

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Mary Ann Orzell,
Morris

File No. 2018-019

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Erica Dorsett-Matthews and Thomas Weik, Town of Morris, County of Litchfield, 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:

1. Complainant alleged that Morris First Selectman Thomas Weik and Selectman Erica Forsett-Matthews (hereinafter "Respondents") violated the provisions of Section 9-369b by using the Town of Morris website to link to a Facebook page that advocated for the town budget referendum to be held on March 15, 2018.
2. The link on the Town of Morris website was one of three tabs on the homepage that were labeled "Calendar," "Social Media" and "News." Scrolling over the *Social Media* tab raised the following caption: "*The 'Town of Morris Connecticut' Facebook page is managed by First Selectman TP Weik and Selectman Eric Dorsett-Matthews. Opinions expressed on this page are not necessarily representative of the Town's Board of Selectman.*"
3. Further, the Facebook page did not have any direct functions to reach governmental departments, contacts, officials, services or pay bills as was available through the Town of Morris official webpage. The communication that is the subject of this complaint was posted on the Facebook page on March 15, 2018 at 10:15 AM and read on part:

Come out and Vote Today on the Town Budget from 12-8PM at the Community Hall. Failure to pass this budget is not only endangering the fiscal health of the Town of Morris, but also the financial stability of the Elderly and those on fixed incomes. The Town needs to meet its financial obligations to the Regional School District and to its employees...
4. General Statutes § 9-369b, provides in pertinent part:

...

(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 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.

[Emphasis added.]

5. Upon investigation, there was no dispute that the website was maintained by the town and that the Facebook page that is subject of this complaint was not funded by Morris, but rather, privately established and maintained.
6. After investigation, it was determined that the Social Media tab described above had been removed from the Morris homepage. Further, Respondents admitted that they maintained the Facebook page and, in response to this complaint and investigation, sought guidance from the Commission staff about how they could best comply with the law and best address the situation alleged in the complaint.
7. Respondents, in response to this complaint and investigation, denied that the Morris homepage advocated for a referendum, but conceded that the Facebook page, which was accessible through the Social Media tab, could be construed by some individuals as advocating for passage of the budget referendum. Furthermore, Respondents indicated that the link was “...*removed from the website to eliminate any concern or confusion that [Complainant] might have had.*” The investigation confirmed that the link to the Facebook page was removed after the filing of this complaint.

General Statutes and “Pending” Referenda

8. The Commission has consistently held that General Statutes § 9-369b only applies when a referendum is “legally pending,” or when “the last legal condition” has been satisfied to ensure that the referendum will take place. *See Complaint by Thomas A. Karhrl*, Old Lyme, File No. 2007-185 and *Complaint by Matthew Paulson*, Bethel, File No. 2015- 030. In this instance, there is no dispute that the dissemination of the flyers through public school teachers and their mailboxes occurred while the Board of Education budget referendum was pending in North

Stonington. Therefore in applying § 9-369b, the Commission must determine whether the social media tab that served as a link to the Facebook page in question was at public cost and whether that page contained advocacy and therefore was prohibited by § 9-369b.

Precedent for Websites and General Statutes § 9-369b

9. The Commission has concluded that the use of municipal funds to disseminate material that advocates a position on a referendum on a website constitutes a violation of General Statutes § 9-369b (a). *See Complaint by AvalonBay Communities, Inc.*, File No. 2001-186; *Complaint by Edward J. Hardy*, Oxford, and File No. 2003- 172; *Complaint by Matthew J. Grimes*, Brookfield, File No. 2008-070 (posting of a letter advocating a “Yes” vote for the passage of a referendum found to be a § 9-369b violation). More specifically, the Commission has found a violation of § 9-369b where, as in this instance, a link on a publicly funded website connects to advocacy materials that are otherwise privately funded and maintained on a personal website. *See Hardy*.
10. Similarly, the Commission has concluded that advocacy materials that were privately created, but posted a publicly funded library website, was illustrative of a § 9-369b violation. *See AvalonBay*. Finally, the Commission has concluded that the use of publicly funded email accounts on the morning of a referendum to disseminate links to town websites that contained advocacy materials for the passage of a referendum was a violation of § 9-369. *See Complaint by George Ruhe*, Wethersfield, File No. 2012-054 (where the Superintendent of a public school system used his public email account to disseminate links to town websites that contained materials from the town building committee pertaining to renovations that were the subject of the referendum).
11. The Commission notes that Respondents, as members of the Morris Board of Selectmen, were *not* third parties and therefore their comments on social media did *not* satisfy the exception for such comments as provided for in General Statutes § 9-369 (a) (1) (4).
12. The Commission has consistently 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.

13. The Commission finds that taken as a whole, the timing, tenor and tone of the March 15, 2018 Facebook posting at 10:15 AM on the morning of the Morris budget referendum vote that was held between the hours of 12:00-8:00, which warned of dire consequences and risks of meeting town obligations to the public, satisfies the standard for determining that it constituted advocacy for the passage of that budget. Furthermore, based on the specific facts and circumstances in this instance, the Commission finds that a reasonable person could conclude, as alleged, that the Facebook page that was accessible through the Social Media tab on the Town of Morris website contained advocacy for purposes of General Statutes § 9-369b.
14. The Commission concludes, therefore, that Respondents, by linking the town website to a Facebook page, which contained a post advocating for the March 15, 2018 referendum, violated General Statutes § 9-369b
15. Respondents admit all jurisdictional facts and agree 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 Respondents shall receive a copy hereof as provided in Section 9-7b -56 of the Regulations of Connecticut State Agencies.
16. It is understood and agreed that this agreement will be submitted to the Commission at its next available meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission by any party in any subsequent hearing, if the same becomes necessary.
17. The Respondents waive:
 - (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.
18. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondents pertaining to this matter.

Dear Mr. Chairman,
We disagree with the Commission's findings
and do not feel the Town is responsible
for the content of any of the links the
Town adds to its Website.

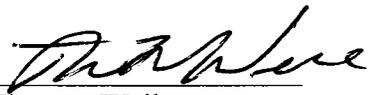
ORDER

IT IS HEREBY ORDERED that henceforth Respondents shall strictly comply with the requirements of General Statutes § 9-369b.

The Respondents:

BY: 
Erica Dorsett-Mathews
111 South Street
Morris, Connecticut

Dated: 9/20/18

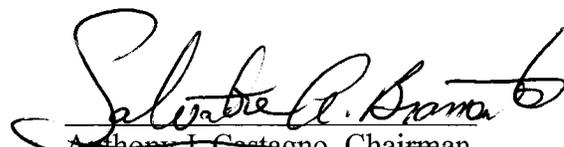
BY: 
Thomas Weik
205 West Street
Morris, Connecticut

For the State of Connecticut:

BY: 
Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Agent of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 9/18/18

Adopted this 19th day of September, 2018 at Hartford, Connecticut by vote of the Commission.


~~Anthony J. Castagno, Chairman~~
By Order of the Commission
Salvatore A. Bramante - Co Chair