NOTICES OF CONNECTICUT STATE AGENCIES

STATE ELECTIONS ENFORCEMENT COMMISSION

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DECLARATORY RULING 2019-03:

Secondary Payees and Polling Expenditures

On February 26, 2019, the State Elections Enforcement Commission (the ''Commission'' or ''SEEC'') received a request for a Declaratory Ruling from Attorney Derek E. Donnelly (the ''Petitioner'') regarding the reporting of expenditures when a campaign is paying a provider for campaign services and the campaign knows that the provider is paying a subvendor on behalf of the committee. These subvendors are referred to as secondary payees.

Campaign finance laws entrust the control of committee funds to the treasurer and require effective and accurate disclosure by treasurers of both monies raised and monies spent. The Petitioner focuses on the language in General Statutes § 9-608 (c) (l) (B) which includes a requirement for the treasurer to report ''***an itemized accounting of each expenditure***, if any, including the full name and complete address of each payee***, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity***, ***the amount and the purpose of the expenditure*** . . . .''

On March 20, 2019, the Commission voted to initiate a declaratory ruling proceeding responsive to this Petition. This Declaratory Ruling answers the Petitioner's questions and advises treasurers and committees regarding disclosure of secondary payee information.

Executive Summary:

The over-arching principle informing our guidance in this Ruling—that disclosure needs to be real and meaningful—is prescribed in the provisions governing *all* candidate committees: treasurers must report expenditures and keep certain internal records for four years, including, but not limited to, contemporaneous invoices, receipts, bills, statements, itineraries, or other written or documentary evidence showing the campaign or other lawful purpose of the expenditure. The keeping of detailed, contemporaneous records of services performed is of even greater importance when spending public funds. The financial disclosure statements that report campaign expenditures and contributions are the backbone of the campaign finance system in Connecticut.

One of the developments that has become apparent since the SEEC began reviewing candidate committees post-election a decade ago is the proliferation of *service* providers that are enlisted to procure other products or other services. For

example, a consultant may be hired to design and direct a campaign's communications program and, in that role, may procure lawn signs, or have mailers printed, or hire a web designer. The fact that a consultant (a service provider) is used does not free a treasurer from the responsibility of keeping and reporting detailed records of the services provided. In fact, one detail is explicitly required by statute in such situations: disclosure of the *secondary payee*.

When must the treasurer do this? To the extent that the treasurer has knowledge that a consultant or other service provider has hired a subvendor on behalf of the committee, disclosure is required. If the treasurer is not sure whether a subvendor was hired on the committee's behalf, she has a duty to inquire.

In most circumstances it would be enough to ask for and to rely on the response from a consultant; however, in some instances a good faith effort to obtain secondary payee information might involve more. The Commission is reasonable and applies the same common sense principles used generally in the marketplace.

Just as a homeowner might hire a student to whitewash her fence once with far less inquiry than would be used when hiring a contractor for a $100,000 renovation of her home, in some circumstances a good faith inquiry by a treasurer may involve more than a single question. Such situations may include:

- When the amount being paid to the campaign services provider, relative to overall campaign expenditures, is substantial;
- When the treasurer or candidate can gain the information easily due to a close relationship with the campaign services provider or its employees, such as when former colleagues or family members of the treasurer or candidate are involved with the campaign service provider being hired;
- When the treasurer can find the information or should know to ask for it based on other reports that the treasurer had filed or other invoices that the treasurer has received;
- When the treasurer has been put on notice of problems as a result of media coverage questioning their committee's prior filings, advice given as part of the Commission's post-election review of a previous committee for which he was treasurer, or via an enforcement action involving that campaign service provider; and
- When there are indications in the campaign service provider's contracts or documentation that they are likely using secondary payees.

