

STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Valerie Friedman, Washington

File No. 2011-074

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between the Board of Education for the Regional School District Number 12 (“the Board”) and the members of its Communications Committee, in their official capacity, 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 Regional School District Number 12’s (“Region 12”) annual budget was scheduled to be before the electors of Region 12 on May 3, 2011 (the “referendum”).
2. Region 12’s Public Budget Hearing was held on April 4, 2011. The meeting consisted of an overview by the Superintendent of the proposed budget and a period of public comment.
3. At a Special Meeting, also held on April 4, 2011, the Board of Education for Region 12 (the “Board”) voted to set and approve the budget for the year 2011-2012 at an increase of 2.23% over the previous year. A referendum on the budget was noticed for May 3, 2011.
4. The Board authorized its Communication Committee (the “Committee”) to produce educational materials concerning the referendum (the “flyer”).
5. Copies of the flyer were delivered to the post office for mailing to all households in the District. The cost of the mailing was \$532.51.
6. The flyer was not approved by the Board’s counsel prior to its mailing.
7. The Superintendent of Region 12 submitted a draft of the flyer to the Committee. The Committee states that it relied on the Superintendent to satisfy any conditions that had to be met prior to the sending of the flyer.
8. The Board does not dispute that the actions necessary for submission of the referendum to voters had been taken at the time it was mailed.

9. The Commission finds that the flyer selectively used all capitalization and underlining to emphasize cost cutting measures already in place as well as fixed costs (e.g., “NO general wage increase and NO step movement in 2011-12”) and warned of the consequences of failing to approve the referendum question.

10. Region 12 and the members of its Communications Committee, in their official capacity, dispute that the flyer contains advocacy prohibited by § 9-369b (a) and note the factual nature of the representations. They deny that the flyer was intended to advocate for a certain result. Region 12 and the members of its Communications Committee, in their official capacity, maintain that the statements in the flyer are completely factual and that its sole purpose was to present facts to the voters to enable them to vote in an informed manner.

11. Connecticut General Statutes § 9-369b (a) provides, in relevant 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.]

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

For any referendum called for by a regional school district, the regional board of education shall authorize the preparation and printing of concise explanatory texts of proposals or questions approved for submission to the electors of a municipality at a referendum. The regional school board of education's secretary shall prepare each such explanatory text, subject to the approval of the regional school board of education's counsel, and shall undertake any other duty of a municipal clerk, as described in 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 notes its finding of the flyer's selective use of all capitalization and underlining to emphasize cost cutting measures already in place as well as fixed costs. Similar to the instant matter, the Commission has considered the selective use of bold, large print as a factor indicating advocacy. *Complaint of Jane Salce, Thompson*, File No. 1993-161.
16. The Commission has found that, "stated threats of program cuts and dire consequences of failing to approve the referendum, as well as statements of need and justification, to constitute implied advocacy." *Complaint of Tina LaPorta, East Windsor*, File No. 2005-171, ¶ 7; see also *Complaint of Valerie Friedman, Washington*, File No. 2002-160, ¶ 4; *Complaint of Michael Doyle, New London*, File No. 2003-238, ¶ 4, 7.
17. Based on the above findings, the Commission concludes that the flyer constituted a public expenditure made to advocate a position on a pending referendum in violation of § 9-369b (a).
18. The Board and the members of its Communications Committee, in their official capacity, admit all jurisdictional facts and agree 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 Board and the members of its Communications Committee, in their official capacity, shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
19. 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 Board and the members of its Communications Committee, in their official capacity, and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
20. It is understood and agreed that the payment described below is to resolve this matter without the need to proceed to a public hearing and that said payment does not constitute a civil penalty imposed after such a hearing under Conn. Gen. Stat. § 9-369b (c).
21. The Board and the members of its Communications Committee, in their official capacity, waive:
 - (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.
22. Upon the agreement of the Board and the members of its Communications Committee to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

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

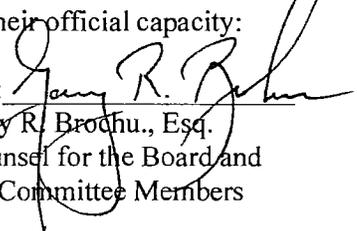
IT IS FURTHER ORDERED that the members of its Communications Committee shall pay five hundred and thirty-two dollars and fifty-one cents (\$532.51) for the violation of § 9-369b (a), which represents the cost of the flyer.

IT IS FURTHER ORDERED that henceforth the Board shall only authorize a committee or other body to prepare and print any explanatory texts concerning a pending Region 12 referendum on the basis of a written record, reflected in its minutes, that any such material be prepared by the Board's secretary and subject to written approval by the Board's counsel for conformity with § 9-369b (a) prior to making expenditures to distribute the educational material to electors.

IT IS FURTHER ORDERED that henceforth the Committee, or any subsequent body similarly authorized by the Board to prepare explanatory material concerning a Region 12 referendum question, shall ensure that any such material be prepared by the Board's secretary and subject to written approval of the Board's counsel for conformity with § 9-369b (a) prior to making expenditures to distribute the educational material to electors.

IT IS FURTHER ORDERED that the Committee, or any subsequent body similarly authorized by the Board to prepare explanatory material concerning a Region 12 referendum question, shall record and maintain such conditional authorization in its minutes.

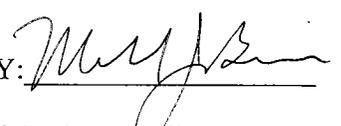
For Region 12 and the members
of its Communications Committee
in their official capacity:

BY: 
Gary R. Brochu., Esq.
Counsel for the Board and
the Committee Members

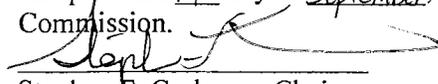
9/11/12

Dated

For the State of Connecticut

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

Adopted this 19th day of September, 2012 at Hartford, Connecticut by vote of the
Commission.


Stephen F. Cashman, Chair

By Order of the Commission