

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 2024-01

Concerning the Return of Stolen Contributions and their Use by the Senate Republican Victory Committee

On August 12, 2024, the Commission received a Petition for declaratory ruling filed by Attorney Joel Rudikoff, on behalf of the Connecticut Senate Democratic Caucus (the “Petitioner”). At its regular meeting on September 18, 2024, the Commission voted to issue a declaratory ruling proceeding responsive to this petition.¹

The Petition specifically requests the Commission to address two questions in a declaratory ruling:

- 1) Whether the recent lump sum payment of more than \$160,000 received on May 9, 2024, by the Senate Republican Victory Committee (the “SRVC”), as a result of the Commission’s April 17, 2024 Order authorizing the transfer of this lump sum to SRVC (discussed in the Commission’s Order dated May 1, 2024, File No-2018-118), should be subject to the version of Connecticut General Statutes § 9-718 in effect at the time of the theft of this money from February, 2014 to December, 2018, rather than the current version of § 9-718 as amended in 2023, which allows for the aggregation of organization expenditures?
- 2) Whether SRVC can utilize this lump sum in one election cycle when the funds were stolen during the course of multiple election cycles?

Background

The background of this case is largely summarized in the case *In the Matter of the Senate Republican Leadership Committee, Hartford, File No. 2018-118*, and so need not be repeated in detail here. In short, the treasurer of the Senate Republican Leadership Committee (the “SRLC”) was discovered to have been stealing contributions from that committee over a long period, beginning some time before 2018. The chair of the committee self-reported the situation to the Commission and an investigation was opened on December 19, 2018. On February 13, 2019, the treasurer was arrested for larceny in the first degree and a criminal case ensued in the Superior Court. The case was resolved in 2023 when the treasurer pled guilty and, as a consideration in his sentencing, agreed to return to the SRLC a set sum (\$248,670) representing some portion of the stolen contributions as restitution. He was sentenced

¹ At its regular meeting on August 28, 2024, the Commission opened a comment period ending September 10, 2024, at 5:00 p.m. The Commission received and reviewed comments from the SRVC (the Senate Republican Majority Committee and the Senate Republican Campaign Committee also submitted letters supporting and adopting the comments of SRVC as their own), the Connecticut Democratic State Central Committee (DSCC) and Len Fasano.

to seven years in prison, execution suspended after six months with three years' probation. The Commission worked with the successor committee to the SRLC to pay off the committee's unpaid debts resulting from the lack of funds caused by the theft. The Commission authorized the transfer of the remainder of the returned funds (\$160,928.93) to the SRVC in May 2024.

Analysis

Restitution

This case presents a novel situation involving restitution to a committee that was part of a plea deal in a criminal court. While we have no prior precedent for court ordered restitution funds being paid to a committee, the Federal Election Commission (the "FEC") does. *In re Scott Coleman*, MUR 7692, the respondent was a treasurer of a political committee and in that capacity made \$88,679 in unauthorized ATM withdrawals from the committee's bank account, incurred \$86,273.40 in personal expenses on the committee credit card, and authorized payment of the credit card charges with the committee's funds. To conceal the theft, the respondent did not disclose contributions corresponding to the amounts stolen in the committee's disclosure reports. The respondent was sentenced to jail, two years' probation and a \$5,000 fine. The respondent also made restitution to the committee in the amount of \$341,983.06 to cover the embezzled amounts, legal fees associated with the criminal investigation, and the internal review costs. The FEC additionally fined the respondent \$20,528 for converting campaign funds to personal use and failing to file accurate reports with the Commission.

Similarly, the FEC advised that court ordered restitution payments were allowed in *Advisory Opinion 2005-04: Jan W. Baran*. There the respondent treasurer was ordered by the court to pay restitution, in monthly installments, to the "Friends of John Boehner" committee as part of his sentencing for embezzling campaign funds. The committee wished to have the restitution payments assigned to a charitable organization of their choice. The FEC advised that restitution payments could not be paid directly to a charitable organization, absent an amendment to the original court order because the respondent treasurer had an obligation under the court order to make restitution payments to the committee.

