per year to the State as they are required to pay a percentage of their sales back to the State. Whether they would be considered state contractors would be a separate discussion. Sealed tickets are lottery type scratch-off tickets that are sold typically to nonprofit organizations to sell at their fundraising events where the nonprofit pays out any winnings. Telephone conversation with Charles Kostruba and James Schmitt of the Department of Consumer Protection's Charitable Games Unit, November 30, 2018.

[7] The resulting contribution and solicitation restrictions laid out in General Statutes § 9-612 (f) do not apply to everyone who works at the licensee but only to those who are considered principals. Anyone seeking guidance on whether they meet the definition of principal is urged to call Commission staff.

**Resolution and Order Setting Forth**
**Specified Proceedings for Petition for Declaratory Ruling**

**Requested by Caitlin Clarkson Pereira Regarding**
**the Use of Campaign Funds to Offset Candidate's Childcare Costs**

Pursuant to General Statutes § 4-176 (e) and Connecticut Agency Regulations § 9-7b-65 (c), it is hereby resolved and ordered that the following proceedings are set regarding the Petition for a Declaratory Ruling in Response to ''Opinion of Counsel 2018-05: Use of Public Funds to Offset Candidate's Child Care Costs,'' received on October 19, 2018 from Caitlin Clarkson Pereira:

(1) The Commission votes to approve for comment the Proposed Declaratory Ruling 2019-02: *Use of Campaign Funds to Offset Candidate's Child-care Costs*.

(2) The Commission directs staff to post the Proposed Declaratory Ruling on the SEEC website, and to circulate the Proposed Declaratory Ruling via email to the list on file of all persons who have requested notice of declaratory rulings, with a comment period to close at 11:59 p.m. on Wednesday, March 13, 2019, with consideration of any received comments at the Wednesday, March 20, 2019 Commission meeting.

Salvatore Bramante – *Vice Chair* Date
By Order of the Commission

## PROPOSED DECLARATORY RULING 2019-02:

### *The Use of Campaign Funds to Offset Candidate's Childcare Costs*

On October 19, 2018, the State Elections Enforcement Commission (the ''Commission'') received a request for a Declaratory Ruling by Caitlin Clarkson Pereira, a candidate for state representative during the 2018 election cycle, as to whether public grant funds that her candidate committee received to run for office through Connecticut's clean elections program, the Citizens' Election Program (''CEP''), could be used to cover childcare costs while she was campaigning. The Petitioner had asked this question of Commission staff during the election cycle and, in Opinion of Counsel 2018-05: *Use of Public Funds to Offset Candidate's Child Care Costs*, issued on August 9, 2018, was told that such costs were not permissible for CEP candidates to pay out of clean elections grant monies.

In her Declaratory Ruling request, the Petitioner argues that the opinion of counsel misinterpreted the laws and regulations and asks that the Commission reconsider the result.

At its regular meeting on November 14, 2018, the Commission voted to initiate a declaratory ruling proceeding responsive to this Petition and the Commission now issues the following guidance.

**Executive Summary**

Campaign funds generally may be spent to pay for childcare costs incurred by a candidate as a result of campaigning as long as such payments are (1) a direct result of campaign activity which would not exist irrespective of the candidate's campaign; (2) reasonable and customary for the services rendered; and (3) properly documented by the campaign.

For candidates participating in the CEP, however, campaign funds may not be spent on such costs after the campaign has been approved to receive grant monies from the CEF (''Citizens' Election Fund'').

**I. Applicable Law**

In general, for expenditures to be considered permissible, they must be made for the lawful purpose of the committee, and, for a candidate committee, the lawful purpose means ''the promoting of the nomination or election of the candidate who established the committee.'' General Statutes § 9-607 (g).

General Statutes § 9-607 (g) (4) further states:

> [E]xpenditures for ''personal use'' include expenditures to defray normal living expenses for the candidate, the immediate family of the candidate or any other individual and expenditures for the personal benefit of the candidate or any other individual as defined in [General Statutes § 9-607 (g) (2)]. ***No goods, services, funds and contributions received by any committee under this chapter shall be used or be made available for the personal use of any candidate or any other individual.*** No candidate, committee, or any other individual shall use such goods, services, funds or contributions for any purpose other than campaign purposes permitted by this chapter.
>
> (Emphasis added.)

For candidates who have been approved to receive a grant from the CEF, however, the rules are stricter than what is laid out in General Statutes § 9-607 (g) alone. CEP grant recipients must additionally abide by a set of regulations, including Regs. Conn. State Agencies § 9-706-1 (a), which state:

> ***All funds in the depository account of the participating candidate's qualified candidate committee***,[1] including grants and other matching funds distributed from the Citizens' Election Fund, qualifying contributions and personal funds, shall be used ***only for campaign-related expenditures made to directly further*** the participating candidate's nomination for election or election to the office specified in the participating candidate's affidavit certifying the candidate's intent to abide by Citizens' Election Program requirements.
>
> (Emphasis added.)