The treasurer is required by law to disclose secondary payees and it is currently the treasurer that bears liability for failure to do so. While a campaign services provider who does not accurately disclose secondary payees may not be directly liable for penalties under the campaign finance law, such provider may subject its clients to increased liability or lose clients whose due diligence reveals that the treasurer cannot both comply with campaign finance statutes and continue to approve payments to the provider due to the provider's refusal to accurately disclose secondary payee information.

This Declaratory Ruling responds to specific questions asked by the petitioner. Additional guidance regarding compliance with documentation and reporting requirements for campaigns using consultants or other service providers who use secondary payees on behalf of the campaign may also be found in the application of those rules through consent orders and findings and conclusions, which are searchable on our website.

Pertinent Law and Precedent:

Only a treasurer may authorize committee expenditures. General Statutes § 9-607 (a). Furthermore, payments by committees must be made in accord with that authorization. General Statutes § 9-607 (d). Treasurers are charged with certain duties including making and reporting expenditures and keeping certain internal records for four years, including, but not limited to, contemporaneous invoices, receipts, bills, statements, itineraries, or other written or documentary evidence showing the campaign or other lawful purpose of the expenditure. General Statutes §§ 9-606 (a) & 9-607 (f).

In addition, the law strictly forbids siphoning campaign funds for personal use. General Statutes § 9-607 (g) (4); Regs. Conn. State Agencies §§ 9-706-2 (b) (1) & (2) (prohibiting Citizens' Election Program (''CEP'') grant recipients from using campaign funds for personal use as well as the candidate's ''personal support or expenses . . . even if such personal items . . . are used for campaign related purposes'').

Treasurers of CEP candidates whose committees are approved for a grant have stricter limitations, and may only spend their funds ''for campaign-related expenditures made to directly further the participating candidate's nomination for election or election.'' Regs. Conn. State Agencies § 9-706-1 (a). Moreover, for CEP grant recipients: ''The absence of contemporaneous detailed documentation indicating that an expenditure was made to directly further the participating candidate's nomination for election or election shall mean that the expenditure was not made to directly further the participating candidate's nomination for election or election, and thus was an impermissible expenditure.'' Regs. Conn. State Agencies § 9-706-1 (b). An expenditure is also impermissible if it is in excess of the usual and normal charge for such goods and services. Regs. Conn. State Agencies § 9-706-2 (b) (6). If a consultant or vendor provides goods or services for free or at a special discount, this would result in an impermissible contribution. General Statutes §§ 9-601a (a) (1) & 9-613 (a).

Candidate committees may spend campaign funds to pay for campaign workers and professional services. General Statutes § 9-607 (g) (2) (P); *see also* Regs., Conn. State Agencies § 9-706-2 (a) (4). This includes services of pollsters, graphic or web designers, strategists, consultants providing campaign management services such as selecting and managing vendors, attorneys, accountants, or other professional persons assisting with campaign activities. Agreements with campaign service providers are required to be made in writing, ahead of time and spell out the amount to be paid, as well as the nature, scope and duration of the duties to be performed. Regs. Conn. State Agencies § 9-607-1.

Treasurers must report all expenditures, including those for campaign service providers such as pollsters or consultants with ''an itemized accounting of each expenditure, if any, including the full name and complete address of each payee, including secondary payees whenever the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity, the amount and the purpose of the expenditure, the candidate supported or opposed by the expenditure, whether the expenditure is made independently of the candidate supported or is an in-kind contribution to the candidate, and a statement of the balance on hand or deficit, as the case may be . . . .'' General Statutes § 9-608 (c) (l) (B).

These laws all work together to not only require treasurers to perform a duty but also to assist them in doing so. For example, gathering the back-up documentation

such as receipts allows a treasurer to confirm that a payment to a campaign worker or consultant is for a permissible purpose. Obtaining information about secondary payees serves a similar purpose in some situations and in others allows the treasurer to confirm that the committee is being charged market value or that costs are not being defrayed through improper discounts.