Additionally, the FEC has consistently advised that a court order requiring restitution payment to an authorized committee gives rise to a debt owed to that authorized committee that must be reported. *In Advisory Opinion 1991-38: Gene Karp*, the respondent treasurer embezzled approximately \$500,000, leaving the committee with a debt of approximately \$60,000. After the respondent treasurer completed his prison sentence for embezzlement, the court ordered the respondent to make restitution in a sum determined by probation. The FEC concluded that the entire restitution amount was a debt owed to the committee until extinguished and must be reported as such. Since the committee affected by embezzlement was still active, the Commission advised that the restitution debt could be rolled over into the candidate's new committee with both committees reporting the rollover, to allow the old committee to terminate. See also *In Advisory Opinion 2005-04: Jan W. Baran* (the entire restitution amount is subject to reporting requirements and must be reported as a debt owed to the committee until the debt is extinguished. Likewise, each restitution payment is a receipt of the committee that must be included in the Committee's reports).

It must be noted that while the FEC has issued guidance on the payment of embezzled funds into a committee's bank account and the reporting required by

those committees, we were not able to find precedent of the FEC issuing any restriction on how court ordered restitution funds should be spent by the committees. Based on the advice given in *In Advisory Opinion 2005-04: Jan W. Baran*, the assignment of court ordered restitution funds is subject to the court's order, which can only be changed by an amendment to the court's order. We see no reason to depart from the FEC's precedent. While the interpretation of General Statutes § 9-718 is within our jurisdiction, any rulings in equity of how the court ordered restitution funds should be used by the committee and over how many election cycles, lies with the court that ordered the restitution.

Application of the Current Law

Both questions posed by the Petitioner can be boiled down to one simpler one: should the current law be applied to the unusual circumstances of the present matter? We can find no support in the law for the position set forth by the Petitioner.

The request implicates three statutes in particular: the recently amended General Statutes § 9-718² and § 9-608 and § 9-618 which set forth the properties and powers of ongoing political committees, such as the SRVC.³

It is worth focusing first on the latter two statutes. The SRVC is a type of ongoing political committee. Unlike durational political committees (see General Statutes § 9-619, e.g.), and all candidate committees, ongoing political committees do not have to distribute their surplus and terminate after each primary, election or referendum (as the case may be).⁴ This means that the contributions they collect in any given year or cycle can be carried forward into the future, indefinitely. Of course, they may also be spent down to zero every year—but they are not required to do, as is the case with durational committees.

² Sec. 171. Subsection (a) of section 9-718 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) Notwithstanding any provision of the general statutes and except as provided in subsection (e) of this section, a legislative leadership committee and a legislative caucus committee, or a legislative leadership committee and another legislative leadership committee, or all three such committees, for the same political party in the Senate may aggregate their maximum allowable amounts for an organization expenditure or expenditures made for the benefit of a participating candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state senator for the general election campaign, provided a written agreement for such aggregation exists among the treasurers of each such aggregating committee. Upon execution of such written agreement, such treasurers shall jointly submit such written agreement to the State Elections Enforcement Commission, which shall make such written agreement available to the public on the commission's Internet web site.

³ As discusses supra and in *In the Matter of the Senate Republican Leadership Committee, Hartford, File No. 2018-118*, the SRVC is a successor committee to the SRLC, a result of the Commission's order to suspend operations of the latter while the criminal case against the SRLC's treasurer went forward and the facts of the matter could be determined by the Superior Court. In the interim, the SRVC could continue on as a functioning ongoing leadership committee, albeit one without any initial funds. Had no theft taken place, the SRLC, which was established in 2000, would undoubtedly have continued on as an ongoing political committee, and the creation of the SRVC would not have been necessary.

