

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Alex Ruskewich, Wilton

File No. 2014-118A

**FINDINGS AND CONCLUSIONS**

The Complainant made multiple allegations concerning the activities of town officials in association with a referendum held September 23 and 27, 2014 to vote on issuing bonds to fund a renovation of the Miller-Driscoll school facility in town. The majority of the allegations are addressed here, with one count separately addressed in SEEC File No. 2014-118B.<sup>1</sup>

**BACKGROUND**

1. By way of background in this matter, on or about February 19, 2013, the Wilton Board of Selectmen created an ad hoc committee entitled the Miller Driscoll Building Committee (the "MDBC"). According to the website for the Town of Wilton, the members of the current committee are Dick Dubow (Board of Selectmen), Karen Birck, John Kalamarides (Board of Finance), Cheryl Jensen-Gerner (MD Principal), Ann Paul (Dir., Sp. Services), Dr. Fred Rapczynski (Dir. Pre-School), John Murphy (Supv., Dist. Cust. Serv.), John Guth, Bruce Hampson, Ray Tobiassen, Rick Tomasetti, and Jim Newton.
2. The Board of Selectmen charged the MDBC with developing a plan "to renovate and upgrade Miller-Driscoll School in order to extend the useful life of the building and site as Wilton's only Pre-K and K-2 school for the next 25 to 30 years." The Committee held eleven (11) public meetings during which multiple conceptual plans to renovate the building were discussed. Members of the public attended these meetings. The conceptual plans were presented to the Board of Selectmen on February 18, 2014 at which time the Board of Selectmen authorized the Committee to proceed with detailed schematic design of one of the conceptual plans. The Committee then held another four (4) public meetings to discuss the schematic design and its cost. At a July 21, 2014 joint meeting of the Boards of Selectmen and Finance, the Board of Selectmen unanimously approved the schematic plan

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<sup>1</sup> The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

and budget for the project presented to the voters at the September 23, 2014 Special Town Meeting.

3. On September 2, 2014 the Board of Selectmen approved a resolution to issue municipal bonds in order to pay for project. This was the act that triggered the Town meeting and referendum clause of the Charter, which was then scheduled and held on September 23 and 27.

### **ALLEGATIONS**

4. The Complainant, a member of a coalition of individuals who formed the referendum committee "Sensible Wilton" opposing the bond issuance for the renovation, separated his complaint into two main allegations and then filed a supplement to his original complaint, which added a third allegation. The allegations will be addressed herein as Count One, Count Two, and Count Three.
5. In Count One, the Complainant alleges that the Town of Wilton utilized public funds to pay for an electioneering communication advocating a "Yes" vote in the referendum.
6. In Count Two, the Complainant also alleges that the Town of Wilton utilized public funds in the form of informational sessions about the project held on "parent nights" on September 10th and 17th in which the Complainant alleges representatives of the Town of Wilton advocated for a "Yes" vote in the upcoming referendum.
7. In Count Three, the Complainant alleges that the Town of Wilton placed a notice up on the town-hosted PTA calendar reading "Vote for Miller-District Renovation!"

### **LAW**

8. General Statutes § 9-369b speaks to expenditures of public funds in association with a pending referendum and reads, in pertinent part:

(a)(1) Except as provided in subdivision (2) of this subsection, 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. In a municipality that has a town meeting as its legislative body, the board of selectmen shall, by majority vote, determine whether to authorize an explanatory text or the dissemination of other neutral printed material. Thereafter, each such explanatory text

shall be prepared by the municipal clerk, subject to the approval of the municipal attorney, and shall specify the intent and purpose of each such proposal or question. Such text shall not advocate either the approval or disapproval of the proposal or question. The municipal clerk shall cause such question or proposal and such explanatory text to be printed in sufficient supply for public distribution and shall also provide for the printing of such explanations of proposals or questions on posters of a size to be determined by said clerk. At least three such posters shall be posted at each polling place at which electors will be voting on such proposals or questions. Any posters printed in excess of the number required by this section to be posted may be displayed by said clerk at the clerk's discretion at locations which are frequented by the public. The explanatory text shall also be furnished to each absentee ballot applicant pursuant to subsection (d) of section 9-140. Any municipality may, by vote of its legislative body and subject to the approval of its municipal attorney, authorize the preparation and printing of materials concerning any such proposal or question in addition to the explanatory text if such materials do not advocate the approval or disapproval of the proposal or question.

