

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
David w. Bolton, Union

File No. 2007-186

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes §9-7b, and alleged that the Town of Union School Building Committee (hereinafter "SBC") used public funds to disseminate flyers advocating a position on a local question approved for submission to the electorate at a referendum on March 1, 2007 in violation of §9-369b.

After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. On January 29, 2007, the complained of flyer was mailed to town residents announcing a Public Forum to be held on February 1, 2007 at 7:00 p.m. The flyer contained quoted comments from former and current public officials and local residents. All comments included notes of encouragements toward the construction of a new school building. The flyer also provided a layout of the building plan.
2. On February 1, 2007 the Public Forum was held at the Town hall and a First Selectmen meeting was scheduled for February 5, 2005 to discuss the budget and the school building project. At the February 5th meeting the Selectmen set the dates for the town meeting (February 21, 2007) and the referendum date for March 1, 2007.
3. The Union Town Clerk issued a Public Notice (Warning) pertaining to the Special Town Meeting and Notice of Referendum on February 15, 2007, which read, in part, as follows: "To consider a resolution to appropriate of \$6,585,000 for costs related to design, construction, furnishing and equipping of a new elementary (K-8) school on the site of the existing elementary school."
4. On February 7, 2007, a memorandum from the Union SBC requesting reimbursement in the amount of \$264.60 for "expenses incurred associated with the production and distribution of the flyers" was sent to the First Selectman, Thomas Fitzgerald. Mr. Fitzgerald approved payment for the costs incurred on the aforementioned flyer on February 20, 2007.
5. Connecticut General Statutes §9-369b, provides in pertinent part:
 - (a) Except as provided in subsection (b) of this section, 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. ... *Except as provided in subsection (d) of 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.* 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. ...

[Emphasis supplied.]

6. The threshold question of whether the prohibition in § 9-369b applies is whether the referendum was "pending" at the time of the public expenditure.
7. The Commission concludes that a referendum was not pending as of January 29, 2007 and therefore the prohibition on the expenditure of public funds contained in Conn. Gen. Stat. §9-369b did not apply to the flyer subject to the complaint.
8. In this instance, the flyer was mailed January 29, 2007, before the February 5, 2007 selectmen meeting that set the date for the referendum as March 1, 2007. In fact, the Respondents in this case sought and received legal advice that such distribution was in compliance with § 9-369b, General Statutes.
9. It is concluded therefore, that the production and dissemination of the flyer at public cost did not violate §9-369b, General Statutes, as the ban was not yet in effect.

ORDER

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

That the complaint be dismissed.

Adopted this 9th day of May of 2007 at Hartford, Connecticut.



Stephen F. Cashman

Chairman

By Order of the Commission