

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
M. Kirk Carr, Jr., Clinton

File No. 2012-044

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that John F. Cross III, Superintendent of Clinton Public Schools, violated General Statutes § 9-369b (a) by authorizing the expenditure of municipal funds to distribute a flyer advocating that electors vote in an upcoming referendum.

After an investigation of the allegations and information contained within the complaint, the Commission makes the following findings and conclusions:

1. The Complainant alleges that a flyer paid for by the Clinton Public Schools was made in violation of General Statutes § 9-369b (a) (the "flyer").
2. The Complainant alleges only that the flyer advocated that parents vote in an upcoming referendum. In the complaint itself, the Complainant does not actually allege that the flyer attempts to influence any person to vote for approval or disapproval of any such referendum question.
3. The flyer, on its face, does not attempt to influence any person to vote for approval or disapproval of any such referendum question.
4. While the flyer contains certain words in all capital letters and an exclamation mark, the style and tenor of the communication appears intended only to catch the reader's eye and promote attendance and participation at an informational session regarding the referendum.
5. The flyer does not selectively emphasize (e.g., through all capital letters or bolding) the positives or negatives of any outcome regarding the referendum question. When the communication is taken as a whole, the emphasized words, such as "WHY," "NEW," "ATTEND," "FACTS!" and "ASK" are clearly meant to increase attendance at the informational meeting and do not relate to merits of the referendum question itself. While "VOTE on April 11!" clearly advocates voting, it does not itself attempt to influence in what manner the reader should vote.
6. Connecticut General Statutes § 9-369b (a) provides, in relevant part:

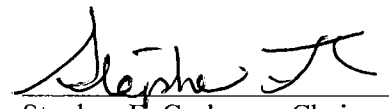
Except as provided in subsection (b) of this section, any municipality may, by vote of its legislative body, authorize the preparation and printing of concise explanatory texts of local proposals or questions approved for submission to the electors of a municipality at a referendum. ... *[N]o expenditure of state or municipal funds shall be made to influence any person to vote for approval or disapproval of any such proposal or question.* [Emphasis added.]

7. The Commission has consistently concluded, “that communications that recommend or urge support or opposition to a referendum question are subject to the restrictions found in Section 9-369b.” See *Complaint of Jennifer Iannucci, Bridgewater*, File No. 2006-166, ¶ 8.
8. 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).
9. In its consideration of the flyer as a whole, the Commission notes its finding that the flyer’s periodic use of all capitalization does not selectively emphasize the positives or negatives of a referendum question. This is distinct from the Commission’s consideration of the selective use of bold, large print as a factor indicating advocacy when such selective use favors or disfavors a specific option for a referendum question by highlighting only the positives or negatives of the outcome. See, for contrast, *Complaint of Jane Salce, Thompson*, File No. 1993-161.
10. Based on the above findings, the Commission concludes that: (1) although the Complainant alleges a violation of § 9-369b (a), the complaint has not alleged facts that would constitute a violation of § 9-369b (a); (2) even if the Complainant so alleged, the flyer, on its face, does not support a finding of prohibited conduct under § 9-369b (a).

ORDER

IT IS HEREBY ORDERED that the complaint be dismissed.

Adopted this 23rd day of May, 2012 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chair
By Order of the Commission