The Commission has had cases involving failure to itemize expenditures and disclose secondary payees and to provide the proper expenditure code for a poll. *See In the Matter of a Complaint by Karen Solich*, File No. 2006-264, Agreement Containing Consent Order and Payment of a Civil Penalty (November 15, 2006) (henceforth order for failure to report secondary payees involving a poll paid for by a committee worker). Pollsters are merely one sort of campaign services provider and the disclosure rules are not limited to pollsters. *See e.g., In the Matter of a Complaint by Wilm Donath and Carola Cammann*, Stamford, File No. 2013-008, Agreement Containing Consent Order (July 17, 2013) (finding violation where treasurer paid $4,000 to a direct mail vendor but failed to include secondary payee reporting). The guidance offered by the Commission therefore applies to reporting of ***all*** secondary and primary payees.

Responses to Petitioner's Questions:

With this initial background in mind, we turn to the Petitioner's questions.

(1) Does the use of a call center (a subcontractor, subvendor, or entity) not owned by the primary payee (polling company) require disclosure by the treasurer in the listing of secondary payee?

If a political polling company contracts with a call center on behalf of the committee to perform data collection for their polls, the call center would be a secondary payee. If, on the other hand, the polling company utilizes its own employees to gather data then it would not have secondary payees.

The Commission has long advised of the necessity of disclosing secondary payees. Even before the legislature codified the secondary payee disclosure requirement in Public Act 04-91, the SEEC and the Secretary of the State both interpreted the expenditure disclosure language requiring a treasurer to itemize each expenditure and to attribute the appropriate expenditure code to mean that the treasurer must disclose the underlying purpose and ultimate beneficiary, or secondary payee, as the case may be, of the expenditure.[1] In the 1990s, the SEEC guidebooks began explicitly stating that secondary payee disclosure is required where a committee pays a consultant who makes payments to other vendors on behalf of the committee. *See e.g., A Guide for Ongoing Political Committees Established by a Business Entity, Organization, or Two or More Individuals for Political Activities)* (rev. July 1996) (''If a consultant is paid by the committee to provide services, the disclosure of each payment to the consultant must also include an attached itemized schedule of the payments the consultant has made to other vendors on behalf of the committee.''). The 1997 SEEC versions of *A Guide for Candidates for State Office, General Assembly, Sheriff and Judge of Probate* (rev. July 1997) and *A Guide for Municipal Candidates* (rev. June 1997) contained the same language, and added the term ''secondary payee.'' The 1998 SEEC guide, *A Guide for Party Committees* (rev. June 1998), contained this same language.

[1] At this time, the language required disclosure including: ''an itemized accounting of each expenditure, if any, inclu440ztding the full name and complete address of each payee, the amount and the purpose of the expenditure . . . '' General Statutes § 9-333j (c) (l) (C) (rev. 1995).

Starting in 1998, the Secretary of the State's Form ED-45 (disclosure statement for candidate, party, and political committees) mirrored this interpretation.[2] The forms contained a column for secondary payee disclosure, and provided clear instructions for secondary payee disclosure and purpose codes (so that the ultimate campaign purpose of each expenditure is transparent).[3] Also in 1998, SEEC staff issued an opinion of counsel to a state central party chair opining that disclosure of secondary payees is required when committees utilize consultants who pay subvendors:

> The secondary payee requirements typically apply to reimbursements made by any committee to a committee worker, reimbursements made by a candidate or exploratory committee to the candidate who established the committee, committee payments to credit card companies and to expenditures by any committee to a professional consultant or similar person where the consultant has paid a third party for goods or services which benefited the committee and which comprised the original expenditure made by the committee. For example, if Connecticut Republicans paid a consultant who, in turn, paid the Hartford Courant for an advertisement in the course of rendering services to the State Central Committee (and the cost was $100 or more), the treasurer would be required to disclose both the payment to the consultant, and the payment to the Hartford Courant as a secondary payee to comply with Section 9-333j.