The CEP regulations further provide:

> (b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following citizens' election program requirements. Participating candidates and the treasurers of such participating candidates shall ***not*** spend funds in the participating candidate's depository account for the following:line
>
> 1. ***Personal use***, as described in section 9-607(g)(4) of the Connecticut General Statutes; [and]line
>
> 2. The ***participating candidate's personal support or expenses***, such as for personal appearance or the candidate's household day-to-day food items, supplies, merchandise, mortgage, rent, utilities, clothing or attire, ***even if such personal items*** (such as the participating candidate's residence, or business suits) ***are used for campaign related purposes***; . . . .

Regs. Conn. State Agencies § 9-706-2 (b) (Emphasis added.)

**II. Commission Staff's Advice in Opinion of Counsel 2018-05**

In Opinion of Counsel 2018-05, Commission staff cited the above and referenced other scenarios in which it has been asked about the limits on personal use under the Program:

> We have been asked, for example, whether public funds could be used to cover part of the mortgage payments for a family member's house that was used as campaign headquarters, to cover a portion of the candidate's personal cell phone bill since it was used to make calls to campaign staff and voters, and to pay for the candidate's clothing which was purchased with campaign engagements in mind. We have looked at whether public funds could be spent to replace the tires of a car that suffered wear and tear crisscrossing the state during a campaign. We have been asked whether CEP funds could be used to pay for a candidate's

[1] A ''qualified candidate committee'' is defined as:

> A candidate committee (A) established to aid or promote the success of any candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, and (B) ***approved by the commission to receive a grant from the Citizens' Election Fund*** under section 9-706.§

General Statutes § 9-700 (12) (emphasis added).

flight to Amsterdam in order to attend a conference the subject of which was part of his campaign platform and would result in pictures he could use in mailers.

Staff explained that while it was sympathetic to these requests and understood the argument that the personal items were being used for campaign-related purposes, it was concerned with the regulations mandating that funds were not to be spent on items that are personal in nature, *even if campaign-related*, since the regulations specifically state that grant funds were to be used ''only for campaign-related expenditures made ***to directly further***'' the candidate's nomination for election or election to the specified office. Regs., Conn. State Agencies § 9-706-1 (a) (emphasis added). Under the regulations, ***even if personal items are used for campaign related purposes,*** costs for personal support or expenses may not be paid out of grant monies. Because of these regulations, staff opined that CEP grant monies should not be used to pay for a participating candidate's childcare costs.

**III. Commission's Prior Decisions & Other Precedent**

The Commission has considered the spending of campaign funds for personal use to be a serious issue. In one matter it assessed a fine equivalent to twice the amount of what a CEP candidate committee paid for clothing and other personal items in violation of the personal use statutes and CEP regulations. *See In re Audit Report for Friends of Gerry Garcia*, File No. 2012-072. The purchase of clothing outside of the CEP has also been found to be personal use. For example, in *In the Matter of a Complaint by John Bysko, et al.*, Old Lyme, File No. 2004-170, the Commission found a violation of the prohibition against personal use after an exploratory committee used funds to pay for the candidate's shoes and clothing. In another case, *In the Matter of a Complaint by Adam Gutcheon*, Windsor, File No. 2002-192, the Commission ordered the respondent candidate to forfeit the equivalent of what his committee had spent on clothing out of campaign funds. *See also In the Matter of Complaints by Tom Kelly*, Bridgeport, File Nos. 2011-090 & 097 (finding that political committee's reimbursements to chairperson for telephone, computer, and internet access bills, without any records substantiating relation to committee, violated personal use prohibition); *In the Matter of Government Action Fund (GAF PAC)*, File No. 2008-003 (concluding that a political committee's payment of chairman senator's personal cell phone bill and his personal credit card without adequate documentation, as well as payments for him to attend legislative conferences, raised personal use concerns).

Over forty years ago, the Commission did, however, address the permissibility of paying for childcare with privately raised campaign funds. In 1976, the Commission issued an advisory opinion that found the cost of care for a dependent to be part of traveling expenses and therefore a permissible expenditure. *See* Advisory Opinion 1976-23: *Cost of Care for Dependents*. The Commission considered the fact that the statutes permit a campaign funds to be used to pay for the candidate's expenses for postage, telegrams, telephoning, stationery, expressage, traveling, meals and lodging provided that the candidate adequately documented the expenses. The Commission then reasoned that freeing a candidate to travel by paying for his or her childcare was as necessary as procuring a bus ticket or renting a car since ''if such care were not purchased, the candidate, presumably, would not be able to travel to attend whatever campaign functions were required, as surely as if the candidate could not purchase a ticket on public transportation.'' *Id.*

We also looked to other jurisdictions with clean elections programs that provide grant monies. Of the ten that provided responses to Commission staff's survey, four of them – Massachusetts, West Virginia, Oakland, CA, and Tucson, AZ – would

not allow campaign funds to be used for childcare. Two jurisdictions – Maryland and Minnesota[2] – allow public funds to be spent on childcare costs. Three jurisdictions have not opined on the subject – Maine, Michigan, and Seattle, WA. New York City's program has the most comprehensively articulated approach – allowing for privately raised funds to be used when certain conditions are met but prohibiting the use of matching grant monies given by the state.[3]