⁴ General Statutes § 9-608

(e) **Distribution or expenditure from surplus funds. Reporting re deficits.** (1) Notwithstanding any provisions of this chapter, in the event of a surplus the treasurer of a candidate committee or of a political committee, other than a political committee formed for ongoing political activities or an exploratory committee, shall distribute or expend such surplus not later than ninety days, or for the purposes of subparagraph (H) of this subdivision, one hundred twenty days after a primary which results in the defeat of the candidate, an election or referendum not held in November or by March thirty-first following an election or referendum held in November, or for the purposes of subparagraph (H) of this subdivision, June thirtieth following an election or referendum held in November, in the following manner. . . (Emphasis added.)

One practical upshot is that all of the contributions from the years in which the theft took place could have been saved for future election cycles, or spent, as the committee saw fit. Because of the theft, there were fewer funds to spend for a period of time resulting in a situation where the stolen funds could *not* be spent, and a period of uncertainty when it was unclear whether they ever would be. But had the theft never occurred, the committee could have saved them voluntarily and legally and would have gained no unfair or—and this is more to the point—no illegal advantage by doing so.

The second upshot, speaking directly to the Petitioner’s second question, is that there is no limitation—nor was there ever any limitation—on how much or how little an ongoing political committee can raise or spend in any given election cycle. The Petitioner’s request is for the Commission to create a one-off limitation in these special circumstances. This is not the proper subject for a declaratory ruling by the Commission, but for the creation of a law by the legislature.

The recent law change regarding a cyclic limitation on *certain types* of expenditures (organization expenditures) by *certain types* of committees (leadership and caucus committees), like the SRVC, in fact made no change to the dollar limitations themselves, but only how some committees could employ them. General Statutes § 9-718 was amended by Public Act 23-205 to enable leadership and caucus committees to aggregate the amounts that they are allowed to spend on organization expenditures. Formerly, each of three committees could each spend a statutory amount on a single candidate. Public Act 23-205 changed the law to enable one of those same three committees to spend triple the statutory amount if the other two relinquished their right to do so. Or they could allocate some portion of the statutory amount to one or the other committees, but the overall aggregate remained capped. It is worth noting that the change in the law was passed by an overwhelming bi-partisan majority of legislators.⁵

Briefly, looking at the text of the law change, we find no support for the Petitioner’s position that the timing of when funds enter a committee’s coffers (or are stolen from the same) should guide which version of the law is applied when it chooses to spend those funds. As discussed, *infra*, as an ongoing committee, the SLVC is legally allowed to have funds carry over from cycle to cycle, going back in perpetuity.⁶ The law change in P.A. 23-205 casts no shadow on the effect of General Statutes §§ 9-608 or 9-618, and significantly was in effect, from passage, in June of 2023—nearly a year before the return of the stolen contributions in May of 2024. When performing statutory interpretation, as the Connecticut Supreme Court noted in 2020, “[the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [one must] seek to determine, in a reasoned manner, the meaning of the statutory language. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider 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, extratextual evidence of the meaning of the statute shall not be considered. . . .” (Internal quotation marks omitted.) *Fay v. Merrill*, 336 Conn., 432, 445-446, 246 A.3d 970 (2020). Here we find no ambiguity: the statute dictates how certain committees can act with respect to organization

⁵ The House Bill passed 145 to 4; the Senate Bill, 35-1. It was signed by the Governor into law on June 29, 2023.

⁶ The SRLC was established in 2000, and could still, theoretically, have funds from that period remaining in its account. The election laws have changed many times since then.

expenditures going forward, not with respect to the source of the accumulated funds that is the source of the expenditures.

Similarly, with respect to the second request, the statutes plainly delineate which types of committees must close after each cycle and therefore cannot spend contributions received in one cycle during a later cycle. Legislative leaderships committees are not among them. As a result, the Commission cannot grant the Petitioner's second request to limit spending of a leadership committee's returned contributions by election cycle.