SEEC Opinion of Counsel 1998-31 (June 25, 1998); *see also In a Matter of a Complaint by Tim Wrightington*, West Haven, File No. 2001-107, Agreement Containing Consent Order to Henceforth Comply with General Statutes *§ 9-333j(c)(1)(D) and 9-333j(c)(1)(C)* (Apr. 27, 2001) (finding violation of requirement to itemize expenditures and use the ultimate underlying purpose code where treasurer failed to disclose secondary payees/beneficiaries related to disclosure of primary credit card payment and reimbursement to committee worker); *In the Matter of a Complaint by Henry J. Zuella*, Oxford, File No. 2003-171, Agreement Containing Consent Order and Payment of a Civil Penalty (Oct. 29, 2003) (assessing civil penalty relating to numerous violations of the statutes, including failure to disclose secondary payees for reimbursements to committee workers).

In 2004, the legislature codified the interpretation that requires treasurers to disclose secondary payees where the principal or primary payee pays another person or entity (a secondary payee) for committee goods or services. *See* Public Act 04-91, *An Act Prohibiting Personal Use of Campaign Funds and Concerning Retention of Internal Records and Reporting Requirements Regarding Party-Building Activi-*

[2] Prior to December 31, 2006, the Office of the Secretary of the State (''SOTS'') was in charge of promulgating disclosure forms and was the filing repository for certain types of committees.

[3] The 1998 Secretary of State disclosure form contained the following instructions:

> PC PROFESSIONAL CONSULTANTS. Use ''PC'' for salaries, fees, and commissions to professional consultants, including attorneys, accountants, advertising similar professionals. If the payment to the professional consultant includes known charges which the professional consultant has already made or will make to a secondary payee, that is, to another vendor (such as a pollster or commercial advertiser), following completion of all of the information contained in this horizontal row, go immediately to the next and succeeding horizontal row(s) and follow the instructions for a secondary payee ''SP'' (see below).
>
> SP-SECONDARY PAYEE OR BENEFICIARY. Use ''SP'' as a coded purpose for an expenditure whenever the reported expenditure to the primary or principal payee is known to include charges which the primary payee has already paid or will pay directly to another person, vendor or entity. . . . For example, if a professional consultant made a payment to the Hartford Courant for a full page ad, the Hartford Courant, Broad Street, Hartford will be set forth in the name & address column, and the purpose of the expenditure column will be ''SP-A'' (reflecting the fact that a payment was made by the professional consulting firm to the Hartford Courant for an advertisement).. . . .

ties. This amendment to the law stemmed, in part, from a SEEC investigation, in which it was found that Governor Rowland charged approximately $6,000 worth of personal expenses on the State Republican Party committee credit card. *See* House Tr. April 22, 2004 (comments of Rep. O'Rourke) at 287; *see Complaint of Tom Swan*, Coventry, File Nos. 2003-147 & 2003-147.1, Stipulated Agreements and Orders to Resolve Complaint Concerning the Use of the State Republican Party Credit Card by Party Officials (Aug. 27, 2003) (finding violations where state central committee provided committee credit card to Governor Rowland because, although the itemization on the monthly credit card statements was sufficient for secondary payee disclosure purposes, backup documentation to substantiate the lawful purpose of each expenditure, for travel hotel, food and beverage and entertainment expenses, was missing or inadequate). The legislative history indicates that one core purpose of this codification was to require treasurers to obtain and maintain internal records to substantiate the lawful purpose of expenditures made via a primary payee to a secondary payee. *See* House Tr. April 22, 2004 (comments of Rep. O'Rourke) at 288.[4]

Thus, to the extent there is knowledge that a subvendor has been hired on behalf of the committee, secondary payee disclosure is required. If the treasurer is not sure whether a subvendor was hired on the committee's behalf, she should inquire, as further discussed in the response to Question 3. *See, e.g., In the Matter of a Complaint by Dana D'Angelo Moreira*, File No. 2005-279, Agreement Containing Consent Order, Forfeiture and Payment of a Civil Penalty (July 19, 2006) (assessing a penalty for, among other things, failing to disclose the secondary payee information or reflect the ''original purpose'' of the expenditures for gas and cell phones that resulted in reimbursements to candidates).