...

(3) For purposes of this subdivision, "community notification system" means a communication system that is available to all residents of a municipality and permits any resident to opt to be notified by the municipality via electronic mail, text, telephone or other electronic or automated means of community events or news. At the direction of the chief elected official of a municipality, a municipality that maintains a community notification system may use such system to send a notice informing residents of an upcoming referendum to all residents enrolled in such system. Such notice shall be limited to (A) the time and location of such referendum, (B) a statement of the question as it is to appear on the ballot at the referendum, and (C) if applicable, the explanatory text approved in accordance with subdivision (1) or (2) of this subsection. Any such notice shall not advocate the approval or disapproval of the proposal or question or attempt to influence or aid the success or defeat of the referendum. Other than a notice authorized by this subdivision, no person may use or authorize the use of municipal funds to send an unsolicited communication to a group of residents regarding a referendum via electronic mail, text, telephone or other electronic or automated means for the purpose of reminding or encouraging such

residents to vote in a referendum, provided such prohibition shall not apply to a regularly published newsletter or similar publication.

(4) Except as specifically authorized in 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 or to otherwise influence or aid the success or defeat of the referendum.** The provisions of this subdivision shall not apply to a written, printed or typed summary of any official's views on a proposal or question, which is prepared for any news medium or which is not distributed with public funds to a member of the public except upon request of such member.

(b) The State Elections Enforcement Commission, after providing an opportunity for a hearing in accordance with chapter 54, may impose a civil penalty on any person who violates this section by authorizing an expenditure of state or municipal funds for a purpose which is prohibited by this section. The amount of any such civil penalty shall not exceed twice the amount of the improper expenditure or one thousand dollars, whichever is greater. In the case of failure to pay any such penalty imposed under this subsection within thirty days of written notice sent by certified or registered mail to such person, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to pay the penalty imposed. Notwithstanding the provisions of sections 5-141d, 7-101a and 7-465, any other provision of the general statutes, and any provision of any special act or charter, no state or municipal officer or employee shall be indemnified or reimbursed by the state or a municipality for a civil penalty imposed under this subsection.

(c) Any municipality may provide, by ordinance, for the preparation and printing of concise summaries of arguments in favor of, and arguments opposed to, local proposals or questions approved for submission to the electors of a municipality at a referendum for which explanatory texts are prepared under subsection (a) of this section. Any such ordinance shall provide for the establishment or designation of a committee to prepare such summaries, in accordance with procedures set forth in said ordinance. The members of said committee shall be representatives of various viewpoints concerning such local proposals or questions. The committee shall provide an opportunity for public comment on such summaries to the extent practicable. Such summaries shall be approved

by vote of the legislative body of the municipality, or any other municipal body designated by the ordinance, and shall be posted and distributed in the same manner as explanatory texts under subsection (a) of this section. Each summary shall contain language clearly stating that the printing of the summary does not constitute an endorsement by or represent the official position of the municipality. (Emphasis added.)

“Pending” Analysis

9. The allegations here implicate the provisions of General Statutes § 9-369b, which concerns the activities of public officials in association with a referendum. Such provisions are not effective unless the referendum is “pending.” The Commission has held that a referendum is legally pending when all of the necessary legal conditions have been satisfied to require that a referendum be held. *In the Matter of a Complaint by Roger Wise, et al, New Fairfield*, File No. 2009-003.
10. Here, the Wilton Charter requires a town meeting and a referendum to be held after the Board of Selectmen propose an issuance of bonds.
11. The records of the Town of Wilton reflect that the Board of Selectmen voted on the proposed issuance of bonds on September 2, 2014, which is the relevant “pending” date in this matter. The referendum at issue here was held on September 23 & 27, 2014.

**COUNT ONE:      Use of Municipal Funds to Advocate in a Referendum**

12. In Count One, the Complainant alleges that while the referendum on the bond issuance was “pending,” flyers advocating a “yes” vote were distributed at two town-sponsored meetings held on September 10th and September 17th as well as at sporting events held on school grounds on the days leading up to the voting days of the referendum. He alleges that he believes that the town paid for the flyers based on the fact that the flyers were distributed at town events and bore the website URL for the town.
13. The Complainant included a copy of a flyer that explicitly advocates for voting “Yes” on the upcoming referendum. The front of the flyer specifically exhorts the voters to “Vote YES for the Miller-Driscoll Renovation Project” and the remainder of the flyer details the date and times of the referendum, as well as the various proposed renovations that would be funded by the bond issue. The bottom of the flyer reads: “See [www.wiltonct.org](http://www.wiltonct.org) for more information on the project.”

