DOCKET NO. HHB-CV-19-6054160-S	:	**SUPERIOR COURT**
CAITLIN CLARKSON PEREIRA	:	**JUDICIAL DISTRICT OF NEW BRITAIN**
VS.	:	**ADMINISTRATIVE APPEALS SESSION**
STATE ELECTIONS ENFORCEMENT COMMISSION	:	**AUGUST 27, 2020**

MEMORANDUM OF DECISION

INTRODUCTION:

This is an administrative appeal from a final decision of the State Elections Enforcement Commission (Commission) preventing the plaintiff, Caitlin Clarkson Pereira, from utilizing funds from a Citizen Elections Program grant (CEP grant) to pay for child care costs incurred solely as a result of her campaign for public office.

FACTS AND PROCEDURAL HISTORY:

The plaintiff registered with the Commission in December, 2017 as a candidate for the 132nd House District. She applied for a CEP grant, and in July, 2018, she was awarded $28,150 to fund her campaign candidate committee. In accordance with General Statutes § 9-703, the plaintiff agreed that she would not raise any additional private funds subsequent to the date that her CEP grant was approved.

The plaintiff requested guidance from the Commission concerning whether it would be allowable to use CEP grant funds to pay for child care costs if the child care costs arose solely as a result of the campaign and were reasonably necessary to the campaign. As an example, the

OFFICE OF THE CLERK
SUPERIOR COURT
2020 AUG 26 AM 10 25
JUDICIAL DISTRICT OF
NEW BRITAIN

electronic notice given to all counsel of record
mailed to Reporter of Judicial Decisions.
8/27/20 A. Jordanopoulos, Clerk

plaintiff proposed to reimburse herself for child care costs that were incurred to care for her minor children during specific campaign events such as "meet and greet" events or time spent by the candidate going door to door.

In a legal opinion, the Commission's counsel denied the plaintiff's request to allow utilization of CEP grant funds to reimburse child care costs that arose solely as a result of the campaign and were reasonably necessary to the campaign. The plaintiff appealed the foregoing opinion guidance to the Commission and requested a formal declaratory ruling. On March 20, 2019, the Commission issued a final declaratory ruling denying the plaintiff's ability to utilize CEP grant funds to reimburse child care costs that arose solely as a result of the campaign and were reasonably necessary to the campaign. The ruling allowed the plaintiff to utilize privately raised campaign funds to reimburse such child care costs up until the date that the CEP grant was approved, however, from the date of the grant approval, the Commission held that the plaintiff could no longer use campaign funds for such reimbursement.

The plaintiff has exhausted her administrative remedies and has appealed the Commission's final declaratory ruling to this court. The plaintiff appeals from a final ruling preventing her from reimbursing herself from campaign funds for child care costs that arose solely as a result of the campaign and were reasonably necessary to the campaign. The declaratory ruling has the same status and binding effect as an order issued in a contested case and is a final decision for purposes of appeal as provided for in General Statutes § 4-183. As such, the plaintiff is aggrieved.

STANDARD OF REVIEW:

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183[1]. Judicial review of an administrative decision in an appeal under the UAPA is limited. *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). "[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the Supreme Court] nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) Id.

Although the courts ordinarily afford deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes, "[c]ases that

---

[1] Section 4-183 (j) provides in relevant part: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. . . ."

present pure questions of law . . . invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Dept. of Public Safety v. Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

In this matter the Commission's final declaratory ruling is purely a legal conclusion based upon the applicable statutes and regulations. The specific legal issue presented has not previously been subjected to judicial scrutiny and is not a long applied agency interpretation. As such the standard of review for the court is less deferential and broader. See *Foley v. State Elections Enforcement Commission*, 297 Conn. 764, 776, 2 A.3d 823 (2010).

When construing a statute, the court must first focus on the text of the statute, giving appropriate meaning to each word or phrase therein. See General Statutes § 1-2z. In determining meaning, the court should ascertain and give effect to the intent of the legislature, starting first with the statutory language itself.

ANALYSIS:

The issue presented is whether a political candidate may use CEP grant campaign funds from the account of their campaign committee to reimburse themselves, or to pay for, child care expenses that arose solely as a result of the campaign and were reasonably necessary to the campaign. An example of such expense would be the expenses for child care incurred while the candidate attends a meet and greet session or is going door to door to meet voters.

There are two statutes that are relevant in analyzing the foregoing issue. First is General Statutes § 9-607 (g). This statute is relevant in three aspects. Section 9-607 (g) (1) specifies in relevant part:

> "As used in this subsection, (A) 'the lawful purposes of the committee' means: (i) For a candidate committee or exploratory committee, the ***promoting*** of the nomination or election of the candidate who established the committee . . . ." [Emphasis added.]

Section 9-607 (g) (2) specifies the expenses that may be paid or reimbursed by a campaign committee, stating in relevant part:

> "Unless otherwise provided by this chapter, any treasurer, in accomplishing the lawful purposes of the committee, may pay any expenses of: . . . (M) ***travel***, meals and lodging expenses of speakers, campaign or committee workers, the candidate and the candidate's spouse for political and campaign purposes . . . and (Z) any other ***necessary*** or political expense." [Emphasis added.]