(2) How is the phrase ''known to include'' defined under General Statutes § 9-608 (c) (1) (B)? Does it include common knowledge?

The Commission has interpreted the language ''known to include'' in General Statutes § 9-608 (c) (1) (B) to mean ''known or should have known.'' *See, e.g., In re: SEEC Initiated Investigation of the Working Families Campaign Committee*, *et al.*, File No. 2013-094, Agreement Containing a Consent Order (Feb. 19, 2014) (''The [Respondent] agrees and understands that, for purposes of the reporting requirements of General Statutes § 9-608 (c) (1) (B), known secondary payees shall include, but not be limited to: . . . any and all persons known or that should be known by [committee] officers or agents to be secondary payees . . . .''); *In the Matter of Government Action Fund*, File Nos. 2008-003 & 2008-003.1, Agreement Containing Consent Order, Forfeiture and Payment of a Civil Penalty (May 6, 2009)

[4] The legislature also strengthened the requirements for receiving and preserving internal records to substantiate the lawful purpose of each expenditure:

> (f) The campaign treasurer shall preserve all internal records of transactions required to be entered in reports filed pursuant to section 9-333j, as amended by this act, for four years from the date of the report in which the transactions were entered. Internal records required to be maintained in order for any permissible expenditure to be paid from committee funds include, but are not limited to, contemporaneous invoices, receipts, bills, statements, itineraries, or other written or documentary evidence showing the campaign or other lawful purpose of the expenditure. If a committee incurs expenses by credit card, the campaign treasurer shall preserve all credit card statements and receipts for four years from the date of the report in which the transaction was required to be entered.

Section 1 of Public Act 04-94 amending General Statutes § 9-607 (f) (formerly § 9-333i (f) (the underlined language indicates the language added in the Public Act). This requirement means that a treasurer is required to obtain sufficient documentation from a primary payee, such as a consultant, to substantiate any payments made by the primary payee to a third party vendor or entity items or services purchased on behalf of the committee.

(finding violations for failure to disclose secondary payees, and that based on previous newspaper articles questioning the committee's substantial credit card bills, as well as post-election reviews of previous committees on which the treasurer served, put the respondents on notice that they ''knew or should have known'' the requirements to disclose expenditures, including secondary payees, for credit card expenditures).

There is similar language in General Statutes § 9-608 (c) (1) (F) which provides: ''Each statement filed under subsection (a), (e) or (f) of this section shall include, but not be limited to: . . . (F) for each individual who contributes in excess of one hundred dollars but not more than one thousand dollars, in the aggregate, ***to the extent known***, the principal occupation of such individual and the name of the individual's employer, if any . . . .'' The Commission and staff have also interpreted this language to have a ''knew or should have known'' element as well. *See, e.g.,* SEEC Opinion of Counsel 1998-31 (June 25, 1998); *In the Matter of a Complaint by Dana D'Angelo Moreira*, File No. 2005-279, Agreement Containing Consent Order, Forfeiture and Payment of a Civil Penalty (July 19, 2006).

Treasurers are therefore required to make a good faith effort or best effort to obtain secondary payee information.[5]

For the purposes of this declaratory ruling request, the Commission would consider the phrase ''common knowledge'' (which is the language used by the Petitioner in his request) to be synonymous with the phrase ''known or should have known''.

(3) Does a treasurer have an affirmative obligation to determine whether secondary payees exist? If so, what are the requirements to do so?