14. The Wilton Town Clerk confirmed that no committees other than "Sensible Wilton" registered to make expenditures related to the referendum in this case.
15. The Town of Wilton generally denied the allegation here and provided evidence that the flyer was created and paid for by one or more private citizens and not by the Town of Wilton, including but not limited to an individual by the name of Susan Price.
16. When the instant Complaint was filed alleging that the Town of Wilton had paid for the flyers, Ms. Price contacted town attorney Kenneth Berhard as follows:

Upon seeing the distribution of the "No" flyers and the placement of them on cars in the school parking lot, I became very angry and decided, along with some of my friends, to produce a 'Yes' flyer. We went to Paul's Prosperous Printing and had 2,000 flyers printed at a total cost of \$100.00. I'm attaching a copy of the receipt. We distributed the flyers at three school events. The flyers were never approved or even shown to any public school official or town official and I did it entirely on my own initiative and the distribution was my effort alone. I also distributed the flyers at soccer fields, football fields and at a Stop & Shop. I have reviewed the complaint filed to the SEEC and to the extent that it connects my activities with the Building Committee or with town officials, it is pure nonsense, . .

17. As an initial matter, the Commission found no evidence supporting the allegation that the Town of Wilton used municipal funds for the flyer at issue. As such, Count One is dismissed as to them.
18. However, the Commission continued the investigation and named Ms. Price as a respondent, as the flyers contained no attribution, as required in certain circumstances by General Statutes § 9-621 (c), which reads in pertinent part:

(c) No business entity, organization, association, committee, or group of two or more individuals who have joined solely to promote the success or defeat of a referendum question shall make or incur any expenditure for any written, typed or other printed communication which promotes the success or defeat of any referendum question unless such communication bears upon its face, as a disclaimer, the words "paid for by" and the following: (1) In the case of a business entity, organization or association, the name of the business entity, organization or association and the name of its chief executive officer

or equivalent, and in the case such communication is made during the ninety-day period immediately prior to the referendum, such communication shall also bear on its face the names of the five persons who made the five largest aggregate covered transfers to such business entity, organization or association during the twelve-month period immediately prior to such referendum. The communication shall also state that additional information about the business entity, organization or association making such communication may be found on the State Elections Enforcement Commission's Internet web site; (2) in the case of a political committee, the name of the committee and the name of its treasurer; (3) in the case of a party committee, the name of the committee; or (4) in the case of such a group of two or more individuals, the name of the group and the name and address of its agent.

19. The main question here is whether a "group of two or more individuals who have joined solely to promote the success or defeat of a referendum question" incurred the expenditure for the flyers here, such that an attribution was required.
20. It is well established that Pursuant to § 9-621, individuals who are not a "group of two or more individuals who have joined solely to promote the success or defeat of a referendum question" 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 also *In the Matter of a Complaint by Lynn Brewer*, Winsted, File No. 2012-133; *In the Matter of a Complaint of M. Kirk Carr, Jr., Clinton*, File No. 2012-083; *In the Matter of a Complaint of Amy Primorac, Monroe*, File No. 2009-064; *In the Matter of a Complaint of Arthur R. Thompson, Deep River*, File No. 2007-380; *In the Matter of a Complaint of Pamela Lang, Middlefield*, File No. 2006-168; *In the Matter of a Complaint of Tony Palermo, Westbrook*, File No. 2003-186; and *In the Matter of a Complaint by Old Saybrook Town Clerk Sarah Becker*, File No. 2001-191.
21. In response to staff inquiries during the investigation of this matter, Susan Price generally took responsibility for the flyer at issue. She asserts that she produced 2000 flyers at the above print shop at a cost of \$100 (and provided evidence in support), but enlisted others to help her distribute the flyers at town events, including but not limited to sporting events and town meetings.
22. Ms. Price asserts that these flyers were her project, but that she did not work entirely alone. Indeed, in the interest of full disclosure, she also provided copies of detailed e-mails between her and MDBC member Bruce Hampson. MDBC member Karen Birck and Miller-Driscoll principal Cheryl Jensen-Gerner are recipients of the e-mails, but the main

communication is between Mr. Hampson and Ms. Price, with the other individuals included as recipients.

