

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by  
George H. Millerd, Kensington

File No. 2010-074

**AGREEMENT CONTAINING CONSENT ORDER**

This agreement, by and between Robert Weber, Berlin Corporation Counsel, (the "Respondent") 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. At all times relevant hereto, the referendum question concerning the "Certify as New" option for a Berlin public school was scheduled to be before the Berlin electors (the "referendum").
2. As reflected in the minutes of its May 18, 2010 meeting, during the pending referendum, the Berlin Town Council voted to authorize and instruct the town staff to prepare explanatory texts for publication in the local newspaper and to distribute such texts at informational meetings.
3. As reflected in the minutes, the members of the Town Council, only gave general authorization for the preparation of explanatory texts and not to any specific explanatory text. Such preparation and approval was largely delegated under the authority of the Town Manager and the Respondent with input from municipal staff and officers.
4. Subsequent to the May 18, 2010 meeting, the Town Manager and municipal staff composed two draft versions of the materials in dispute. One version was a more condensed pamphlet to be distributed to the local newspapers as an insert (the "newspaper flyer"). A response provided by the Berlin Town Clerk reported the cost for the newspaper flyer as: (1) printing and delivery from Academy Printing \$670.40; (2) expense to staff for the *Berlin Citizen* \$565.00. The second version was a more detailed flyer to be handed out to members of the public who attended several informational sessions held by the town (the "meeting flyer"). On the basis of estimates by town staff, the cost for the meeting flyer was estimated at approximately \$50.00 for 1,000 copies (estimated at 5 cents per copy).
5. The Respondent acknowledges that the content of both flyers were subject to his final approval and authorization before publication, which comports with the procedural requirements of § 9-369b (a). The actual language of the flyers was never approved by the Berlin Town Council.
6. The Respondent has provided draft versions of the meeting flyer, which appear to demonstrate the Respondent's good faith attempt to comply with the law. The communications contained in

such record includes “neutralizing” the draft language and the process clearly incorporates editorial suggestions by at least one town officer opposed to the “Certify as New” option in the referendum.

7. Specific examples in such records reflecting improvements made to neutralize the meeting flyer prior to its distribution include: (1) for the Q&A regarding “April 6”, the draft italicized “unanimously” whereas the final flyer removed this emphasis; (2) for the Q&A regarding “What does Renovate as New mean” the draft identified it as “the best solution” whereas the final stated it was “selected...over other options considered”; (3) for the Q&A regarding “What is the cost to Berlin after State reimbursement and what is the impact upon taxes” the parenthetical “One can always *lower* the amount requested for reimbursement”[Emphasis in original] was removed entirely; (4) for the Q&A regarding “What if this Ordinance is defeated at the referendum on June 8, 2010” the draft language describing the “Certify as New” referendum option as an outcome that “likely solves Berlin’s high school facility needs for decades” was removed; (5) for the Q&A regarding “Why should I vote/care?” the draft language stating “if the current High School’s accreditation is lost, the entire Town will suffer” is mitigated to “This referendum impacts each and every citizen. It impacts on the quality of life, property values and the future of Berlin. One must vote to be heard.”
8. The Respondent and town officers report they have been unable to recover similar draft versions of the newspaper flyer, which served as an abridged version of the meeting flyer because of limited publication space. As noted above, while the Respondent reports that he did edit the newspaper flyer, the investigation has obtained no direct documentary evidence of such edits being recommended or made.
9. In its examination of the whole of the newspaper flyer, the Commission notes certain areas of specific concern: (1) the selective emphasis by italicizing that, “Berlin *will not* bond the total sum all at once.”; (2) describing one of the options as “may only be a short term solution” appears to be telltale language designed to influence; (3) describing the “Certify as New” referendum option as “a compromise between the most expensive solution of building a New High School and the least expensive solution of fixing the worst problems and potentially dealing with future problems on a piece meal basis with the prospect of much less State funding,” which appears crafted to promote this option.
10. The Respondent states, and the Commission does not dispute, that the Respondent was operating under a very short deadline to review and approve the newspaper flyer.
11. Connecticut General Statutes § 9-369b (a) provides, in relevant part:

[A]ny 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 ... 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 ... [N]o 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....

