

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of
Isaac Ruiz, Chester

File No. 2007-356

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that during the months of August, September, and October 2007, Chester's Water Pollution Control Authority (the "WPCA") distributed five separate mailers, one of which allegedly advocates for support for an October 23, 2007 referendum. The Complainant alleges a violation of General Statutes § 9-369b.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. The Complainant alleges that the WPCA of Chester, Connecticut used public funds to create and distribute five postcards, one of which allegedly advocated support for an October 23, 2007 referendum.
2. The Complainant further states as follows: "The WPCA met on August 15, 2007 and on September 19, 2007. At neither of these meetings is there a record of vote authorizing the preparation and printing of materials concerning the mailings, nor comment from the municipal attorney." He also maintains that on "September 19, 2007 the WPCA voted to request the Board of Selectmen to hold a Town Meeting and Referendum on the issue. The Board of Finance voted on September 21, 2007 and the Board of Selectmen voted October 2, 2007 *to call a town meeting.*" [Emphasis added.]
3. General Statutes § 9-369b (a) provides in pertinent part:

Except as provided in subsection (b) of this section, any municipality may, by vote of its legislative body, authorize the preparation and printing of concise explanatory texts of **local proposals or questions approved for submission to the electors of a municipality at a referendum. . . .** Except as provided in subsection (d) of this section, **no expenditure of state or municipal funds shall be made to influence any person to vote for approval or disapproval of any such proposal or question.** [Emphasis added.]
4. The Commission has consistently held that the General Statutes § 9-369b prohibition on the use of public funds to advocate a position on a referendum only applies when a referendum is "legally pending." See, e.g., *Complaint of Thomas A Kahrl, Old Lyme, File No. 2007-185.*
5. According to the Commission, a referendum is not "legally pending" until all of the necessary legal conditions have been satisfied to ensure that the referendum will take place. *Id.*

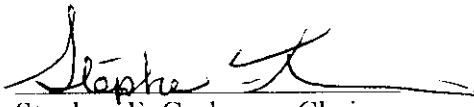
6. Chester's Board of Selectmen held a Town Meeting on October 11, 2007 at which they voted to hold a referendum by voting machine on October 23, 2007. Chester is governed by Title 7 of Connecticut General Statutes. Pursuant to General Statutes § 7-7, the Board's vote was the last legal condition that needed to be satisfied to ensure that the referendum take place. *See* General Statutes § 7-7 (The selectmen of the town may . . . submit any item which, . . . could properly come before such a [town] meeting to the voters at a date set for such vote or along with any other vote the date of which has been previously set.)
7. As such, the Commission concludes that the referendum at issue was legally pending on October 11, 2007.
8. Tom Marsh, First Selectman of the Town of Chester, admits that the WPCA used municipal funds to produce and mail five postcards to the public concerning the topic the public would be vote on at a referendum. He maintains, however, that those postcards were not sent after the legally pending date but rather, were sent between August and the first week of October of 2007.
9. He further asserts that the WPCA was well aware of the prohibition on the use of municipal funds set forth in General Statutes § 9-369b and took steps to comply with that provision. The Commission has not uncovered any evidence to the contrary.
10. Moreover, the Complainant asserts in his complaint that the five mailers at issue were received no later than October 5, 2007. This is almost a week prior to the date on which the referendum became legally pending. In addition, the complaint, which contains copies of each of the mailers at issue, was notarized on October 9th and filed with the Commission on October 10, 2007. Again, prior to the date on which the referendum became legally pending.
11. It is therefore concluded that the WPCA's use of municipal funds for the mailers in question did not violate General Statutes § 9-369b.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the case be dismissed.

Adopted this 16th day of July, 2008 at Hartford, Connecticut.


Stephen F. Cashman, Chairperson
By Order of the Commission