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STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Marie Egbert, Hebron

File No. 2010-056

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between The Hebron Public Schools, Eleanor S. Cruz Superintendent of Schools for the Hebron Public Schools, and Karen Conderino, Administrative Assistant to the Superintendent of Schools for the Hebron Public Schools (hereinafter referred to as the Respondents) and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Respondent Hebron Public Schools is a public school system in Hebron, Connecticut, that is operated by municipal funds provided through the Hebron Board of Education. At all relevant times, Eleanor S. Cruz was the Superintendent of Schools for the Hebron Public Schools, and Karen Conderino was an Administrative Assistant for the Superintendent of Schools for the Hebron Public Schools.
2. On May 5, 2010, Marie Egbert ("Complainant"), a resident of Hebron, filed a complaint with the State Elections Enforcement Commission ("Commission"), setting forth twelve alleged violations of General Statutes § 9-369b by the Respondents in relations to the Hebron budget referendum of May 4, 2010.
3. The Town of Hebron held a referendum on May 4, 2010, regarding the Town of Hebron's proposed budget for Fiscal Year 2010/2011 in the amount of \$33,854,400. The aforementioned budget amount incorporated and included the budget for Hebron Public Schools. The proposed budget for the referendum was established at the end of the April 13, 2010 special meeting of the Hebron Board of Finance, by unanimous vote taken at 10:15 P.M.
4. On May 4, 2010 the municipal budget referendum detailed in paragraph 3 above failed with 639 "yes" votes and 1127 "no" votes.
5. 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. ... 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.]

6. General Statutes § 9-369b prohibits the use of public funds to advocate for a referendum while a referendum is “pending.” The Commission has determined that a referendum is pending when the necessary legal conditions have been satisfied to require publication of a warning (notice) that a referendum question will be submitted to a vote of the eligible voters of a municipality on a certain date. (See A Guide to Financing a Referendum Question (Revised May 2007), hereinafter “Guide”).
7. The Commission finds that in Hebron the annual budget referendum is automatically set after the adjournment of the Board of Finance meeting where the proposed annual budget is approved pursuant to town charter. The Commission further finds that the proposed annual budget was unanimously approved by the Hebron Board of Finance at its April 13, 2010 Special Meeting as described in paragraph 3 above. The Commission finds therefore that at the close of the April 13, 2010 meeting, the necessary conditions had been met to set the referendum and issue a warning, and therefore the May 4, 2010 referendum was pending as of April 13, 2010.
8. The Commission finds that of the 12 allegations described in paragraph 2 above, Allegations 1 through 4 involved alleged expenditures of public funds to advocate for the May 4, 2010 referendum *after* the referendum was *pending* on April 13, 2010, thereby triggering the application of General Statutes § 9-369b. Allegations 5 through 12, however, involved alleged expenditures of public funds *prior* to the April 13, 2010, when the referendum was pending. Section § 9-369b does not apply to such expenditures. The Commission, therefore, dismisses Allegations 5 through 12.
9. The Commission, based on its findings detailed in paragraph 8 above, addresses Complainant’s remaining alleged violations of § 9-369b, which pertain to the assertions below:
 1. On May 4, 2010 an e-mail from a school parent regarding “concerns over vote decision and fears of losing more programs at the school” was discussed on a Hebron community website (hereinafter “Allegation 1”).
 2. On May 4, 2010 an e-mail from Respondent, regarding an internet link to the "State of the Schools" insert was disseminated with public funds (“hereinafter Allegation 2”).
 3. On April 27, 2010 an e-mail from Respondent regarding "*Budget Message from the superintendent*" with a statement of ‘further budget reductions’ if the May 4, 2010 referendum did not pass, was disseminated with public funds (hereinafter “Allegation 3”).

4. On April 27, 2010, a post on a community Internet forum by a school parent about the Superintendent's budget message (hereinafter "Allegation 4").
10. The Commission finds that Allegation 4 is based on a parent's posting made to an Internet forum concerning the Town of Hebron. The Commission further finds that there is no evidence that either the posting made by the parent or the Internet forum was public funded. Thus, although the posting was made after April 13, 2010, General Statutes § 9-369b does not apply because there is no evidence that this was an expenditure of public funds. As such, the Commission dismisses Allegation 4.
11. The Commission finds that Allegation 1 is based on a May 4, 2010 e-mail which included in its body a copy of a "Hebron Dollars and Sense" website page. The Commission further finds that there is no evidence that either the e-mail sent by the parent or the website within the e-mail was publicly funded. Thus, although the e-mail was sent after April 13, 2010, General Statutes § 9-369b does not apply because there is no evidence that this was an expenditure of public funds by Respondents. As such, the Commission dismisses Allegation 1.
12. Allegations 2 and 3, the remaining allegations, both involve e-mails sent by and employee of Hebron Public Schools from an e-mail address provided by the Hebron Public Schools. The Commission has previously held that the use of town or school district websites and servers are public expenditures (*In the Matter of a Complaint by Judy Aron*, West Hartford, File No. 2008-073 and *In the Matter of a Complaint by Matthew Grimes*, Brookfield, File No. 2008-070;). The Commission consistent with its *In the Matter of a Complaint by Matthew Grimes* and its prior holdings, finds that the use of a publicly funded web server and a Hebron Public Schools e-mail address to disseminate the information in Allegations 2 and 3, as described in paragraph 9 above, constituted public expenditures.
13. The Commission further finds that because the public expenditures pertaining to Allegations 2 and 3 were made after the April 13, 2010, when the May 4, 2010 referendum became pending, they are subject to General Statutes § 9-369b. Consequently, the Commission must determine whether those expenditures were made to advocate for or made to influence a referendum.
14. Allegation 3 alleges that a Hebron Public Schools employee sent an e-mail on April 27, 2010 with the subject "Budget Message from the Superintendent" to parents and members of the community. That e-mail contained a budget message from the Superintendent, which, according to Respondents, reviewed the budget cuts voted on by the Hebron Board of Education the night before in order to reduce the Board's budget by 1.5%, as requested by the Hebron Board of Finance. The Superintendent's budget message concluded with the following sentence: "If the budget [referendum] does not pass, these reductions will stand and the Board of Education will have to reduce the budget further. Thank you for your support of Hebron Public Schools."