12. Connecticut General Statutes § 9-369b (c) provides, in relevant part:

The State Elections Enforcement Commission, after providing an opportunity for a hearing in accordance with chapter 54, may impose a civil penalty on any person who violates subsection (a) or (b) of this section by authorizing an expenditure of state or municipal funds for a purpose which is prohibited by subsection (a) of this section....

13. The Commission has consistently concluded, “that communications that recommend or urge support of or opposition to a referendum question are subject to the restrictions found in Section 9-369b.” *In the Matter of a Complaint by Jennifer Iannucci, Bridgewater*, File No. 2006-166, ¶ 8.

14. 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, constitute advocacy. *Complaint by Marie Egbert, Hebron*, File No. 2010-056 at ¶ 15. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. *Id.*; see also *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).

15. In its consideration of the flyer as a whole, the Commission made specific note of the language describe in detail in paragraph nine above.

16. Based on the above findings, the Commission concludes that payments for the publication and distribution of the newspaper flyer constituted an expenditure of municipal funds that advocated a position on a pending referendum in violation of § 9-369b (a).

17. The Commission notes that the Respondent and agents and officers of the Town of Berlin have been fully cooperative in the course of the investigation.
18. In its assessment of an appropriate penalty, the Commission notes that it appears the Respondent was conducting a good faith effort to comport the language in both publications to the requirements of § 9-369b (a), but operating under too short a deadline to perform an ultimately sufficient level of due diligence as to the newspaper flyer. Given the documentary basis of the good faith effort by the Respondent, as corporation counsel, regarding the meeting flyer, that the nature and degree of any advocacy language in the meeting flyer may remain within reasonable dispute, and the low amount of the expenditure at issue, the Commission declines to seek a penalty for that specific publication.
19. Although the Commission does not dispute the Respondent's claim of a good faith effort to comport the language of the newspaper flyer to the requirements of § 9-369b (a), the Commission has not afforded meaningful weight to such a claim due to the lack of a documentary record of such a good faith attempt.
20. 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 Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
21. 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.
22. As noted above, based on the findings in paragraph three and five, the Commission and the Respondent agree that it was the Respondent alone who authorized the expenditures at issue and who has accepted liability for the violation of § 9-369b (a). Accordingly, this Consent Order resolves any and all allegations against all other officers, employees or agents of the Town of Berlin insofar as they are either specifically alleged in the underlying complaint or within the scope of this agreement. Any and all issues neither specifically alleged in such complaint nor specifically addressed in this Consent Order remain outside the scope of this agreement.
23. The Respondent 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.

24. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

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**ORDER**

IT IS HEREBY ORDERED that henceforth the Respondent shall strictly comply with the requirements of Connecticut General Statutes § 9-369b (a).

IT IS FURTHER ORDERED that the Respondent shall pay one thousand two hundred and thirty-five dollars and forty cents (\$1,235.40) for the violation of § 9-369b (a), which represents the cost of printing and delivering the newspaper flyer.

IT IS FURTHER ORDERED that the Respondent maintain and preserve in his possession and control any and all records of written advice issued in his capacity as corporation counsel, to the Town of Berlin or any other municipality, concerning § 9-369b for a period of four years beginning on the date of the execution of this agreement. Such records shall include, but not be limited to, any recommended or approved edits to explanatory texts or other publications subject to the requirements of § 9-369b.

Respondent:

For the State of Connecticut

BY: 

6-15-12

BY: 

Robert Weber, Esq.  
Weber & Carrier, LLP.  
24 Cedar Street  
New Britain, CT. 06052

Dated

Michael J. Brandi, Esq.  
Executive Director  
and Authorized Representative  
Of the State Elections  
Enforcement Commission  
20 Trinity Street, Suite 101  
Hartford, Connecticut

Adopted this 27 day of June, 2012 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chair  
By Order of the Commission

**RECEIVED  
STATE ELECTIONS**

**JUN 18 2012**

**ENFORCEMENT COMMISSION**