Section 9-607 (g) (4) prohibits the use of campaign committee funds for personal use, stating in relevant part:

> "As used in this subdivision, expenditures for 'personal use' include expenditures to defray ***normal living expenses*** for the candidate, immediate family of the candidate or any other individual and expenditures ***for the personal benefit*** of the candidate or any other individual ***having no direct connection with***, or effect upon, the campaign of the candidate or the ***lawful purposes of the committee***, as defined in subdivision (2) of this section. 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. . . ." [Emphasis added.]

The second relevant statute, General Statutes § 9-706, deals with CEP grants and specifies at § 9-706 (e) that:

> "The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, ***on permissible expenditures under subsection (g) of section 9-607*** for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive." [Emphasis added.]

Based upon the foregoing, the Commission concluded that (i) for the purpose of promoting the nomination or election of its candidate, a campaign committee may pay or reimburse expenses that (ii) are travel expenses or are necessary to the campaign, (iii) are not for "personal use", and (iv) are further subject to, for CEP grants, regulations adopted by the Commission to implement § 9-607 (g).

In accordance with § 9-706 (e) the Commission adopted § 9-706-1 (a) of the Regulations of Connecticut State Agencies which provides:

> "All funds in the depository account of the participating candidate's qualified candidate committee, 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 the Citizen's Election Program requirements."[2] [Emphasis added.]

---

[2] The regulations in § 9-706-2 (b) further provide that campaign funds may not be used for (i) personal use as described in General Statutes § 9-607(g) (4), nor for (ii) 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.

Thus the regulations provide that campaign committees with CEP grants can only pay, or reimburse, expenses that "directly further" the candidate's nomination or election.

For campaign committees that do not have CEP grants, the Commission has provided a ruling[3], that is reaffirmed in the declaratory ruling that is the subject of this appeal, which provides:

> "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 the candidate's campaign; (2) reasonable and customary for the services rendered; and (3) properly documented by the campaign."

As noted this ruling remains in effect and was reaffirmed by the Commission in this declaratory ruling. In making the foregoing ruling, the Commission determined that payment of the child care expenses described complied with § 9-607 and as such were for "promoting the nomination or election of the candidate" (General Statutes § 9-607 (g) (1)); travel expenses or expenses necessary to the campaign (General Statutes § 9-607 (g) (2)); and were not for "personal use" (General Statutes § 9-607 (g) (4)). In determining that the foregoing child care expenses were not for personal use the Commission determined that they were (i) not normal living expenses of the

---

[3] This ruling, Commission Advisory Opinion 73-23, has been in effect since 1976.

candidate, (ii) not for the personal benefit of the candidate, and (iii) had a direct connection to the campaign. See the definition of "personal use" at § 9-607 (g) (4). The Commission must have made the foregoing determinations because only expenses compliant with § 9-607 (g) may be paid from campaign committee funds.

The foregoing determinations make sense. A candidate with young children cannot leave them unattended. As a result, if the candidate would like to attend a meet and greet session, or spend time going door to door meeting voters, they have three potential choices. They can make arrangements for child care, or they bring the children to the campaign event, or they can choose not to attend the campaign event. Bringing young children to most campaign events will reasonably be expected to detract from the event's effectiveness, may be counter to the promotion of the campaign, and may not be in the best interest of the children. Thus for many events the choices are arrange for child care or cancel the event. It must be stressed in this regard, that we are analyzing the situation where the child care expenses are arising solely as a result of the campaign and would not have existed absent the campaign.

Given the foregoing, it is easily seen that these child care expenses are for the "promoting of the nomination or election of the candidate", for without the expense the campaign event cannot go forward. It can also be clearly seen that these child care expenses are either "travel" expenses or "necessary" to the campaign, because without

the expense the travel or the campaign event cannot occur.[4] These child care expenses are not "normal living expenses" because they would not exist absent the campaign. They are not for the "personal benefit" of the candidate because the candidate receives no personal benefit other than the ability to travel or attend the campaign event. Lastly, these child care expenses have a "direct connection" to the campaign because the campaign event could not occur absent the expense.

Absent the Commission's regulations, the Commission would have applied the foregoing ruling to the plaintiff's request. However, the Commission concluded that the regulation, which applies to CEP grants, was "much stricter" than General Statutes § 9-607 (g). In this regard, the Commission focused on the regulatory requirement that campaign committees with CEP grants can only use campaign funds for "expenditures made to **directly further**" the candidate's nomination or election. The Commission found that child care expenses which arise solely as a result of the campaign and which would not have existed absent the campaign did not "directly further" the candidate's nomination or election.[5]

---

[4] In this regard these child care expenses are indistinguishable from the cost of airfare or a train ticket to the campaign event. Without the expense, the travel or event cannot occur.

[5] The Commission also noted that CEP grants cannot be used for personal items (support or expenses) even if the items are used in the campaign.

