

In the Matter of a Complaint by
George J. Fensick, Jr., Plainville

File No. 2007-225

AGREEMENT CONTAINING CONSENT ORDER FOR A
VIOLATION OF CONNECTICUT GENERAL STATUTES § 9-369b.

This agreement, by and between William Crowley, Lorri Goldsmith, Arthur Hoerle, Keith LaCombe, Susan McCarthy, Patrick Ringrose, Becky Tyrrell, Thomas L. Wazorko and Barbara Willard, of the Town of Plainville, County of Hartford, State of Connecticut, (hereinafter referred to as the Respondents) 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. The Respondents are the individual members of the Town of Plainville Board of Education (hereinafter "PBOE").
2. The Town of Plainville held a referendum on June 19, 2007, on whether or not to increase a previously approved \$16,000,000 appropriation to \$20,680,000 and authorize the renovations, improvements and additions to the Louis Toffolon School. The date of the referendum was set on May 14, 2007, by unanimous motion of the Town Council at its Special Meeting, which started at 8:00 P.M. and concluded at 10:40 P.M.
3. On June 19, 2007, the increased appropriations for the Louis Toffolon School project were approved by referendum with 1331 votes "yes" to 872 votes "no."
4. Complainant alleged that he received a flyer by mail from PBOE at public cost on May 17, 2007, after the referendum was legally pending, that advocated for a particular result at the June 19, 2007 referendum.
5. In addition to that flyer, the Plainville Town Council, by unanimous motion at its May 14, 2007 Special Meeting, approved the expenditure of \$5,000 for the preparation, production and distribution of an explanatory text on the subject of the referendum, pursuant to statutory requirements.
6. 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.*

[Emphasis added.]

7. 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, would constitute advocacy. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. Sweetman v. State Elections Enforcement Commission, 249 Conn. 296 (1999).
8. The flyer at issue is titled “Louis Toffolon School Project,” and begins “Dear Plainville Residents,” and references project benefits, cost savings of approving the additional funding, and warnings regarding the consequences in delaying approval of funding for the project.
9. It is found that the flyer, taken as a whole, advocates an affirmative vote on the referendum. It specifically refers to the approval of the authorization of additional funds for the Toffolon School project which was subject of the June 19, 2007 referendum. It plainly advocates for referendum asking and answering “*why ... it is necessary to approve the additional funding now.*” The Respondents admit that the flyer at issue promoted the success of the referendum question.
10. The flyer at issue was delivered to the printer on May 11, 2007, and to the post office for mailing on May 14, 2007 at or about 2:30 p.m., on the same day, but prior to the Town Council’s 8:00 p.m. Special Meeting. According to the U.S. Postal Service, the flyers were delivered after the postal carriers had started their routes on May 14, 2007, and therefore could not be delivered until the next day, May 15, 2007, at the earliest. Respondents maintain they were unaware of this delivery schedule and were unaware that the printer delivered the flyer at this late time and date.
11. The Commission also finds, and Respondents admit, that the PBOE used public funds to pay for the total cost (\$1,678.69) of production and dissemination of 8,146 flyers. Of that cost, \$903.69 was incurred for use of “*Non-Profit Organization U.S. Postage Paid Permit #47*” owned by Plainville Community Schools according to a Plainville Post Office Mailing Statement of May 14, 2007.
12. It is well-established that the prohibition in General Statutes § 9-369b only applies when a referendum is “legally pending.” See, e.g., *Complaint of William and Kathleen Oppenheimer, et. al., Redding File No. 2003-180*. According to Commission precedent, a referendum is not “legally pending” until all of the necessary legal conditions have been satisfied to ensure that the referendum will take place. Id.

