

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Alex Ruskewich, Wilton
In the Matter of a Complaint by O. Curt Noel, Wilton

File No. 2014-118B
File No. 2015-001

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Cheryl Jensen-Gerner, of the Town of Wilton, County of Fairfield, State of Connecticut 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:

ALLEGATION

1. Two separate Complaints were received by the Commission 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.¹
2. This Agreement addresses solely two e-mails from the school e-mail account of Respondent Cheryl Jensen-Gerner, the Miller-District School principal, to parents reminding them to vote at a referendum. These allegations implicate the recently added provisions concerning the use of municipal funds to send an unsolicited communication to a group of residents regarding a referendum.

¹ The remainder of the allegations in Mr. Ruskewich's complaint are addressed separately in SEEC File No. 2014-118A. However, the following represents the Commission's complete findings and conclusions based on those portions of the Mr. Noel'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.

LAW

3. 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.
4. Here, the Wilton Charter requires a town meeting and a referendum to be held after the Board of Selectmen propose an issuance of bonds.
5. 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.
6. The issue here specifically concerns General Statutes § 9-369b (a) (3), which was added recently in Public Act 13-247 of the 2013 Public Acts and became effective July 1, 2013, and reads, in pertinent part:
 - (a) . . . (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. . . .
(Emphasis added.)

INVESTIGATORY FINDINGS

7. The investigation revealed that the Respondent sent e-mails dated September 19, 2014 and September 26, 2014 to a distribution list which included 692 recipients.
8. An examination of the September 19, 2014 e-mail shows that its primary purpose was as a post-mortem to the parents on the “parent nights” held at the school, but also addresses the renovation project, albeit without urging the recipients to vote in a particular way. However, the e-mail also concludes with the following exhortation:

Please attend the special meeting on Tuesday September 23 where you may cast your vote for or against the project. Voting will continue on Saturday, September 27”

9. The September 26, 2014 e-mail includes only the following exhortation:

This is another reminder of the extended vote regarding the Miller-Driscoll Renovation Project. The public hearing and first vote was held this past Tuesday. Voting will continue tomorrow, Saturday, September 27, from 9:00-6:00 at the Clune Center. There was a small turnout on Tuesday. Hopefully more individuals will be able to cast their vote tomorrow.

COMMISSION CONCLUSION

10. Considering the aforesaid, the Commission concludes that by sending the September 19 & 26, 2014 e-mails Respondent Miller-Driscoll School Principal Cheryl Jensen-Gerner failed to adhere to the proscriptions of General Statutes § 9-369b (a) (3) concerning unsolicited communications to a group of residents regarding a referendum.

11. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining whether a civil penalty will be assessed, and if so, the amount of such civil penalty, the Commission shall consider, among other mitigating and aggravating factors:

- (1) the gravity of the act or omission;
- (2) the amount necessary to insure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

12. This is a matter of first impression for the Commission. However, it should be noted that there is no way to know how these e-mails may have affected voter turnout. Additionally, after passage of Public Act 13-247 of the 2013 Public Acts, Commission staff made efforts to inform each of the 169 municipalities of the new provisions in § 9-369b concerning municipal referendum activities, including the provision prohibiting the use of municipal funds to send an unsolicited communication to a group of residents regarding a referendum.

13. However, while the evidence in these cases suggested that Respondent Jensen-Gerner may have been in favor of a "Yes" vote on the referendum, the evidence did not support the Complainants' implied allegation that she was involved with any advocacy activities. Indeed the evidence showed that she appeared to be keenly aware of the advocacy restrictions and made good faith efforts to avoid utilizing public funds to advocate for a particular outcome (and instructed others to the same effect).

14. The above is a contrast to what appeared in this case to be Respondent Jensen-Gerner's genuine unfamiliarity with the new unsolicited communications provision, which had only come into effect on July 1, 2013, rather than the bad faith that is implied by the Complainants' allegations here.

15. Finally, the Commission notes that the Respondent has no prior history of similar acts or omissions before the Commission.

AGREEMENT

16. Considering the aforementioned aggravating and mitigating circumstances in this matter, especially given the fact this is the first such case under this new provision, the Commission does not believe that Ms. Jensen-Gerner would act similarly in the future, whether or not the Commission issued a civil penalty in this instance. Accordingly, the Commission

concludes and the parties agree that the appropriate remedy herein is a consent agreement in which the Respondent agrees to henceforth strictly comply with § 9-369b in the future.

17. 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.

18. 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.

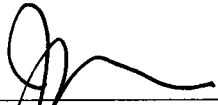
19. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

20. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to these matters and this Respondent.

ORDER

IT IS FURTHER ORDERED THAT that Respondent Cheryl Jensen-Gerner will henceforth strictly comply with the requirements of General Statutes § 9-369b.

The Respondent:




Cheryl Jensen-Gerner
Wilton, CT

By Jessica Richman Smith,
her attorney.
Juris # 436566

Dated: June 12, 2015


For the State of Connecticut:

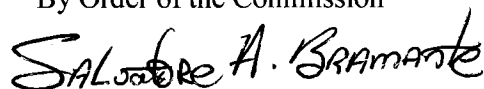
BY: 

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: 6/18/15

Adopted this 25th day of June of 2015 at Hartford, Connecticut



Vice -
Anthony J. Castagno, Chair
By Order of the Commission


**RECEIVED
STATE ELECTIONS**

JUN 18 2015

ENFORCEMENT COMMISSION