

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
George Ruhe, Wethersfield

File No. 2012-054

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Michael T. Emmett (hereinafter referred to as "Respondent"), Superintendent of the Wethersfield Public Schools, Wethersfield, County of Hartford, 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 serves as Superintendent of the Wethersfield Public Schools and has served in that capacity since July 1, 2012.
2. The Town of Wethersfield held a referendum on a high school building project on April 24, 2012.
3. The complainant alleged that the school district spent municipal funds to promote approval of the referendum by sending email messages to electors that included links to documents promoting to all parents in the school district.
4. The email message stated:

News Alert: High School Referendum Vote Today: Tuesday April 24, 2012

All registered voters will be casting ballots TODAY on the Wethersfield High School Renovation Bond Referendum. All polling places will be open from 6 a.m. to 8 p.m.

Project Information:

<http://www.wethersfield.k12.ct.us/page.cfm?p=2416>

Questions & Answers:

http://www.wethersfield.k12.ct.us/uploaded/schools/Wethersfield_High_School/renovation/WHS_Question_-_0210112.pdf

Email "News Alert: High School Referendum Vote Today: Tuesday April 24, 2012" from Wethersfield Public Schools, April 24, 2012.

5. The email indicated that individuals who had previously signed up for news posts received the email. *Id.*
6. Two links in the email – under “Project Information” and “Questions & Answers” respectively – took the viewer to the Wethersfield Public Schools website. Once there, the “Project Information” link provided information prepared by the Town of Wethersfield Building Committee about the renovation, including links to plans, video presentations, evaluations of the project’s cost and the impact to taxpayers, as well as the educational specifications for the renovated high school. See <http://www.wethersfield.k12.ct.us/page.cfm?p=2416> (site last accessed on December 21, 2012); see also Exhibit 2 “Project Information” Link, attached to complaint. The second link, “Questions & Answers,” took viewers to a PDF document prepared by the Town of Wethersfield Building Committee that included responses to common questions about the school project. According to the document, it was updated on January 31, 2012. See “WETHERSFIELD HIGH SCHOOL RONOATIONS [sic] AND ADDITIONS – “AS NEW” http://www.wethersfield.k12.ct.us/uploaded/schools/Wethersfield_High_School/renovation/HS_Question_-_0210112.pdf.
7. The “Questions & Answers” document covered numerous topics. Among the numbered questions and responses are:

...

16. WITH REGARDS TO THE BUILDING PLAN THAT WAS CHOSEN WHY THIS PLAN? WERE THERE OTHER LESS PRICED ONES CONSIDERED?

...

The proposed project provided the best value using the existing building assets, maximizing state reimbursement for the high school, and providing the Town of Wethersfield with an “As New” facility. That will reduce future utility/energy costs. [Emphasis in original]

...

18. WHAT HAPPENS IF THIS PROJECT DOES NOT HAPPEN?

If the project does not happen there might be a number of ramifications. One specific issue will be with the school's accreditation from the New England Association of Schools and Colleges (NEASC). Our accreditation report will be very critical of curricular and instructional constraints placed upon the school by its physical limitations. It is well within reason to think that the school will go on warning and eventually probation for its accreditation if the project does not happen. Our property values would be at risk of plummeting. The Office of Civil Rights (OCR) has cited Wethersfield High School for multiple code violations surrounding handicapped accessibility and Title IX issues. While we have made some changes and improvements for smaller issues, the larger issues

remain. These corrections can only happen with major and costly renovation. If we do not comply I do not know what the sanctions might be. I would think that the school district might be subject to some type of liability. An improved facility would put us on an even playing field (academically) as some of our neighboring districts. If we do not address some instructional areas our students would have less of an opportunity than students at neighboring schools which is inequitable. If the project does not happen we will be spending non-reimbursable dollars on items that fail (boilers, windows, plumbing etc.) displacing dollars that can be allocated to education.