As noted the Commission, in its ruling on privately raised campaign funds, has already determined that these child care expenses (i) are not "normal living expenses" because they would not exist absent the campaign (ii) are not for the "personal benefit" of the candidate because the candidate receives no personal benefit other than the ability to travel or attend the campaign event, and (iii) have a "direct connection" to the campaign because the campaign event could not occur absent the expense. The Commission also determined that they were not for "personal use".

For the very same reasons, it is apparent that these child care expenses are made "to directly further" the candidate's nomination or election. Since these child care expenses exist solely as a result of the campaign and would not have arisen absent the campaign, and since the campaign event cannot exist absent the expenses, the expenses "directly further" the nomination or election of the candidate.[6] Also, these child care expenses are not personal items (support or expenses) because they would not exist absent the campaign and the campaign event cannot proceed without them. As such these child care expenses are easily distinguished from mortgage or rent for the candidate's existing home, utilities for the candidate's existing home, and clothing

---

[6] How can it be said that these child care expenses do not directly further campaign activity if the campaign activity in question cannot exist without the expense? It is difficult to imagine an expense which more directly furthers a campaign than an expense without which a campaign event could not occur.

or personal appearance expenses because the foregoing expenses would exist absent the campaign and the campaign could proceed without them.

In addition to the foregoing, allowing reimbursement of child care expenses that arise solely as a result of the campaign and would not have existed absent the campaign serves the public policy embedded in the foregoing statutes of encouraging all types of people, including those with small children, to run for public office to ensure that all segments of our population are represented in our government. Similarly, it ensures that candidates with small children can play on an even playing field in the campaign as compared to candidates without small children. Lastly, it consistently and even handedly interprets the statutes and regulations giving similar meaning to words such as "personal" and "direct" that appear in related statutes and regulations.

Given all of the foregoing, the court finds that the proper interpretation of the applicable statutes and regulations as applied to child care expenses that **arise solely as a result of the campaign** and **would not exist absent the campaign** provides the result that:

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

Child care expenses that meet the foregoing conditions directly further a candidate's nomination for election or election to office and therefore satisfy § 9-706-1 (a) of the Regulations of Connecticut State Agencies . As such the court sustains the appeal to the extent provided for in the foregoing.

The defendant strenuously argues that its regulations are valid and appropriate. The court here has not disturbed the defendant's regulations, but has merely interpreted the regulations in view of the authorizing statutes and the specific question posed in this case. In the court's view the proper application of the statutes and the regulations to the question posed here is that child care expenses that arise solely as a result of the campaign and would not exist absent the campaign, meet the regulatory requirement that they directly further the candidate's nomination or election. Thus the regulatory standard remains as promulgated by the defendant and the directly further standard[7] will continue to serve its purpose of safeguarding taxpayer funds while at the same time allowing campaigns to proceed on a level playing field.

The court's application of the statutes and regulations is not inconsistent with the defendant's interpretations in other matters. Specifically, the defendant has previously prohibited use of CEP funds for (i) clothing and personal items, (ii)

---

[7] The regulatory standard of "directly further" is somewhat more restrictive than the corresponding statutory standard of "direct connection with".

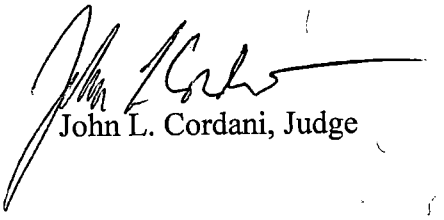
personal technology expenses, (iii) personal telephone, computer and internet bills, (iv) monthly car payments, and (v) the cost of a personal storage unit. Child care expenses that arise solely as a result of the campaign and would not exist absent the campaign are different from the foregoing in that, because of the parental responsibilities, particular campaign activity cannot occur unless the children are taken care of. In contrast, the foregoing previously prohibited items are not so directly connected to campaign activity such that the activity cannot occur without them.

The court's interpretation and application of the statutes and the regulations also avoids having to consider whether or not the Commission's interpretation and application gives rise to issues of gender discrimination and the attendant constitutional issues. The plaintiff has asserted that the Commission's interpretation and application have an illegal disparate impact on women, such as the plaintiff, because women carry the burden of child care more than men. The Commission defends against the foregoing claims based upon the record in this particular case, which even if successful, leaves the specter of the claim of illegal discrimination and the constitutional issues attendant thereto. The court does not address these weighty issues here because the court's interpretation and application of the statutes and regulations avoids the necessity of addressing the claim and removes the specter of discrimination, while at the same time leaving the regulatory scheme undisturbed. It is well established that courts should, whenever possible, construe statues to avoid

constitutional infirmities. See *Foley v. State Elections Enforcement Commission*, 297 Conn. 764 (2010). The court believes that its ruling accomplishes the foregoing while utilizing the plain meaning of applicable statutes and regulations and maintaining the Commission's regulatory scheme in applying the statutes and regulations to the specific facts of this matter.

ORDER:

The appeal is sustained as provided for herein.



John L. Cordani, Judge