As just discussed, General Statutes § 9-608 (c) (1) (B) requires the treasurer to disclose secondary payees when she knew or should have known that the primary payee made or will make such secondary payments. To that end, the treasurer is required to make a good faith effort to obtain secondary payee information. In other words, treasurers should perform reasonable due diligence to determine whether a campaign service provider has hired secondary payees on behalf of their committee. In order to comply with the disclosure requirements regarding the purpose of the expenditure and payments to secondary payees, treasurers cannot just hand off funds to the campaign service provider, disclose a single lump sum expenditure to the provider, and be done. Rather, treasurers must exercise care to make sure that all

[5] Other jurisdictions with subvendor/secondary payee disclosure provisions apply similar standards. *See* California Fair Political Practices *Advice Letter* File No. I-90-107 (instructing treasurers must use reasonable diligence to obtain and disclose subvendor information, and that merely sending a letter to a consultant requesting subvendor information does not satisfy this duty if the consultant fails to reply or provide the requested information, and that subvendor disclosure is not required for payments made by a printer for items such ink, paper, or staff to produce the printing because such items are part of the printer's normal operating expenses); Massachusetts Office of Campaign and Political Finance, *Interpretive Bulletin OCPF-IB-10-04* (instructing that if consultant does not provide subvendor information, the committee must contact the consultant in writing to inquire whether the consultant has used subvendors, and the consultant must either provide subvendor information or provide a written statement to the committee stating that no subvendors were used); New York City Campaign Finance Board, Guidelines for Staff Recommendations for Penalty Assessments for Certain Violations, 2017 Citywide Elections (rev. Oct. 18, 2018) ''(Compliance with [the New York City subvendor disclosure and recordkeeping] requirement is accomplished by either submitting a subcontractor disclosure form completed by the vendor (whether or not the vendor in fact subcontracted goods or services of more than $5,000), or by submitting evidence of a good-faith attempt to contact the vendor to request that the vendor complete the form.''); *see, e.g.,* Baez 2009, Final Determination (N.Y.C. Campaign Fin. Bd Oct. 18, 2012) *available at* https://www.nyccfb.info/PDF/reports/FBD/FBD-2009-mbaez-591.pdf (assessing penalty when campaign knew or should have known vendor paid a subcontractor but did not provide subcontractor disclosure form for the vendor or evidence of good faith attempt to obtain such information).

committee funds are being spent for the committee's lawful purpose, market value is being paid, and that they receive the required backup documentation to substantiate such payments made on behalf of the committee and confirm the proper expenditure code.

The Commission is reasonable and applies common sense to these situations and the resolution of cases involving these provisions. By way of comparison, a homeowner hiring a contractor for a $100,000 renovation might talk with a building inspector who will know which home renovation contractors routinely meet code requirements, check in with their state's consumer protection agency and local Better Business Bureau to make sure the contractor does not have a history of disputes with clients, and visit a current job site to see how the contractor works and verify that the job site is neat and safe and workers are courteous and careful with the homeowner's property.[6] That same homeowner would be justified in simply paying $20 to a passing student to shovel the driveway on a snowy afternoon with no further inquiry but a quick conversation.

So too would the level of inquiry necessary for a treasurer approving the payment of a single $1,000 poll be significantly different from that expected of a treasurer paying a majority of a CEP grant to a single service provider. The amount of inquiry that is necessary depends on the situation.[7]

First and foremost, if the amount being paid to a campaign services provider, relative to the campaign's overall expenditures, is high, and there has been no mention of secondary payees from the campaign services provider, the treasurer would want to inquire further.

If a treasurer or candidate should be able to obtain the information easily due to a close relationship with the campaign services provider or its employees, such as when former colleagues or family members of the treasurer or candidate are involved with the campaign service provider being hired, then it is expected that the treasurer will have the information necessary to report accurately. *See, e.g., In the Matter of a Complaint by Dana D'Angelo Moreira*, File No. 2005-279, Agreement Containing Consent Order, Forfeiture and Payment of a Civil Penalty (July 19, 2006) (assessing fines and forfeitures for violations including failure to report employer and occupation to the extent known when the information was held by candidates and their own relatives).

