

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Lynn Brewer, Winsted

File No. 2012-133

FINDINGS AND CONCLUSIONS

The Complainant filed this Complaint pursuant to Connecticut General Statutes § 9-7b. The Complainant alleges that David LaPoint of Winsted, Connecticut (the "Respondent"), issued postcard communications opposing the adoption of the Winsted June 2, 2012 town budget referendum (the "referendum question"), which failed to properly include the required "paid for by" and "approved by" language in violation of General Statutes § 9-621 (a). The Complainant further alleges that the Respondent mailed a partially completed absentee ballot application, identifying himself as an assistor in the completion of such application.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. The Complainant has alleged and offered no direct evidence associating the Respondent with postcards that opposed the adoption of the referendum question and which did not contain an attribution identifying who paid for or approved the communication (the "Communication").
2. The Respondent has provided a written denial concerning his alleged involvement in making expenditures for the Communication. No available evidence links the Respondent with the expenditure for the Communication.
3. The origin of the Communication remains presently unknown and the evidence obtained in the course of the investigation does not indicate a reasonable likelihood of identifying the person making the expenditure for the Communication.
4. The Respondent publicly associated himself with opposition to the adoption of the referendum question. For example, the Respondent did not refrain from identifying himself in other communications opposing the adoption of the referendum question. Separate and apart from the Communication, flyers reportedly issued by the Winchester Taxpayers Association clearly included an attribution stating "Paid for by members of the Winchester Taxpayers Association. Fighting for the Citizens who pay the bills. David G. LaPoint, Taxpayer Advocate for Winchester/Winsted."
5. General Statutes § 9-621 (a), governing attributions on political advertising, provides:

No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication, or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or promotes or opposes any political party or solicits funds to benefit any political party or committee unless such communication bears upon its face (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer; (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, and (2) the words "approved by" and the following: (A) In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate. [Emphasis added.]

6. Pursuant to § 9-621 (a), individuals acting alone, are not required to include attributions on advocacy communications concerning referenda, as mandated by the Supreme Court's ruling in *McIntyre v. Ohio Elections Commission*, 541 U.S. 334 (1995). See *Complaint of Pamela Lang, Middlefield*, File No. 2006-168, *Complaint of Arthur R. Thompson, Deep River*, File No. 2007-380, *Complaint of Amy Primorac, Monroe*, File No. 2009-064, *Complaint by Old Saybrook Town Clerk Sarah Becker*, File No. 2001-191, *Complaint of Tony Palermo, Westbrook*, File No. 2003-186, and *Complaint of M. Kirk Carr, Jr., Clinton*, File No. 2012-083.

7. As described above regarding the inapplicability of the attribution statute in § 9-621 (a) to individuals acting alone, the existence of the Communication alone is not evidence that any violation of the election laws necessarily occurred.
8. As a separate matter, the investigation finds that the Respondent mailed a partially completed and unexecuted absentee ballot application to the Complainant.
9. Based on the copy provided by the Complainant, the Respondent clearly identified himself as an assistor in the completion of the unexecuted absentee ballot applications. Under "Declaration of the Person Providing Assistance," the Respondent clearly provided his name, phone number, address and signature. The applications were also partially completed insofar as they provided the potential applicant's name and address and identified the applicable date of the referendum question. The signature area for the potential applicant was left blank.
10. General Statutes § 9-140 (a), governing reporting assistance in completing absentee ballot applications, provides, in relevant part:

Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting....

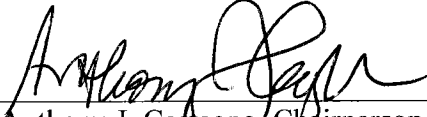
11. Based on the above findings, the Respondent complied with the requirements of § 9-140 (a) regarding providing the signature and identifying information of an assistor.
12. In the same envelope as the partially completed absentee ballot applications, which were marked with the Respondent's name and return address, the Respondent also included a written statement opposing adoption of the referendum question. For the reasons stated above, any expenditure for such a communication, when made by an individual acting alone, is not subject to the attribution requirement of § 9-621 (a). Accordingly, the Complainant has not alleged a recognized violation regarding such communication.

ORDER

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

That the Complaint be dismissed.

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



Anthony J. Castagno, Chairperson
By Order of the Commission