13. In the present case, the referendum was legally pending after 8 p.m. on May 14, 2007. Thus, the delivery of the advocacy materials to the post office on May 14th, hours before the referendum was approved, but such that it was unlikely that the postal service could have completed its delivery that day, meant that all of the flyers would have been received by postal patrons after the referendum was legally pending unless the council failed to send the project to referendum.
14. The Commission concludes that Respondents should not have ceded control of the advocacy materials to the printer for mailing at a date so close to the Town Council's vote regarding the referendum and that under circumstances such as these, when an advocacy piece is distributed by the postal service at a time when Respondents knew or should have known it would be received by its intended recipients after the referendum would likely be legally set, the actual distribution after the referendum was in fact set constitutes a violation of Connecticut General Statutes §9-369b, irrespective of when the expenditure is approved or when payment is made. *See In the Matter of a Complaint by Donald Snow, Madison, File No. 2000-151* (Concluding that distribution of advocacy materials after a referendum was legally pending violated C.G.S. § 9-369b, although materials were paid for prior to pending referendum.)
15. The Commission concludes that the Respondents should have known it would result in its receipt after the referendum was likely to become legally pending.
16. The Commission finds that the PBOE was operating under the general advice of counsel that as long as advocacy materials are delivered at public cost prior to the pendency of the June 19, 2007 referendum, the expenditure would not violate Connecticut General Statutes §9-369b. Respondents accordingly believed in good faith that their expenditure of public funds to promote their position on the referendum and the delivery of advocacy materials to the post office prior to the pendency of the referendum was permissible.
17. However, because the Respondents should have known or are responsible for knowing that they would be delivered by the postal service, and thus received by their intended recipients, after the referendum was likely to become legally pending, the Commission concludes that the Respondents violated Connecticut General Statutes § 9-369b. The Commission finds the Respondents had an affirmative duty to communicate to the service hired that the materials had to be received by the intended recipients prior to the pending date of the referendum.
18. Connecticut General Statutes § 9-369b (b) provides that the Commission may impose a civil penalty for any violation of § 9-369b (a) of one thousand dollars or twice the amount of the improper expenditure, whichever is greater. The Commission concludes the Respondents' violation of Connecticut General Statutes § 9-369b is not only unintentional, but occurred in spite of a good faith effort to ascertain and comply with the requirements of the law. Under these circumstances, the Commission will not impose civil penalties against the Respondents.

19. The 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.
20. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
21. 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.
22. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth, the Respondents shall strictly comply with the requirements of Connecticut General Statutes §9-369b, and shall ensure that no expenditure of municipal funds shall be made to influence any person to vote for approval or disapproval of a referendum question.

For the Respondents:

BY:

William Crowley,
2 Raffi Drive
Plainville, Connecticut

Dated

12/20/07

BY:

Lorri Goldsmith
16 Beechwood Drive
Plainville, Connecticut

Dated

12/20/07

BY:

Arthur Hoerle
150 Redstone Hill
Plainville, Connecticut

Dated

For the State of Connecticut

BY:

Joan Andrews

Joan M. Andrews, Esq.
Director of Legal Affairs,
And Enforcement and
Authorized Representative
OF the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated

11/8/08

BY:

Keith LaCombe
204 West Main Street
Plainville, Connecticut

Dated

12/20/07

BY:

Susan McCarthy
154 Pickney Avenue
Plainville, Connecticut

Dated

BY:

Patrick Ringrose
17 Fleetwood Drive
Plainville, Connecticut

Dated

20 DECEMBER

BY:

By J. J.

12/20/07

Becky Tyrrell
174 West Main Street
Plainville, Connecticut

Dated

BY: _____

Thomas L. Wazorko
8 Usher Avenue
Plainville, Connecticut

Dated

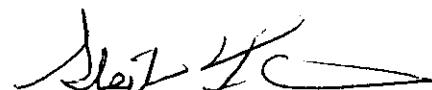
BY: Barbara Willard

12/30/07

Barbara Willard
148 Tomlinson Avenue
Plainville, Connecticut

Dated

Adopted this 14th day of November, 2007 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chair
By Order of the Commission

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Plainville, Connecticut

Dated _____

BY: _____

Keith LaCombe
204 West Main Street
Plainville, Connecticut

Dated _____

BY: _____

Susan McCarthy
154 Pickney Avenue
Plainville, Connecticut

Dated 12-24-07

BY: _____

Patrick Ringrose
17 Fleetwood Drive
Plainville, Connecticut

Dated _____

BY: _____

For the State of Connecticut

BY: _____

Joan M. Andrews, Esq.
Director of Legal Affairs,
And Enforcement and
Authorized Representative
OF the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated _____

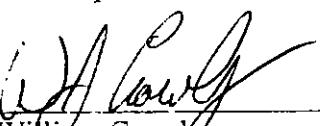
1/8/08

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Plainville, Connecticut

BY: _____

12/21/07
Dated

Dated

Dated

Dated

Dated

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For the State of Connecticut

BY: 
Joan M. Andrews, Esq.
Director of Legal Affairs,
And Enforcement and
Authorized Representative
OF the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

1/8/08
Dated

Becky Tyrrell Dated
174 West Main Street
Plainville, Connecticut

BY: Thomas L. Wazorko 12-21-07
Thomas L. Wazorko Dated
8 Usher Avenue
Plainville, Connecticut

BY: _____ Dated
Barbara Willard Dated
148 Tomlinson Avenue
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