Similarly, if the treasurer should have known to ask for the information based on other reports that the treasurer has filed or other invoices that the treasurer has received, then the treasurer would be expected to marshal the information available to them and follow up to ensure accurate reporting. *Id*. (noting the treasurer could

[6] https://www.thisoldhouse.com/ideas/top-8-pro-tips-how-to-hire-contractor.

[7] *Cf. In the Matter of a Complaint by Steven Sheinberg*, File No. 2016-077B, Agreement Containing a Consent Order (December 20, 2017) (henceforth but no penalties assessed where failure to report secondary payees was honest mistake due to fact that expense was made before he took over from very ill treasurer*), In the Matter of a Complaint by Elizabeth Rhoades*, Stafford Springs, File No. 2009-051, Findings and Conclusions (September 22, 2010) (taking no further action where the treasurer failed to report secondary payees for reimbursements to committee workers but investigation showed every expenditure was for permissible purpose and the treasurer had documents supporting the payment*); In the Matter of a Complaint by Carl Ruggerio*, East Haven, File No. 2007-368, Agreement Containing Consent Order (May 14, 2008) (assessing penalties where treasurer reported nine mailers as approximately $25,000 lump sum and failed to report $22,500 to printer as secondary payee with the expenditure code appropriate to the ultimate underlying purpose for each separate mailing); *Complaints of Tom Kelly*, Bridgeport, File Nos. 2011-090 and 097, Agreement Containing Consent Order (Feb. 15, 2012) (assessing fines and forfeitures for failure to disclose secondary payees where over 50% of the committee expenditures involved inconsistent and often missing secondary payee reporting).

also have found some of the information necessary to report employer and occupation when the information for some contributors could be found on other reports).

Other facts that might indicate that greater diligence in compliance is required include when a treasurer has been put on notice of problems. For example, the Commission has found that a treasurer should have known to correct disclosure issues, including the reporting of secondary payees, as a result of media coverage questioning their committee's prior filings. *See In the Matter of Government Action Fund*, File No. 2008-003, Agreement Containing Consent Order, Forfeiture and Payment of a Civil Penalty re: Ceneviva (May 6, 2009) (newspaper article questioning prior 2003 late reporting of credit card bills put the Respondent on notice that he ''knew or should have known to be more attentive to the expenditures and reporting requirements'').

Similarly, if the campaign services provider being considered was given advice as part of the Commission's post-election review of the candidate's prior campaign or that of another campaign which used the same provider and with which the candidate or treasurer was involved, that would provide the treasurer with notice that she ought to have a heightened level of diligence with respect to those reporting issues. *See In the Matter of Government Action Fund*, File No. 2008-003, Agreement Containing Consent Order, Forfeiture and Payment of a Civil Penalty re: Ceneviva (May 6, 2009) (finding significant penalties warranted when treasurer failed to show good faith in attempting to comply after receiving two post-election reviews citing many of the violations repeated in the campaign under investigation); *In the Matter of a Complaint by Joseph Pinto III*, File No. 2006-190, Agreement Containing Consent Order (April 11, 2007) (assessing penalties for reporting errors including failure to disclose secondary payees when earlier municipal audit program findings had instructed treasurer on secondary payee requirements).

In addition, irregularities in paperwork, such as late billing, may also indicate the need for an increased inquiry, as that may indicate a lag time as the primary campaign services provider waits to be billed by the secondary payee so that he can add his own charges and pass on the costs. A refusal to quote prices of certain items to be provided ahead of time or an odd structuring or layering of contracts so that the amount to be paid for some services is clear but the amount to be paid for other services is not may also indicate that the contracting primary provider is going out to market to identify secondary subvendors.

