

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Kirk Carr, Clinton

File No. 2015-031C

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Diane Neri (the "Respondent"), and the undersigned authorized representative of the State Elections Enforcement Commission (the "Commission"), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

PARTIES

1. At all times relevant hereto, the Respondent was an Administrative Assistant with Clinton Youth & Family Services ("CYFS") a department of the Town of Clinton.

ALLEGATIONS

2. The Complainant alleges that the Respondent used public funds to advocate for the passage of a referendum in violation of General Statutes § 9-369b.¹

LAW

3. General Statutes § 9-369b (a) (4) provides:

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 any such 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. For purposes of this section, the maintenance of a third-party comment posted on social media or on an Internet web site maintained by the state, a municipality or a regional school district permitting such third-party comments shall not constitute an expenditure of state or municipal funds.

¹ 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.

FACTUAL BACKGROUND

4. The investigation into this matter revealed that a referendum concerning the Town of Clinton's budget was publicly noticed on April 22, 2015.
5. On April 23, 2015 and again on May 7, 2015, a group known as Partners in Community, ("PiC") purchased advertisements (the "Advertisements") in the Harbor News, a newspaper circulated in the Town of Clinton. The Advertisements included the following statements: "Vote on May 13 to support Clinton youth!" "To continue our efforts, we need your support! Please vote on May 13 at Town Hall to support Clinton youth and keep our programs intact." and "Without your vote, our efforts to prevent underage substance use in Clinton may end."
6. By way of background, PiC was formed on August 26, 2012 "to help inspire positive attitudes and empower healthy choices in our youth and adults."
7. While PiC is not an official agency of the town of Clinton, its financials are all managed by the town.
8. PiC receives grants from public and private sources. Those deposits are made directly into the Clinton municipal bank accounts. Expenditures are similarly made via Town of Clinton checks, bearing the facsimile signatures of all three selectmen.
9. With regard to the Advertisements, the order was placed by Robyn Sneider, a volunteer with PiC, after the Advertisements and the associated costs were approved by PiC's board. The invoice for the Advertisements was issued to CYFS and addressed to Kelley Edwards. Respondent Edwards is listed both as the "grant coordinator" for PiC as well as a program coordinator for CYFS.² The invoice was then processed and approved for payment from a Clinton municipal account by Respondent Neri, an administrative assistant with Clinton Youth and Family Services and a volunteer with PiC. Respondent Neri processed the same and issued an official Town of Clinton check, bearing the facsimile signatures of all three selectmen, for payment for the Advertisements.
10. By way of explanation for this apparent use of municipal funds to pay for an advertisement promoting the success of a referendum question, Respondent noted that, although it was a Town of Clinton check, the funds were actually a private grant Guilford Savings Bank had given to PiC and those funds had been deposited in the Town's account for use by PiC.

² Kelley Edwards is also a respondent in this matter. The allegations concerning Ms. Neri are addressed in a separate document.

However, the accounting does not back up this position. The total invoice for the Advertisements was \$2,035.00. The Town of Clinton issued two checks to Shore Publishing for \$973.75 and \$940.00 respectively. Ms. Neri also issued a personal check to Shore Publishing for \$390.00 purportedly to cover the costs of the Advertisements. Guilford Savings Bank did issue a grant to PiC for \$1,300.00. On their face, these numbers do not balance out. However, even in the light most favorable to the Respondent, the amount of “private money” grants and donations allocated to the Advertisements equals \$1,690.00. The invoice for the Advertisements were \$2,035.00. Accordingly, even if the Commission were to accept the Respondent’s argument that all the private grants that were deposited into the Town of Clinton’s accounts were dedicated for the purpose of the Advertisements, and that they could still be considered other than municipal funds, Respondents would still of have used \$345 in municipal funds to pay for the Advertisements.

DISCUSSION

11. The Commission uses a three prong analysis in applying § 9-369b to communications that balances: (1) whether the communication was made while a referendum was pending, (2) whether the communication advocates, and (3) whether the communication was made with public funds. *See Complaint by Mary V. Gadbois, East Lyme*, File No. 2010-123.
12. The first prong of this test is not in dispute as all expenditures were made after the referendum was publicly noticed and all legal requirements to hold the referendum had been met.
13. With regard to the second prong, “communications that advocate a particular result, either expressly or when considered as a whole, or make an ordinary reasonable person understand that the communication advocates for a particular result, are deemed to constitute advocacy for purposes of applying § 9-369b.” *In the Matter of a Complaint by Sean Murphy, Woodbury*, File No. 2015-003 citing *Sweetman v. State Elections Enforcement Comm'n*, 249 Conn. 296 (1999). In this case, the Advertisements both expressly, and when considered as a whole, advocate for the passage of the pending referendum by using language such as “To continue our efforts, we need your support! Please vote on May 13 at Town Hall to support Clinton youth and keep our programs intact.”
14. Finally, with regard to the third prong, there is no question as to whether municipal funds were used to fund the Advertisements. Even if all of the Respondent’s arguments were accepted, a minimum of \$345 of municipal funds would have been used to fund the advertisements. Accordingly, the Commission need not address whether private funds held by the Town for the benefit of a private entity would be considered municipal funds, but advises that such an arrangement is not recommended.

15. Respondent Neri was the only individual that, in her official capacity, approved the expenditure of town funds for the advertisements. Accordingly, Respondent Neri is liable for the expenditure of public funds on the Advertisement.

TERMS OF GENERAL APPLICATION

16. The Respondent admits to all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.

17. 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 to contest the validity of the Order entered into pursuant to this Agreement.

18. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondent regarding this matter.

19. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

ORDER

It is hereby ordered that the Respondent shall henceforth strictly adhere to the requirements of General Statutes § 9-369b.

It is further ordered that The Respondent shall, in coordination with the respondents in SEEC File Nos. 2015-031A and 2015-031B, refund three hundred forty-five dollars (\$345) to the Town of Clinton.

For the Respondent:

By: Diane G. Neri
Diane G. Neri
14 Beach Road
Clinton, CT 06413

For the State of Connecticut:

By: Michael J. Brandi
Michael J. Brandi
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106

Dated: 3/7/17

Dated: 3/17/17

Adopted this 22nd day of March, 2017 at Hartford, Connecticut by vote of the Commission.

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