

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
George Zipparo, Redding

File No. 2013-093B

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between the Board of Education for the Regional School District Number 9 (the "Board"), and Superintendent Bernard A. Josefsberg, 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 9's ("Region 9") annual budget was pending (the "referendum question").
2. Region 9's Superintendent, Josefsberg, authorized the expenditure of a total of \$2,334.20 in municipal funds for the production and distribution of a publication concerning the referendum question (the "Explanatory Text").
3. The Explanatory Text reports "Major Goals of the Proposed Budget: Preserve class size to accommodate increased enrollment. Maintain high standards for teaching and learning. Maintain facilities and fields. Control operating costs. Support program growth and innovation."
4. The Explanatory Text includes a section titled *Guiding Principle*, which includes an inspirational quote on the value of education. This *Guiding Principle* appears to be frequent boilerplate in Region 9 material and is included on the school's website and is painted on the walls of the school's lobby.
5. The Respondents acknowledge that the Explanatory Text was not issued in accordance with the procedure prescribed by General Statutes § 9-369b (b).
6. The Respondents dispute that the Explanatory Text contains advocacy prohibited by § 9-369b (a) and note the factual nature of the representations.
7. 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.]

8. 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.

9. The Commission has previously determined that compliance with the procedural requirements of § 9-369b is the exclusive method by which a municipality may issue and fund explanatory texts concerning pending referendum question and hereby applies that same reasoning to regional school boards. See *Complaint of Valerie Friedman*, File No. 2002-160; *Complaint of Walther Grunder, et al*, File No. 1998-256; *Complaint of Barbara Stambo; et al*; File No. 1996-227; *Complaint of Donald Hassinger*, File No. 1994-104; *Complaint of G. Wilbur, et al*, File No. 1994-133.
10. 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.
11. 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).
12. 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 ... 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.

13. Based on the above findings, the Commission concludes that the language in the Explanatory Text raises concerns regarding whether a public expenditure was made to advocate a position on a pending referendum in violation of § 9-369b (a), but declines to reach a specific conclusion in this regard in consideration of the execution of the instant Consent Order.
14. The Respondents 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 Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
15. It is understood and agreed that this agreement will be submitted to the Commission at its next available meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission by any party in any subsequent hearing, if the same becomes necessary.
16. The Respondents 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.
17. Upon the Respondents’ agreement 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 Bernard A. Josefsberg shall strictly comply with the requirements of Connecticut General Statutes §§ 9-369b (a) and 9-369b (b).

The Respondents:

By their counsel: Anthony Shannon
Anthony Shannon
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103

For the State of Connecticut:

BY: Michael J. Brandi
Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 12/16/13

Dated: 12/18/13

Adopted this 15th day of JAN, 2014 at Hartford, Connecticut by vote of the Commission.

Anthony J. Castagno
Anthony J. Castagno, Chairman
By Order of the Commission

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