Treasurers should seek the information necessary to make the required reports accurately. In some cases, more than a written request for the information may be required. *See In the Matter of a Complaint by James W. Bruno*, File No. 2006-153, Agreement Containing Consent Order and Payment of a Civil Penalty (August 6, 2008) (penalties assessed where treasurer claimed he had made written requests for information but there were multiple and repeated failures to provide employer and occupation information to the extent known). Sometimes, as with consultants providing strategy and communications advice and receiving a large portion of the overall funds spent, a heightened level of care may be necessary to assure accurate disclosure. For example, Commission staff has provided sample contract language to assist treasurers in obtaining secondary payee information from consultants, particularly when the consultant is being paid a majority of the campaign funds to essentially function as a campaign manager designing and implementing communications strategies.

As with the aforementioned homeowner hiring a contractor for a $100,000 renovation who talks with building inspectors, checks for complaints with the state's

consumer protection agency and local Better Business Bureau, or visits a current job site to see how the contractor works, a treasurer preparing to pay a large percentage of the campaign's funds to one campaign services provider may look at reports on file with eCRIS to see if the provider is reported as using secondary payees, check with SEEC for complaints against the provider, and/or visit the provider's offices.

At other times, as when a treasurer approves a single expenditure to a polling company for a relatively small amount, a simple inquiry as to whether they will be hiring a call center on the committee's behalf would be enough.

(4) Is a primary payee such as a pollster required by law to disclose a secondary payee such as a call center, when asked by a treasurer?

The treasurer is required by law to disclose secondary payees and it is currently the treasurer that bears liability for failure to do so.[8] It would, however, be an aggravating circumstance in assessing penalties if a treasurer continues to approve payments to a campaign services provider after such treasurer knew or should have known that the campaign services provider intentionally lied or misrepresented information in response to inquiries as to secondary payee information. Thus, while a campaign services provider who does not disclose accurately secondary payees may not be directly liable for penalties under the campaign finance law, such provider may subject its clients to increased liability or lose clients whose due diligence reveals that the treasurer cannot both comply with campaign finance statutes and continue to approve payment to the consultant due to the consultant's refusal to disclose secondary payee information.

While there may not be direct liability on the part of a campaign services provider providing false information regarding secondary payees to a treasurer, there are other campaign finance violations that may apply to a given set of facts. For example, in one instance involving a poll, the Commission found the poll provider liable for defraying the costs of a polling effort on behalf of a candidate. *See Complaints of Jonathan Pelto*, File No. 2009-104, Agreement Containing Consent Order and Payment of a Civil Penalty (January 26, 2011) (penalty issued for pollster utilizing his graduate students who were being paid with public funds without informing the treasurer of his defrayal). An honest discussion regarding secondary payees to be used and services being provided might have prevented this violation. The Commission has also indicated that in some circumstances, there could be liability if the treasurer delegates his duties to approve expenditures to another person to such an extent that the other person is acting as treasurer. *See In the Matter of Government Action Fund*, File No. 2008-003, Agreement Containing Consent Order, Forfeiture and Payment of a Civil Penalty (May 6, 2009) (noting that it was improper for the treasurer to delegate storage responsibilities (of backup documentation) to a political committee chair (the Respondent), noting that the only delegation allowed is to a candidate of a candidate committee); *Complaints of Tom Kelly*, Bridgeport, File Nos. 2011-090 and 097, Agreement Containing Consent Order (Feb. 15, 2012) (finding violations of secondary payee disclosure relating to committee worker reimbursements and noting that someone other than the treasurer was substantially involved in authorizing committee expenditures).

[8] The Commission realizes that it is the campaign services provider who ultimately knows for certain whether secondary payees were hired on behalf of a committee, and in response to an escalating problem revealed by post-election reviews since the passage of the Citizens' Election Program, the Commission has asked the legislature to make certain campaign services providers directly liable for failure to disclose to treasurers the secondary payee information that treasurers need to fulfill their reporting requirements.

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. This declaratory ruling is only meant to provide general guidance and addresses only the issues raised.

Adopted this ____ day of _____ 2019 at Hartford, Connecticut by a vote of the Commission.

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Anthony J. Castagno, Chairman