23. Importantly, while the communications show that MDBC members were at least knowledgeable about the flyer, there was no evidence in the e-mails or otherwise found in the investigation supporting a finding that a “group of two or more individuals” incurred the expenditure for the flyer.<sup>2</sup>
24. This case is not unlike, *In the Matter of a Complaint of Arthur R. Thompson, Deep River*, File No. 2007-380. In *Thompson*, two individuals independently developed and solely incurred expenditures for two different flyers, but agreed to coordinate in the distribution of each other’s flyer. The Commission found that that:

In the present case, Ms. Epright and Ms. Huybensz did not jointly make an expenditure to promote the defeat of the pending referendum question. Ms. Epright merely volunteered to help distribute the anonymous political statement that Ms. Huybensz independently paid for and composed . . . Since Ms. Huybensz acted alone and independently made the expenditure for the flyer, she was not required to include an attribution on the flyer, pursuant to General Statutes § 9-621.

*Thompson*, File No. 2007-390 at ¶¶ 7-10.

25. Considering the aforesaid, while Ms. Price did not work entirely alone—she admits that she enlisted others to help her distribute the flyers—the Commission has held that this does not automatically trigger the attribution requirement in § 9-621. The evidence here does not support a conclusion that a “group of two or more individuals” incurred the expenditure for the flyer. As such, Ms. Price was not required to put an attribution on it. Count One should also be dismissed as to Ms. Price.

**COUNT TWO: Use of Public Funds by Using Public Facilities for Advocacy**

26. In Count Two, the Complainant alleges that at so-called “parent nights” held on September 10 and 17th at the Miller-Driscoll School, members of the MDBC attended the parent

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<sup>2</sup> Also importantly, a municipal expenditure is not triggered simply because members of a municipal committee are aware of electioneering communications and/or may have even distributed such electioneering communications in cooperation with another individual. Individuals do not automatically give up their personal free speech rights by virtue of membership on a public committee.



nights and advocated for a “Yes” vote at these nights. The Complainant asserts that this was an impermissible use of public funds to advocate for an outcome in the referendum, in violation of General Statutes § 9-369b.

27. The Complainant specifically alleges that on September 10th and 17th, the Miller-Driscoll School held two of its regularly scheduled “parent nights” at the school and at these events, representatives of the MDBC and the school gave presentations to the parents regarding the renovation project. The Complainant alleges that the presentations given by the MDBC were “advocacy sessions.” He bases his allegations mainly off of the testimony of two parents, one of which was O. Curtis Noel<sup>3</sup>, who provided a statement indicating that it was his opinion that the presentation, led by Karen Birck of the MDBC, “gave what can only be described as a strong sales pitch calling for support of the \$50 million M-D renovation proposal. She urged these parents to vote for the proposal.” Parent John Macken also spoke at the September 23, 2014 Town Meeting and described the session at his parent night similarly as a “sales pitch.” The Complainant was unable to provide any video or audio recordings of the parent night presentations or additional witnesses who would testify similarly to Mr. Macken and Mr. Noel.

28. In its initial response, the Town of Wilton asserts:

In the weeks prior to the scheduled Special Town Meeting vote to approve/disapprove the issuance of the bonds, the Committee conducted a public informational session on September 4, 2014 at the library. The Committee also did presentations to the Rotary Club, the realtors, the PTA Council, the Wilton Education Foundation, the Republican Town Committee, the Democratic Town Committee and the Kiwanis Club. There were presentations at the various “meet the teacher” days and open houses. The purpose of the presentations was to advise the Wilton electorate of the physical and educational needs of the school and to outline The Board of Selectmen’s charge to renovate and upgrade the school to extend its useful life for another 25-30 years. At those sessions, the Committee did provide an informational brochure that was paid for with public funds, a copy of which is attached hereto. A quick review of the brochure will affirm that the text is informational only and does not advocate for either an affirmative or negative vote. During the informational meetings, the Committee was very careful not to indicate or direct how people should vote, but only wanted the Wilton taxpayers

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<sup>3</sup> The Commission notes that Mr. Noel is also the Complainant in SEEC File No. 2015-001, which concerns additional allegations under § 9-369b in relation to the bonding referendum.

and citizens to understand what the project consisted of and what improvements were proposed for the Miller Driscoll School.

