

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Robert Burke, Bethel

File No. 2011-129

FINDINGS AND CONCLUSIONS

Complainant Robert Burke brings this complaint pursuant to General Statutes § 9-7b alleging that Respondent Matthew Knickerbocker used public funds to promote his 2011 candidacy for first selectman of the Town of Bethel in violation of General Statutes § 9-610 (d). Specifically, Complainant alleged that Respondent Knickerbocker, then incumbent first selectman for the Town of Bethel, used public funds to send a letter to town residents about the town's ongoing road-paving project. After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. Respondent was elected as Bethel's first selectman in 2009. He successfully ran for reelection in November 2011.
2. On October 14, 2011, Respondent sent a letter on Town of Bethel letterhead that purported to "bring [recipients] up to date on the road repair project that was authorized last year." *See* Letter from Matthew Knickerbocker to residents (Oct. 14, 2011) ("Re: Bethel Road Construction Update").
3. Respondent stated in his response to this complaint that the October 14, 2011 letter was only sent to residents affected by the road projects and was neither political nor promotional of his campaign. *See* Letter from Matthew Knickerbocker to Gilberto Oyola (Nov. 22, 2011).
4. General Statutes § 9-610 (d) comprises two different prohibitions on the use of public funds to promote the candidacy of a public official. First, § 9-610 (d) (1) prevents an incumbent within the three months preceding an election from using public funds "to mail or print flyers or other promotional materials" that are intended to promote the candidacy of the incumbent. General Statutes § 9-610 (d) (1). Second, § 9-610 (d) (2) bans any individual from authorizing the use of public funds during the 12-months preceding an election for any promotional campaign or advertisement that "features the name, face or voice of a candidate for public office" or promotes the nomination or election of a candidate. Section 9-610 (d) (2) would not apply here because this communication was not a "promotional campaign or advertisement."
5. The Commission has applied a two-pronged test for determining whether a communication violates Connecticut General Statutes §9-610 (d) (1). A communication is deemed to violate §9-610 (d) (1) if it (1) expressly advocates the candidate's reelection or (2) is so laudatory as to implicitly advocate such reelection. *See* In the Matter of a Complaint by Karen Mulcahy, Waterbury, File No. 2005-292A & B (State Elections Enforcement Comm'n, Feb. 8, 2006); In the Matter of a Complaint by Peter Torrano, Norwalk, File No. 99-214 (State Elections Enforcement Comm'n, June 14, 2000). In the Matter of a Complaint by Ann Piscottano, New Haven, File No. 97-221 (State Elections

Enforcement Comm'n, Oct. 29, 1997) ; and In the Matter of a Complaint by Joseph Travagliano, East Haven, File No. 91-170 (State Elections Enforcement Comm'n, Oct. 9, 1991).

6. The road-construction-update letter that is the focus of this complaint expressly advocates for neither the reelection of the Respondent nor promotes the defeat of Respondent's opponent in the election. Therefore, the Commission must determine if the letter appears so laudatory as to advocate implicitly for Respondent's re-election. In making this determination, the Commission must consider the consistency of the language of the communication in relationship to its governmental purpose. In spite of its governmental purpose, such communication will be deemed to violate §9-610 (d), if it makes reference to any of the following:

- (1) the candidacy or party affiliation of any elected official;
- (2) the record of any elected official; or
- (3) a solicitation for contributions or other support for any official's campaign for re-election, or promoting the support of any other candidate, political committee or political party.

7. The road-construction-update letter sent from Respondent did not directly advocate for his reelection. Still, the letter did include several references to things that Respondent had done to advance the road project and indicated that Respondent planned to continue the project in the future. Specifically, Respondent's letter stated in relevant part:

When I sought the office of First Selectmen two years ago, the single most often heard complaint about our town was the poor condition of our roads. . . . This letter provides me the opportunity to keep you up to date with the progress of our road recovery; repairs to potholes will continue as well.

In June 2010, I proposed, and the Board of Selectmen unanimously approved, a comprehensive Road Recovery Plan. . . . The plan was to be financed through an \$8.5 million bond issue, and by taking advantage of the historic low interest rates, there would be no increase in the town's overall debt payments as a result of the road project.

. . . .
When phase 1 is completed, I will submit a new financing proposal to the Board of Finance for the remaining 22 miles of roads in the project, and I will ask that the entire project be brought before the voters through a referendum. The full list of the roads covered by the Road Recovery Project is attached with this letter.

Letter from Matthew S. Knickerbocker, First Selectman (October 14, 2011). The letter indicated recalled that the Board of Finance had rejected the entire project, but that eventually, "[a]fter extensive debate, the Finance Board allowed a scaled back, \$2 million project to go forward." *Id.* The letter did not specify what, if any, role Respondent played in that debate.

8. Section 9-610 (d) (1) applies to Respondent since he was an incumbent seeking reelection in 2011. The second prerequisite regarding timing of the publication is satisfied since the road-construction-

update letter was dated October 14, 2011, falling well within the 90-day period before the November 2011 election which began that year on August 8.

9. To find that the letter violated the prohibitions in § 9-610 (d) (1), the Commission must determine whether the letter was so laudatory as to advocate implicitly for the candidate's reelection. As in the companion cases (File Nos. 2011-127 and 2011-128), the language in this letter did not specifically promote the candidate's reelection. It did not discuss his candidacy, his party affiliation, or seek support or contributions. The letter, however, did put forth the Respondent's efforts to improve the roads and his ability to achieve results in spite of the objections of the Board of Finance. The letter indicated that Respondent played a direct role in this road plan, stating that Respondent proposed the initial plan and intended to finish the project in the future.
10. The Commission declines to find that the language in the October 14, 2011 letter was so laudatory as to violate the § 9-610 (d) (1) prohibition on incumbents' use of public funds to promote their reelection.
11. The Commission, however, will take this opportunity to introduce two new factors that it will consider when making the determination of whether a communication is so laudatory that, in spite of its governmental purpose, it implicitly advocates for the reelection of an incumbent – timing of the communication and its relationship to other communications. If a communication is released shortly before an election and appears to be one of a series of communications that collectively seem to advocate for the reelection of an incumbent, then the Commission will take those factors into its determination of whether a communication violates the prohibition in § 9-610 (d) (1) on the use of public funds to promote an incumbent candidate's reelection.

ORDER

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

That the complaint be dismissed.

Adopted this 22 day of AUGUST of 2012 at Hartford, Connecticut.



Stephen F. Cashman

By Order of the Commission