

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Linda C. Fasake,
Hampton

File No. 2016-049

FINDINGS AN CONCLUSIONS

The Complainant filed this complaint pursuant to General Statutes § 9-7b and alleged that the Hampton First Selectman, as well as various other individuals, violated campaign finance and elections laws by improperly advocating for passage of a June 23, 2016 referendum (hereinafter "Referendum") pertaining to Regional School District Number 11.

1. The Complainant alleged Hampton First Selectman Allan R. Cahill, as well as Dayna McDermott Arriola, Mary Oliver, Kathi Newcombe, Gay Wagner, violated campaign finance and elections laws by improperly advocating for passage of the Referendum pertaining to the Regional School District Number 11 (hereinafter RSD #11) in the Town of Hampton.
2. The Complainant specifically alleged that:
 - (1) The Hampton First Selectman violated General Statutes § 9-369b by authorizing the use of the community notification system to advocate for the Referendum by email;
 - (2) Ms. Gay Wagner violated § 9-621 by producing and disseminating an explanatory text by email through the Hampton community notification system that was not prepared by the municipal clerk and approved by the municipal attorney;
 - (3) Ms. Gay Wagner violated § 9-621 by not including an attribution on the email that was allegedly an "explanatory text;"
 - (4) Hampton Registrars of Voters Dayna McDermott Arriola and Mary Oliver and Referendum Moderator Juan Arriola violated § 9-236 by posting a solicitation in the polling place pertaining to the Referendum; and,
 - (5) Ms. Kathi Newcombe, as agent for "A Better Education" (ABE), violated § 9-602 by failing to register ABE as a political committee after it exceeded of \$1,000.00 in contributions and expenditures advocating for a "Yes" vote at the referendum.

3. The Commission declines to address Complainant's allegations pertaining to municipal codes and federal regulations and limits this disposition to its jurisdiction as provided by General Statutes § 9-7b.

4. By way of background, the towns of Chaplin, Hampton and Scotland make up RSD # 11.

5. General Statutes § 9-369b, provides 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. ... 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.
[Emphasis added.]

6. General Statutes § 9-621, provides 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.***

[Emphasis added.]

7. General Statutes § 9-236, provides in pertinent part:

(a) ***On the day of any primary, referendum or election, no person shall solicit*** on behalf of or in opposition to the candidacy of another or himself or on behalf of or ***in opposition to any question being submitted at the election or referendum***, or loiter or peddle or offer any advertising matter, ballot or circular to another person ***within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place*** or in any room opening upon any such corridor, passageway or approach. ... The moderator shall evict any person who in any way interferes with the orderly process of voting.
[Emphasis added.]

8. Upon investigation, the Commission finds that on June 23, 2016, the Town of Hampton held the Referendum with the following question on the ballot:

Should the Town of Hampton submit an application to the Board of Education to Regional School District No. 11 for institution of the procedure for dissolution?

9. 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.

10. Further, the Commission has 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. *In the Matter of a Complaint by Marie Egbert*, Hebron, File No. 2010-056. 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).

11. Allegation One: *The Hampton First Selectman violated General Statutes § 9-369b by authorizing the use of the community notification system to advocate for the Referendum by email.*

12. The Commission finds that Mr. Cahill, at all times relevant to this complaint, was Hampton First Selectman. Further, General Statutes § 9-369b (a) (3) provides that a “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.*” The Commission concludes in this instance that the June 21, 2016 email that is subject of this complaint and investigation was produced by a “community notification system” of the Town of Hampton for the purposes of § 9-369b.
13. General Statutes § 9-369b prohibits authorizing the expenditure of public funds to support or oppose a referendum. The Commission finds that on or about June 21, 2016, the Town of Hampton issued on its community notification system an email that provided in part:

*From Town of Hampton – Subject: Town referendum June 23, 2016 – Polls are open Thursday, June 23, 12 Noon – 8PM – Town Hall – This referendum is to decide whether **to initiate a study** concerning the future of Region 11 Parish Hill Middle/High School. It is not a referendum to close the school. – Please see the home page of the town website www.hamptonct.org to see the referendum question.*

[Original emphasis.]
14. The Commission has consistently held “that communications that recommend or urge support of or opposition to a referendum question are subject to the restrictions found in Section 9-369b.” *See Iannucci*. The Commission concludes therefore that the email subject to this complaint is subject to the restrictions of § 9-369b.
15. Pursuant to General Statutes § 9-369b, the Commission must determine whether a communication urges 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 and therefore falls within the prohibition against using public funds to advocate for a referendum. *See Egbert*.
16. General Statutes § 10-63a provides that *(b) Any two or more towns which are members of a regional school district composed of three or more towns may, pursuant to a vote of the legislative bodies of the respective towns, apply to the regional board of education **to institute procedure** for the dissolution of the district as hereinafter provided.* [Emphasis added.]