29. According to the Town, near the beginning of each school year, Miller-Driscoll School holds “parent nights” on a separate night for each of the grades. Parents with children attending those grades are invited on the night scheduled for the specific grade, and teachers assigned to teach such grades are also invited to attend the meetings. For a number of years, the format for the Parent Night at Miller-Driscoll School has been to gather as a group of the whole at the beginning of the evening for a brief general presentation of approximately fifteen minutes. Topics of general interest are chosen for the large gathering at the beginning of the evening, such as a review of the math curriculum. After the large gathering at the beginning of the evening, teachers and the parents of their students go to the various classrooms for more specific discussion of the school and its programs and resources.

30. For the 2014-15 school year, the Miller-Driscoll School followed the established practice for Parent Nights in 2014. Specifically, the following Parent Nights were held:

September 8: Second Grade  
September 10: Kindergarten  
September 17: First Grade

31. The Town of Wilton asserts that in accordance with the established practice, there was a general gathering for about fifteen minutes at the beginning of the evening for a presentation on a topic of general interest. In 2014, the topic of general interest was the school renovation project at Miller-Driscoll School that was under consideration. Ms. Jensen-Gerner served as a member of the Miller-Driscoll Building Committee, which was established with regard to the proposed school building project to renovate Miller-Driscoll School. As a member of that Committee, Ms. Jensen-Gerner was aware of the prohibition set forth in Conn. Gen. Stat. Section 9-369b against spending public funds to advocate a referendum result. With that prohibition in mind, Ms. Jensen-Gerner granted permission to other members of the Committee to provide factual information to the parents attending the Parent Night meetings in September 2014. The committee members who presented that information were as follows:

September 8: Bruce Hampson and Karen Birck  
September 10: Bruce Hampson and Karen Birck  
September 17: Karen Birck and Glenn Hemmerle

32. The Town asserts that the information about the proposed building project was presented through a PowerPoint presentation that was factual in nature. The same PowerPoint presentation was used at each of the three Parent Nights at Miller-Driscoll School. Members of the building committee also used this PowerPoint presentation at multiple information sessions throughout the community, including presentations at the Library, to community groups, and at the parent nights at other schools. The PowerPoint presentation consists of information on ten slides, and a final slide with the email addresses of the two members of the building committee who were making the presentation. The information presented is factual in nature, and it provides information both as to the changes that would be achieved through the renovations and as to the costs to the taxpayer of the renovation project.

33. MDBC member Bruce Hampson provided an affidavit in the matter which read:

1. I have served on the Miller Driscoll Building Committee with Karen Birck.
2. On September 9, 2014 Karen Birck and I provided an informational presentation to Miller Driscoll parents regarding the Town's interest in renovating the Miller Driscoll School. Just prior to the presentation I was handed a flyer published by a group called Sensible Wilton advocating a "No Vote" on a future bonding issue for the aforesaid renovations.
3. Having been advised by Town Council, I was well aware of the fact that the presentation given by Karen and myself was to be informational only and that we were not to advocate either a positive or negative vote on the future bonding referendum. The purpose of the presentation was to provide facts and information and to encourage parents and voters to attend the special town meeting scheduled for September 23rd. The Principal of the school made it clear that we only had a limited amount of time to make our presentation and there would be no opportunity for questions. At some point I did reference the Sensible Wilton "Vote No" flyer and stated that I did not believe the facts contained therein were accurate and I encouraged people to attend the special town meeting where they could ask questions and become more informed about their perspective vote.
4. At no time during the September 9, 2014 meeting and presentation to the parents of the Miller Driscoll School children did I advocate for

the project or encourage people about how they should vote. My only purpose was to provide as much information as I could and encourage the attendees to become informed about the underlying facts for the proposed Miller Driscoll project.

34. Ms. Price also made a statement as a witness to the “parent night” presentations, as follows:

[S]ince I attended three of the events referenced in the complaint, I can state that neither The Building Committee nor school officials gave any express opinion as to how people should vote. Everything that I heard was strictly background information on what was being proposed in the way of renovations and repairs to the Miller Driscoll School. . . .