## IV. Analysis

While the Petitioner's request was limited to the use of clean election grant monies, the Commission will take this opportunity to point out that it is not retracting its 1976 advisory opinion and that it would be a permissible expenditure of *privately raised* campaign funds to cover the costs of childcare incurred by a candidate while campaigning as long as such payments are: (1) a direct result of campaign activity which would not exist but for the candidate's campaign; (2) reasonable and customary for the services rendered; and (3) properly documented by the campaign.[4]

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[2] Minnesota has a specific statute that recognizes the cost of childcare for a candidate's children while campaigning as a legitimate expenditure, whether public or general campaign funds are used. *See* Minn. Stat. § 10A.01, subd. 26 (11).

[3] Prior to 2018, New York City's matching funds program had a specific statutory provision that prohibited the use of campaign funds to cover childcare costs. Section 3-702 (21) (b) of the administrative code of the City of New York had provided: ''Campaign funds shall not be converted by any person to a personal use which is unrelated to a political campaign. Expenditures not in furtherance of a political campaign for elective office include the following: . . . (6) Tuition payments and childcare costs; . . . .''

After a series of hearings in 2018, the New York City legislature passed legislation on October 31, 2018 to permit campaign funds to be used for certain childcare expenses provided specified criteria had been met. Specifically, the language modified subdivision 21 of section 3-702 to permit campaign funds to be spent on:

> 13. Childcare services, provided that: (i) the candidate has received an approved statement of campaign childcare eligibility, pursuant to subdivision 23 of this section, demonstrating that such services are for a child or children under thirteen years of age for whom the candidate is a primary caregiver and that either the need for such services would not exist but for the campaign or the candidate has experienced a significant loss of salary or wage earnings that would not have occurred but for the campaign; and (ii) that expenditures for such services may only be incurred during the calendar year of the election, and the year immediately preceding the calendar year of the election, and may not be incurred after such election is held.

The legislation further provides that such childcare expenses are exempted from the expenditure limit for the first $20,000 spent in the election year. Notably, the legislation only applies to ***non-public*** campaign funds and only during the calendar year of the election and the immediately preceding year.

*See* A Local Law to Amend the Administrative Code of the City of New York, in Relation to Permitting the Use of Campaign Funds for Certain Childcare Expenses, File No. 0899-2018.

[4] When a committee anticipates it will pay someone over $100 for services, it is required to have a written agreement in place which lays out the nature and duration of the fee arrangement and describes the scope of the work to be performed before any work is begun, and is also required to maintain records documenting the actual work performed or services rendered. *See* Regs., Conn. State Agencies § 9-607-1. In this particular case, where personal use concerns are raised even if the payment is well below $100, the Commission still urges some base level documentation of the childcare services being provided at all amounts, such as the dates and hours worked, the associated fee, and the campaign activity that necessitated the childcare.

As far as whether CEP grant monies may be used to cover a candidate's childcare costs while campaigning, the Commission confirms its staff's advice that under the current law and regulations, once a committee is approved to receive CEP grant funds, its campaign funds may not be used to pay for such expenses. The regulations that come into play once a campaign has been approved for a grant state that all expenditures must ''directly further'' the candidate's campaign and ''even if'' personal items are used for campaign related purposes, costs for personal support or expenses may not be paid out of grant monies.

The Commission reminds candidates that these regulations only come into play once the candidate committee has been approved to receive a grant. As such, the candidate committee of a candidate intending to participate in the CEP may pay for the candidate's childcare expenses with potentially qualifying contributions raised to demonstrate adequate public support in connection with the grant application, provided the three criteria listed above have been met. This may occur up until the committee is approved for a grant.

**V. Conclusion**

Privately raised campaign funds may generally be spent to pay for childcare costs incurred by a candidate as a result of campaigning as long as such payments are (1) a direct result of campaign activity which would not exist but for of the candidate's campaign; (2) reasonable and customary for the services rendered; and (3) properly documented by the campaign.

In the context of candidates participating in the CEP, campaign funds may be spent on such costs up until the campaign has been approved to receive a clean elections grant from the CEF. Once a committee is approved for a grant, monies may not be spent on childcare.

A change in legislation would be needed to alter this outcome. If the legislature chooses to consider allowing CEP grant monies to be used for costs such as childcare, the Commission would recommend looking to New York City's clean elections program for its recent handling of the issue. While New York City does not ultimately allow such an expenditure out of matching grant funds, the documentation requirements and restrictions recently adopted into its law are instructive.

This constitutes a declaratory ruling pursuant to General Statutes § 4-176. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

Adopted this __th day of March, 2019 at Hartford, Connecticut by a vote of the Commission.

Anthony J. Castagno, *Chairman*