Equitable Remedy

Even if the statutes did not so plainly militate against granting the Petitioner's requests, the Commission could not act. "When a statute is not plain and unambiguous, we are directed to 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. . . ." (Internal quotation marks omitted.) *Id.*, at 446.

The Petition, however, does not address these factors for interpretative guidance. Rather, the Petition asks the Commission to act solely on the basis of preventing "an unacceptably inequitable situation, inadvertently giving one party a massive, unexpected fundraising advantage." The government may not act solely to equalize financial resources in the electoral process. *Green Party of Connecticut v. Garfield*, 616 F.3d 213, 243-246 (2nd Cir. 2010); *Davis v. FEC*, 554 U.S., 724, 738-742 (2008).

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 18th day of September 2024 at Hartford, Connecticut by a vote of the Commission.

Stephen T. Penny, Chairperson
By Order of the Commission

NOTICES OF CONNECTICUT STATE AGENCIES

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

SPA 24-AA COVID-19 Updates

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS). Public comment information is at the bottom of this document.

Changes to Medicaid State Plan

Due to the American Rescue Plan Act (ARP) period ending on September 30, 2024, there will be several changes to coverage and reimbursement related to COVID-19 for laboratory services, testing and vaccine administration.

Effective on or after October 1, 2024, SPA 24-AA will amend Attachment 4.19-B as follows:

- End dating the COVID-19 proprietary laboratory analysis (PLA) testing codes to remain consistent with the current PLA coverage policy (not covered).
- Repricing the COVID-19 laboratory codes from 100% to 70% of the Medicare rate to remain consistent with CMAP's current payment methodology for independent laboratories., from 100% to 95% to remain compliant with similarly priced services for family planning clinics, and from 100% to 80% to remain compliant with services reimbursed to medical clinics.
- To continue reimbursing pharmacies for COVID-19 tests and vaccines at a revised rate.
- COVID vaccine administration billed as procedure code 90480 will continue to be reimbursed at 100% of the Medicare rate for both pediatric and adult members covered under the HUSKY Health A, B, C, and D programs.
- COVID-19 vaccine administration billed by pharmacies will be reimbursed average wholesale price (AWP) plus \$1.00.
- COVID-19 at home test kits will continue to be reimbursed to pharmacies at the average wholesale price (AWP).

Fee schedules are published at: <http://www.ctdssmap.com>. Select “Provider”, then select “Provider Fee Schedule Download”; after accepting the Terms and Conditions, proceed to the applicable fee schedule.

Fiscal Impact

Overall, DSS anticipates that this SPA will increase annual aggregate expenditures by approximately \$3,843,051 in State Fiscal Year (SFY) 2025 and \$4,968,091 in SFY 2026.

This proposed change of COVID-19 vaccine administration paid to providers at reduced rates is estimated to have a gross fiscal impact of \$2,528,497 in SFY 2025, and \$3,275,794 in SFY 2026.

The proposed change of continuing to reimburse for COVID-19 testing and revising the reimbursement rate to meet current policy is estimated to have a gross fiscal impact of \$4,883,189 in SFY 2025, and \$6,288,293 in SFY 2026.

It is estimated that proposed changes to the reimbursement rates paid to pharmacies for COVID-19 tests and vaccines to have a gross fiscal impact of \$2,093,990 in SFY 2025, and \$2,745,012 in SFY 2026 and \$2,769,010.

This proposed change of COVID-19 vaccine administration paid to clinics is estimated to have a gross fiscal impact of \$3,589 in SFY 2025, and \$3,780 in SFY 2026.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: <https://portal.ct.gov/DSS/Health-And-Home-Care/Medicaid-State-Plan-Amendments>. The proposed SPA may also be obtained at any DSS resource center, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105. Please reference “SPA 24-AA COVID-19 Updates”.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than **October 8, 2024**.