35. Turning to the question here, the Complainant alleges that school facilities were utilized by representatives of the MDBC to advocate voting “yes” on the referendum to “captive” parents at these so-called “parent-night” presentations. Statements from two parents were included as proof of the allegations. The Town of Wilton denies this allegation and provided a fairly lengthy rebuttal, which included statements from participants, as well as the PowerPoint presentation and the informational brochure that was utilized at each information night. Neither of these documents advocated for a particular vote on the referendum, but were informational in nature. Additionally, Susan Price provided a statement refuting the stories of the parents highlighted by the Complainant.

36. On the other hand, the evidence does establish that both MDBC member Ms. Birck and Mr. Hampson, who participated in the presentations in question, both clearly appeared to personally favor a “yes” vote on the referendum (after all, as MDBC members, they voted to recommend the project). However, the evidence is insufficient to show that it is more likely than not that these individuals expressed such opinions and/or urged a “Yes” vote at any of the public meetings.

37. This specific allegation appears to be new to the Commission, although there are analogous cases that inform the Commission’s past treatment of similar matters. Importantly, the Commission has repeatedly established that:

The Commission does not, however, construe General Statutes § 9-369b (a) in a manner that precludes elected officials or the public from freely discussing issues and business on a meeting agenda, regardless of the municipal expense associated with holding and/or airing the meeting. *See In the Matter of a Complaint by Arthur Screen*, File No. 2005-167 (No violation found where a statement of advocacy on a pending budget

referendum was made by a Board of Education member at a regularly scheduled public meeting in which the sole agenda item was the review and discussion of budget items); *see also In the Matter of a Complaint by Craig Powers*, SEEC File. No. 2009-050 (“Written, printed or typed summary” exception applies to uses of municipal facilities and/or funds to hold a special meeting in order to solely to discuss the preparation of a “written, printed or typed summary of an official’s views on a [pending] proposal or question, which is prepared for any news medium . . . .”). *But see, In the Matter of a Complaint by Joseph Valys*, SEEC File No. 2005-165 (Violation found where, during a Board of Education meeting broadcast on public access television at municipal expense, municipal official, unrelated to any item on a meeting agenda, announced to the viewing audience that there was an hour left to vote on a referendum and urged the viewing audience to “get out and vote no.” This case appears to be an outlier.)

38. Here, there is a legitimate question as to whether the “parent-night” is sufficiently analogous. The evidence establishes that the event was public (though not necessarily publicly noticed beyond the Miller-Driscoll parents) and there was notice (again, to the parents), that the project would be discussed. However, it not clear that the events were “meetings” as such, like the above cases, or even whether such distinction is material here.
39. Moreover, there is evidence that the Town understood its obligations to stay neutral in its communications. Even assuming that words of advocacy may have been utilized by individuals in the meeting, any acts taken by such individuals to deviate from that specific instruction from the town attorney may have been, at best, such individual’s expression of their personal beliefs rather than paid advocacy on behalf of a public entity.
40. However, leaving the above questions aside, ultimately this and any matter rests on the sufficiency of the evidence found. And here, there is insufficient evidence to establish as to whether advocacy even took place in any specific and/or material way. In each of the above cases, there were transcripts and, in some cases, videotapes available of the events. As the word choices made by the participants could very well turn words conveying information into words of advocacy, precision is key. Here, we have hearsay and competing narratives on what might have occurred, but no concrete record to review.
41. In the absence of any better evidence, the Commission cannot conclude that it could factually establish that it was more probable than not that advocacy occurred in the first place. As such, the Commission concludes that the evidence is insufficient to make a

finding that it was more probable than not that public funds were used to advocate in a referendum here. Count Two should be dismissed.