17. While the Commission declines to opine on the detailed requirements of either General Statutes § 10-63a (b) or the dissolution of RSD #11, it finds that the language in the email “to initiate a study” as it pertains the Referendum was reasonable in the context of the General Statutes § 10-63a, which provides that members of a regional school district may apply to the regional board of education “to institute procedure” for the dissolution of the district.
18. Moreover, the Commission finds that the communication’s tone and tenor did not otherwise advocate for purposes of applying and concluding violations of § 9-369b. See Sweetman. Therefore, the Commission finds that the June 21, 2016 email was not “advocacy” for purposes of applying General Statutes § 9-369b to public expenditures prior to and pertaining to the Referendum.
19. The Commission concludes that Hampton First Selectman Cahill did not violate General Statutes § 9-369b by using Hampton’s community notification system to disseminate an email that advocated for the Referendum. The Commission therefore dismisses Allegation One as it was not supported by the facts after investigation.
20. *Allegation Two: Ms. Gay Wagner violated § 9-621 by producing and disseminating an explanatory text by email through the Hampton community notification system that was not prepared by the municipal clerk and approved by the municipal attorney.*
21. The Commission finds that Ms. Gay Wagner volunteered for the Town of Hampton to maintain the “Hampton Town Activities” system that is used by the town to communicate public announcements. She admits that she drafted the email that is subject of this complaint and investigation at the request of Hampton First Selectman Cahill. The Commission finds a lack of information to contradict the aforementioned admission.
22. The Commission notes that pursuant to General Statutes § 9-369b an explanatory text is prepared by the town clerk and approved by the municipal attorney. Further, each such explanatory text “...shall specify the intent and purpose of each such proposal or question.” See § 9-369b Finally, such text shall not advocate either the approval or disapproval of the proposal or question and should entail a concise explanation of the subject matter of a referendum. *Id.*

23. The Commission finds that content of the email was insufficient to constitute an “explanatory text’ pertaining to the Referendum for purposes of General Statutes § 9-369b. More specifically, while the email provided the time, place, date and purpose of the Referendum it did not include intent, further explanation, or the body of the question to be voted on. In fact, the Commission finds that the email, while directing recipients to further information regarding the Referendum, did not explain the question that was subject of the Referendum itself; that is the submission of an application by the town to RSD # 11 regarding the possible dissolution of RSD #11.
24. The Commission concludes therefore that the requirements of General Statutes § 9-369b pertaining to the preparation of explanatory texts by municipal clerks and their approval by municipal attorneys did not apply to the email disseminated by the Town of Hampton on June 21, 2016.
25. The Commission concludes that Ms. Wagner did not violate General Statutes § 9-369b by failing to seek approval of an email she issued pertaining to the Referendum on June 21, 2016. Allegation Two is therefore dismissed as it was not supported by the facts or the law after investigation.
26. *Allegation Three: Ms. Gay Wagner violated § 9-621 by not including an attribution on the email that was allegedly an “explanatory text.”*
27. General Statutes § 9-621 (c) provides an attribution requirement for expenditures for printed communications that promote the success or defeat of a referendum that are made by a group of two or more individuals who have joined together for that purpose.
28. The Commission finds, as detailed herein, that the email in question did not promote the success or defeat of the Referendum or otherwise contain advocacy. The Commission further finds that Ms. Wagner and First Selectman Cahill did not constitute a group of two or more individuals joined together to support or oppose a referendum for purposes of applying General Statutes § 9-621.
29. The Commission concludes therefore that Allegation Three fails both as a matter of law and based on these specific facts and circumstances, which did not trigger the requirements of General Statutes § 9-621 to the printed communication identified by Complainant. The allegation is therefore dismissed.

30. Allegation Four: *Hampton Registrars of Voters Dayna McDermott Arriola and Mary Oliver and Referendum Moderator Juan Arriola violated §9-236 by posting a notice in the polling place that solicited on behalf of the Referendum.*

31. The Commission finds that the parties do not dispute that a notice was posted at the entrance of the polling place in Hampton during the Referendum. That notice provided:

Please STOP – If you have any questions about the ballot, ask ***before*** you check in. Thank you!

If you are concerned regarding any definition or wording of the question on the ballot, please see a Selectman in the Selectmen’s Office. Election officials are statutorily precluded from providing interpretation of any ballot question.

[Original emphasis.]