DEPARTMENT OF SOCIAL SERVICES

Notice of Proposed Medicaid State Plan Amendment (SPA)

**SPA 24-AB: October 2024 Quarterly HIPAA Compliant Update-
Physician Office and Outpatient Fee Schedule, Durable Medical
Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule
and Medical Clinics Fee Schedule/ Updates to the Chiropractor Fee
Schedule and Family Planning Clinic Fee Schedules**

The State of Connecticut Department of Social Services (DSS) proposes to submit the following Medicaid State Plan Amendment (SPA) to the Centers for Medicare & Medicaid Services (CMS) within the U.S. Department of Health and Human Services (HHS). Public comment information is at the bottom of this document.

Changes to Medicaid State Plan

Effective on or after October 1, 2024, SPA 24-AB will amend Attachment 4.19-B of the Medicaid State Plan to incorporate the October 2024 Healthcare Common Procedure Coding System (HCPCS) changes (additions, deletions, and description changes) to the physician office and outpatient, DMEPOS and medical clinic fee schedules. DSS is making these changes to ensure the fee schedules remain compliant with the Health Insurance Portability and Accountability Act (HIPAA).

Secondly, effective October 1, 2024, the following evaluation/ management (E/M) procedure codes will be added to the chiropractor fee schedule (see below):

Procedure Code*	Description	Rate
99202	Office o/p new sf 15 min	\$44.98
99203	Office o/p new low 30 min	\$66.40
99204	Office o/p new mod 45 min	\$100.17
99205	Office o/p new hi 60 min	\$125.34
99211	Office o/p est sf phy/qhp	\$14.94
99212	Office o/p est 10 min	\$26.83
99213	Office o/p est low 20 min	\$42.93
99214	Office o/p est mod 30 min	\$64.99
99215	Office o/p est hi 40 min	\$87.60

Third, the family planning clinic fee schedule is being update with the addition of procedure code 57522- Conization of cervix, with or without fulguration, with or without dilation, effective October 1, 2024.

Fee schedules are published at this link: <http://www.ctdssmap.com> (select “Provider,” then “Provider Fee Schedule Download,” accept the terms and conditions, and select the applicable fee schedule).

Fiscal Impact

The HIPAA updates to the physician office and outpatient fee schedule are estimated to increase annual aggregate expenditures by \$6,885 in state fiscal year (SFY) 2025, and \$10,637 in SFY 2026.

The HIPAA updates to the DMEPOS fee schedule are estimated to increase annual aggregate expenditures by \$178,433 in SFY 2025, and \$275,679 in SFY 2026.

The HIPAA updates to the medical clinic fee schedule are not expected to have any fiscal impact, since similar procedure codes have no clinical utilization in SFY 2024.

The addition of select E/M procedure codes to the chiropractor fee schedule is estimated to increase annual aggregate expenditures by \$828,281 in SFY 2025, and \$1,270,377 in SFY 2026.

The update to the family planning clinic fee schedule is estimated to increase annual aggregate expenditures by \$29,756 in SFY 2025 and \$45,973 in SFY 2026.

Obtaining SPA Language and Submitting Comments

The proposed SPA is posted on the DSS website at this link: <https://portal.ct.gov/DSS/Health-And-Home-Care/Medicaid-State-Plan-Amendments>. The proposed SPA may also be obtained at any DSS resource center, at the Town of Vernon Social Services Department, or upon request from DSS (see below).

To request a copy of the SPA from DSS or to send comments about the SPA, please email: Public.Comment.DSS@ct.gov or write to: Department of Social

Services, Medical Policy Unit, 55 Farmington Avenue, 9th Floor, Hartford, CT 06105. Please reference “SPA 24-AB: October 2024 Quarterly HIPAA Compliant Update - Physician Office and Outpatient Fee Schedule, Durable Medical Equipment, Medical Surgical Supplies and Orthotics and Prosthetics Fee Schedule and Medical Clinics Fee Schedule/ Updates to the Chiropractor Fee Schedule and Family Planning Clinic Fee Schedules”.

Anyone may send DSS written comments about this SPA. Written comments must be received by DSS at the above contact information no later than **October 9, 2024**.