15. The Respondents deny that the budget message detailed in paragraph 14 above was intended to advocate for the referendum or that it was intended to influence how a member of the community voted on the referendum. Instead, the Respondents intended the message to be a factual recitation of the cuts voted on by the Board of Education. The Commission has historically concluded that communications which urge a particular result, either by express wording of advocacy or *when considered as a whole*, would make the ordinary reasonable person believe that a particular result is urged, would constitute advocacy. In determining whether a communication constitutes advocacy, the Commission reviews *the entire communication and considers its style, tenor and timing*. *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999). Taking into consideration the timing and tenor of the communication, the Commission finds that the e-mail and budget message described in Allegation 3 was a public expenditure to advocate for the May 4, 2010 referendum. *See Guide*, at 32.
16. The Commission accordingly concludes based on the finding detailed in paragraph 15 above that the Respondents violated General Statutes § 9-369b by making a public expenditure pertaining to Allegation 3 to advocate for the pending May 4, 2010 referendum in the Town of Hebron.
17. The Commission finds that the expenditure pertaining to Allegation 2 was made through the Hebron Public Schools server using a Hebron Public Schools e-mail address. The Commission further finds that the aforementioned e-mail contained an internet link to a brochure referenced as “State of Our Schools.” The “State of Our Schools” brochure, according to Respondents, is an annual publication from the Superintendent’s office, and it does not mention or reference the pending referendum. Because that brochure was sent to parents by a Hebron Public Schools e-mail account, it was an expenditure of public funds. Accordingly, the Commission must next determine whether that expenditure was made to advocate for or made to influence a referendum.
18. As noted previously, the Commission historically concluded that communications which urge a particular result, either by express wording of advocacy or *when considered as a whole*, would make the ordinary reasonable person believe that a particular result is urged, would constitute advocacy. In determining whether a communication constitutes advocacy, the Commission reviews *the entire communication and considers its style, tenor and timing*. *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).
19. The Commission finds that that the contents in the “State of Our Schools” report described in paragraph 17 above and pertaining to Allegation 2, which support and validate the quality and programmatic direction of Hebron Public Schools, when considered as a whole, and based on the timing and tenor, would make the ordinary reasonable person believe that a “yes” vote was urged for the May 4, 2010 referendum by its dissemination on the morning of the referendum. The Commission concludes therefore that Allegation B was an expenditure to influence that referendum as proscribed by General Statutes § 9-369b.

20. The Commission concludes based on the findings in paragraphs 17 and 19 above that by sending the May 4, 2010 e-mail on the Hebron Public Schools server from a Hebron Public Schools e-mail address, the Respondents' violated General Statutes § 9-369b by making an expenditure of public funds to influence the passage of the Hebron annual budget (inclusive of the Board of Education budget) that was the subject of the May 4, 2010 referendum.
21. The Commission notes that it has previously found that the use of town or school district web sites to promote a referendum constitutes a violation of General Statutes § 9-369b, (*In the Matter of a Complaint by Judy Aron*, West Hartford, File No. 2008-073; *In the Matter of a Complaint by Matthew Grimes*, Brookfield, File No. 2008-070; and *In the Matter of a Complaint by Matthew Paulsen*, Bethel, File No. 2003-152A). It nevertheless deems the nature of the violations detailed herein as an emerging issue. Therefore, under these unique circumstances, the Commission will not seek civil penalties and/or restitution against the Respondents. Instead, the Commission and Respondents agree to the Order hereinafter stated in this agreement.
22. The Respondent admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
23. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
24. The Respondents waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
25. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth, the Respondents shall strictly comply with the requirements of General Statutes § 9-369b.

Respondent:

For the State of Connecticut

BY: Karen Conderino
Karen Conderino
Hebron Public Schools
580 Gilead Street
Hebron, Connecticut

3/8/2011
Dated

BY: S. Clark Kief
Shannon Clark Kief, Esq.
Legal Program Director,
and Authorized Representative
Of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

3/14/11
Dated

BY: Eleanor S. Cruz
Eleanor S. Cruz
Superintendent of Schools
Hebron Public Schools
580 Gilead Street
Hebron, Connecticut

3/8/2011
Dated

Adopted this 16th day of March, 2011 at Hartford, Connecticut by vote of the Commission.

Stephen F. Cashman
Stephen F. Cashman, Chair
By Order of the Commission