**COUNT THREE: Use of a Public Website for Advocacy**

42. Subsequent to the filing of his initial Complaint, the Complainant discovered an entry on the town-hosted PTA calendar for the Cider Mill School PTA reading "Vote for Miller-District Renovation!" He alleges that this is an impermissible expenditure of municipal funds to advocate for the referendum.
43. The Town of Wilton responded that no town official had anything to do with authorizing the posting of information on the linked pages. The Town asserts that the Board of Education were not even aware of the existence of the information contained in the linked pages until asked to respond to the instant investigation.
44. According to the Town, many years ago the Wilton Public Schools permitted the parent-teacher associations of its various schools to move their websites to the district server. The Wilton Public Schools provide direct access to the district website for their PTAs to edit only the PTA content. The Town asserts that the content posted is determined solely by the PTA and the Wilton Public Schools exercise no supervision or editorial control over the PTA website.
45. However, the Town also noted that as a result of this matter, the Board of Education will be considering procedures going forward in which the principals at each school will review and approve any proposed content before it is posted on the PTA website.
46. After investigation, the Commission found that four parents had editorial access to the Cider Mill School PTA website, Andrea Bates, Clarissa Cannavio, Lisa Smith and Madhavi-Sharma Vallabhajosula.
47. The investigation revealed that it was Ms. Vallabhajosula who made the posting at issue here.
48. Ms. Vallabhajosula asserted that it was her responsibility to update the website calendar, which she did based mainly based on the school's "hot cider" newsletter. She asserts that it was never her intent to post any words of advocacy, but merely to put the event on the calendar.
49. Turning to the question here, the facts are straightforward. Ms. Vallabhajosula, in her capacity as a volunteer parent PTA member, created an event on the Cider Mill School

website calendar entitled, "Vote for Miller-District Renovation!" She asserts that she never had any intent to post content advocating for or against the referendum, but was merely creating the event that she saw mentioned in Cider Hill's regularly published school newsletter (aka "Hot Cider"), as is her regular practice. She asserts that she was imprecise in her transcription and used an incorrect pronoun. English is not her first language.

50. As an initial matter, while the Commission did not find evidence to contradict the Town's affirmations that they did not direct any individual or group to post the content at issue here, the Commission also does not find this availing as a defense. The Board of Education's choice to issue its parent-teacher organizations a blank check to post its content without review, does not necessarily absolve it from liability under § 9-369b.
51. Turning to the substantive issue, to determine whether a violation of General Statutes § 9-369b has occurred, the Commission considers first whether there was an expenditure of public funds and then whether the communication advocated for or against a referendum question while the referendum was pending. The Commission has found in prior cases that the costs associated with a website maintained by public schools is an expenditure of public funds under § 9-369b. See *In the Matter of a Complaint by Matthew Grimes, Brookfield*, File No. 2008-070, (concluding that a message posted on a website maintained at public cost urging support of a budget while a budget referendum was pending violated § 9-369b). The Commission, consistent with its prior decisions, concludes that the Region 12 website used as detailed herein qualifies as an expenditure of public funds for the purposes of § 9-369b. See *In the Matter of a Complaint by Patrick S. Dwyer, Bridgewater*, File No. 2014-049.
52. The second prong of the Section 9-369b analysis focuses on whether the communication advocated for or against the outcome of a referendum. The Commission has previously concluded that communications that advocate a particular result, either expressly or when considered as a whole, and make an ordinary reasonable person understand that the communication advocates for a particular result, will be deemed to constitute advocacy. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its tone, tenor and timing. The Supreme Court analyzed this standard of review in *Sweetman v. State Elections Enforcement Commission* and concluded that the Commission could rely on this process to determine when communications advocated for or against the outcome of a referendum. See *Sweetman v. State Elections Enforcement Comm'n*, 249 Conn. 296 (1999) and *Dwyer* at ¶ 8.
53. Considering the tone, tenor, and timing of the communication here, it does not rise to the level of advocacy. The message itself is very short. It is contained within an area of a website which by its nature is dedicated to the announcement of the dates and times of

events. While not fatal to this claim, the message does not expressly advocate for a result. Putting the message into another context, it could easily have stated, "Vote for Budget Referendum!" or "Vote for Board of Education Election!" which would perhaps have been a safer choice than what was used here.<sup>4</sup> However, here the Commission concludes that a reasonable person would just as likely consider these words, especially in their context on a calendar, to be merely informative rather than anything more.

54. Accordingly, the Commission concludes that the evidence is insufficient to establish that it is more likely than not that an impermissible expenditure of public funds was made here. Count Three should be dismissed.

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<sup>4</sup> The Commission also notes the investigation's findings regarding Respondent's language learner status.




ORDER

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

That the matter is dismissed.

Adopted this 16th day of June, 2015 at Hartford, Connecticut.

  
Anthony J. Castagno, Chairperson  
By Order of the Commission