32. In response to this complaint and investigation, Ms. McDermott Arriola and Ms. Oliver provided a detailed written response denying the allegations against them and Mr. Arriola pertaining to their activities as election officials at the Referendum. Their response to the complaint, in part, included the following:

[I]n accordance with CGS 9-236 ... we instruct election officials to refrain from explaining ballot questions for voters, as such interpretations may be viewed as influence. Election officials are instructed to only read the sample ballot to voters who request assistance.

Thus the Registrars, for every voting event, post at the entrance of the polling place the sign ...

In this case, we directed voters to the Selectmen because it was the Selectmen’s question, and the documentation necessary to answer voters’ concerns – the statute that governs dissolution and the Minutes of the Selectmen’s meeting that approved the referendum – were available as public documents in the Selectman’s Office. The Registrars did not want to stand accused of sending voters toward the political factions that we assumed, correctly, would be a presence near the 75 foot perimeter to the polling place as soon as the polls opened.

33. The Commission finds, after reviewing the notice posted by Ms. Arriola and Ms. Oliver at the polls on June 23, 2016, that the notice did not “*solicit ... on behalf of or in opposition to any question being submitted at the election or referendum*” as prescribed by General Statutes § 9-236. Additionally, the Commission finds that the notice, as detailed above, did not constitute “advertising matter,” a ballot or a “circular” for purposes of applying § 9-236.
34. The Commission concludes therefore that the notice at the entrance of the polls on June 23, 2016, in the Town of Hampton pertaining to the Referendum, under these narrow and specific circumstances, was *not* prohibited by General Statutes § 9-236 as *either* a solicitation in support or opposition to that referendum *or* as the dissemination of advertising matter, a ballot or a circular, within the polls at a referendum.
35. Therefore, the Commission concludes that Ms. McDermott Arriola, Ms. Oliver and Mr. Arriola did *not* violate General Statutes § 9-236 pertaining to the posting of the above notice at the entrance of the polls during the Referendum. The Commission therefore dismisses Allegation Four.
36. Allegation Five: *Ms. Kathi Newcombe, as agent for “A Better Education” (ABE), violated § 9-602 by failing to register ABE as a political committee after it exceeded of \$1,000.00 in contributions and expenditures advocating for a “Yes” vote at the referendum.*
37. The Commission finds that Ms. Newcombe provided a detailed response to this complaint and investigation that included documentation pertaining to *A Better Education* or ABE, a group that advocated for the Referendum.
38. Upon investigation, the Commission finds that the following expenditures were made by ABE in connection with the Referendum:
- (1) \$232.84 for mailing to all postal routes in Hampton and a limited distribution to rural postal routes in Scotland;
 - (2) \$72.38 for first class postage to 154 homes in Scotland that are included in regular mail service; and,
 - (3) \$22.24 for paper and ink cartridge costs in producing a flyer on a home computer with a personal laser jet printer.
39. Further, the Commission finds that Ms. Newcombe in response to this allegation denies that ABE was responsible for the cost of the “Vote Yes!” signs that were used in Hampton prior to the Referendum.

40. More specifically she explained that she “rescued” these from the Hampton town refuse center “some time ago” and believes that the signs were originally generated for an earlier 2009 vote pertaining to RSD #11. The Commission finds a lack of evidence contradicting the aforementioned explanation regarding the signs that are subject of Allegation Five.
41. The Commission finds, for reasons detailed in paragraphs 37 and 38 above, that there is insufficient evidence to find that Ms. Newcombe and ABE exceeded \$1,000.00 in receipts and expenditures to advocate for the Referendum. The Commission concludes therefore that ABE was not required to register with the Hampton Town Clerk pursuant to General Statutes § 9-602. The Commission therefore dismisses Allegation Five.
42. Finally, the Commission finds that Complainant’s various allegations regarding campaign Finance and election law violations by Hampton First Selectman Allan R. Cahill, as well as Dayna McDermott Arriola, Mary Oliver, Kathi Newcombe, Gay Wagner, violated campaign finance and elections laws by improperly advocating for passage of the Referendum pertaining to RSD #11 in the Town of Hampton, remained unsubstantiated after a thorough investigation and therefore dismisses each allegation that formed the basis for this complaint

ORDER

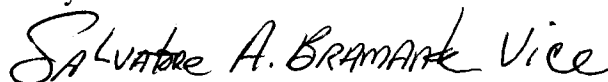
The following Order is recommended on the basis of the aforementioned findings:

That the case be dismissed.

Adopted this 19th day of April, 2017 at Hartford, Connecticut



Anthony J. Castagno, Chair
By Order of the Commission

 Vice