

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Donna G. Rusgrove and
Jacqueline B. Sheehan, Burlington

File No. 2014-066

FINDINGS AND CONCLUSIONS

Complainants Donna Rusgrove and Jacqueline B. Sheehan bring this Complaint pursuant to Connecticut General Statutes § 9-7b. The Complainant alleges that Alan Beitman, Superintendent of Schools and Jack Gedney, the Principal of Lake Garda School in Burlington, Connecticut, used the School Messenger system to remind parents of the school budget referendum during the time when the referendum was pending. After the investigation of the Complainants' complaint, the Commission makes the following findings and conclusions:

1. The Complainants alleged the use of the school messenger system to send out an email relating to a budget referendum violated General Statutes § 9-369b. The body of the email was as follows:

*Dear Lake Garda Parents: – Good Morning. I wanted to send a sort reminder to please mark your calendars for the next school budget referendum. The Vote will take place at the Town Hall on **WEDNESDAY MAY 28, 2014. 6:00am until 8:00pm.** Thank you and have a great day. – Respectfully – Jack Gedney – Principal*
[Original Emphasis.]
2. The Commission applies a three prong analysis in applying § 9-369b including (1) whether the communication advocates, (2) whether it was made with public funds, and (3) whether it was made while a referendum was pending. The analysis in this case turns on whether the referendum was pending when the subject communication was disseminated.
3. A referendum question is pending when the necessary legal conditions have been satisfied to require the publication of the warning (notice) of the referendum. *See generally In the Matter of a Complaint by Donald Hassinger, Woodbury, File No. 2010-50.*
4. General Statutes § 9-369b provides in pertinent part:

(b) 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.

5. Further, General Statutes § 9-369b, as amended by Public Act 13-247 incorporated restrictions for the use of municipal funds to send unsolicited communication by electronic or automated means as of July 1, 2013. More specifically, only *community notification systems* – as opposed to systems that reach only a subset of an entire community – are now permitted to be used for the limited purposes of reminding voters of the time, location and question of an upcoming referenda.
6. The Commission finds the following timeline of events pertaining to the May 28, 2014 referendum dispositive:
 - a. On May 12, 2014 at a 7:00 p.m. Regular School Board Meeting the Superintendent recommended and requested that the discussion of a May 27th annual meeting that would adjourn to a May 28th referendum be scheduled for consideration by the Board of Education.
 - b. On May 15, 2014 at 9:39 a.m., an E-Mail was sent by Jack Gedney using the school messenger system to remind parents of the referendum on May 28, 2014.
 - c. On May 15, 2014 at 7:00 p.m., a Special Meeting of Regional School District 10 was held to discuss the referendum and to approve the Superintendent's call for a May 27th meeting followed by a May 28th referendum.
 - d. On May 16, 2014 at 11:02 a.m., an E-Mail was sent from the *Hartford Courant* stating that the notice of the referendum would be published on May 19th, 2014.
7. The Commission finds, as detailed in the timeline above that until the call of the May 27, 2013 meeting was approved at the May 15, 2013 Region School District No. 10 Special Meeting *the legal possibility of not holding a referendum continued to be a viable option*. The call of a May 27, 2013 meeting (to adjourn to referendum on May 28th) was approved at 8:31 p.m. at the close of the May 15, 2013 Special Meeting. At the close of the May 15, 2013 meeting the necessary legal conditions were therefore fixed and required that a notice of referendum be published which was forwarded to the *Hartford Courant* on May 16, 2013 and published on May 19, 2013.
8. Any communication would have to be made *while a referendum was pending* to trigger the application of General Statutes § 9-369b, as amended by P.A. 13-247. The email subject to this complaint was sent on May 15, 2014 at 9:39 a.m. *prior* to the 7:00pm meeting that evening, which resulted in the publication of the warning of referendum.
9. The Commission finds that the relevant communication was sent *prior* to the time when the necessary legal conditions determining the pendency of May 28, 2014 referendum had occurred and thus *prior* prohibitions pursuant to General Statutes § 9-369b being in effect.

10. The Commission concludes for the reasons detailed herein that because the communication subject to this complaint was disseminated at public cost prior to the pendency of the May 28, 2014, the prohibitions of General Statutes § 9-369b did not apply and therefore no violation of that statute occurred.

ORDER

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

That the Complaint be dismissed.

Adopted this 19th day of August of 2014 at Hartford, Connecticut



Anthony J. Castagno, Chairman
By Order of the Commission