“WETHERSFIELD HIGH SCHOOL RONOVATIONS [sic] AND ADDITIONS – “AS NEW”
http://www.wethersfield.k12.ct.us/uploaded/schools/Wethersfield_High_School/renovation/WHS_Question_-_0210112.pdf

8. Connecticut General Statutes §9-369b provides in pertinent part:
 - (a) . . . [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 . . .
9. 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 §9-369b, General Statutes. In its determination of whether a publicly funded communication advocates the approval or disapproval of a referendum, the Commission has considered the communication as a whole, its content, style, tenor and timing.
10. The Commission has determined previously that communications that advocate a particular result, either expressly or, when considered as a whole, make an ordinary reasonable person understand that the communication advocates for a particular result, would constitute advocacy. The Supreme Court analyzed this standard of review in *Sweetman v. State Elections Enforcement Commission* and concluded that the Commission could rely on that process to determine when communications advocated for or against the outcome of a referendum. *See* 249 Conn. 296, 316 (1999).
11. In prior decisions the Commission has found that the costs associated with a website or server maintained by the public schools would be an expenditure of public funds under § 9-369b. *See In the Matter of a Complaint by Matthew Grimes, Brookfield*, File No. 2008-070, ¶ 8 (concluding that message posted on town website while referendum was pending that urged support for budget violated General Statutes § 9-369b).
12. The Commission has recognized that the prohibition against using public funds to influence the outcome of a referendum does not apply to messages limited to statements of the time, place and date of an upcoming referendum.

13. Likewise, the hosting and maintenance of a website, where the material advocating on behalf of the referendum was made available to the public, also cost the school system. However small, the school system made expenditures of public funds.
14. Respondent asserts that it was not the intention of the Wethersfield Public Schools to advocate for a position on the referendum question by including materials prepared by the Town of Wethersfield Building Committee on the website and/or by sending e-mails containing links to such materials to citizens residing in the Town of Wethersfield who had previously signed up to receive updates regarding the high school building project. Rather, it was the intention of the Wethersfield Public Schools to provide access to information prepared by the Town of Wethersfield Building Committee regarding the high school building project.
15. Notwithstanding the intentions of the Wethersfield Public Schools, the Commission concludes that the website, which was also paid for by public funds from the Wethersfield Public Schools, contained information that a reasonable person would view as advocating for a positive vote on the referendum.
16. The Commission concludes that the electronic mail message of April 24, 2012, which notified certain Wethersfield residents of the referendum vote and, more importantly, referred them to the school system's website that included material advocating for the high-school-building project that was the subject of the referendum, violated General Statutes § 9-369b's ban on the use of public funds to influence the outcome of a referendum question. The Commission concludes that although the message itself did not advocate for or against the referendum, the website created and maintained by the Wethersfield Public Schools included advocacy materials that promoted the referendum.
17. The Commission has taken into consideration the limited impact, nature and expense of the email message at issue in its resolution of this matter.
18. 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.
19. The Respondent neither admits nor denies the Commission's conclusions that the information on the website advocated a position on the referendum question, but is willing to accept the terms of this consent order in an effort to allow the Commission to resolve this matter.
20. 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 Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.

21. The Respondent waives:

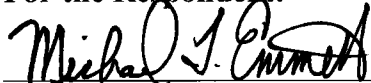
- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.

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

ORDER

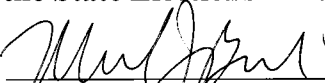
IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with the requirements of Connecticut General Statutes §9-369b, and shall further ensure that no expenditure of municipal funds shall be made to influence any person to vote for approval or disapproval of a referendum question.

For the Respondent:



Michael T. Emmett
Superintendent
Wethersfield Public Schools
Wethersfield, CT

For the State Elections Enforcement Commission:

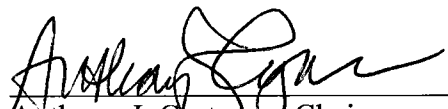
BY: 

Michael J. Brandi, Esq.
Executive Director and General Counsel
of the State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: February 6, 2013

Date: 2/20/13

Adopted this 20th day of February of 2013, at Hartford, Connecticut.



Anthony J. Castagne, Chairman
By Order of the Commission