

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of
William A. Michael, Bethel

File No. 2008-069

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that the Bethel Superintendent of Schools "initiated an automated telephone contact to parents of school children alerting them to the Tues. May 20 budget referendum," and that such contact "was not authorized" by the Bethel Board of Education.

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

1. The Complainant, a resident of Bethel, Connecticut, alleges that the Bethel Superintendent of Schools violated General Statutes § 9-369b when he, without authorization from the Bethel Board of Education, used public funds for an automated telephone call alerting parents of school children of the pending May 20, 2008 referendum in the Town of Bethel.
2. On the evening of May 19, 2008, automated phone calls were placed to the parents of the Bethel Public Schools using a call list and automated system that notifies parents of emergencies, late openings, early dismissals, and the like, at the authorization of the Bethel Superintendent of Schools.
3. The automated phone message in question simply stated: *"There is a budget referendum on May 20. Polls are open from 6:00 a.m. to 8:00 p.m."*
4. Connecticut General Statutes § 9-369b, provides in pertinent part:
 - (a) 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. In a municipality that has a town meeting as its legislative body, the board of selectmen shall, by majority vote, determine whether to authorize an explanatory text or the dissemination of other neutral *printed* material. Thereafter, each such explanatory text shall be prepared by the municipal clerk, subject to the approval of the municipal attorney, and shall specify the intent and purpose of each such proposal or question. Such *text* shall not advocate either the approval or disapproval of the proposal or

question. The municipal clerk shall cause such question or proposal and such explanatory text to be printed in sufficient supply for public distribution and shall also provide for the printing of such explanations of proposals or questions on posters of a size to be determined by said clerk. At least three such posters shall be posted at each polling place at which electors will be voting on such proposals or questions. Any posters printed in excess of the number required by this section to be posted may be displayed by said clerk at the clerk's discretion at locations which are frequented by the public. The explanatory text shall also be furnished to each absentee ballot applicant pursuant to subsection (d) of section 9-140. 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. *Any municipality may, by vote of its legislative body and subject to the approval of its municipal attorney, authorize the preparation and printing of materials concerning any such proposal or question in addition to the explanatory text if such materials do not advocate the approval or disapproval of the proposal or question.* This subsection shall not apply to a written, printed or typed summary of an official's views on a proposal or question, which is prepared for any news medium or which is not distributed with public funds to a member of the public except upon request of such member. [Emphasis added.]

5. The Bethel Board of Education was not charged a fee for the automated phone call at issue because of the company's error in making it so late in the evening of May 19th, and therefore no public expenditure was actually made.
6. The Commission has consistently held and advised that the publication and dissemination of printed materials limited to the "time, date and place" of a pending referendum is permissible and is not prohibited by General Statutes § 9-369b.
7. The Commission's "date, time and place" rule has historically been applied to newsletters that have been sent home with school children, and is based on the premise that in the absence of advocacy, merely providing notice of a pending referendum, without more, does not violate General Statutes § 9-369b, or invoke the procedures required for dissemination of publicly funded neutral materials.

8. Although the Commission has not previously applied this rule to automated telephone calls, the same logic applies. In addition, § 9-369b, which requires approval by a legislative body for the use of public funds for the production and dissemination of explanatory texts and other informational materials is limited to *printed* materials, and does not apply to the automated telephone message at issue.
9. The Commission concludes that automated telephone calls limited to notice of the date, time and place of a referendum, which do not attempt to influence a vote, for approval or disapproval of a referendum or otherwise advocate a result, do not violate General Statutes § 9-369b.
10. The Bethel Superintendent of Schools did not violate General Statutes § 9-369b, by authorizing an automated telephone call the day before a referendum that was limited to notice of the time and date of that referendum.

ORDER

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

That the case be dismissed.

Adopted this 13th day of August, 2008 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission