

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaints by
Kenneth Heidkamp & Patrick DeAngelis

File Nos. 2008-154 &
2008-162

CONSENT AGREEMENT AND ORDER
CONTAINING CIVIL PENALTY

This Agreement, by and between Paul J. Perrotti ("Respondent"), of the Town of Middlebury, County of New Haven, State of Connecticut and the authorized representative of the State Elections Enforcement Commission ("SEEC") 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 Middlebury Volunteer Fire Department, Inc. ("MVFD") is a Connecticut corporation whose purpose is to provide fire protection services to the town of Middlebury. The MVFD receives at least portion of its funding from the Town of Middlebury.
2. Included on the ballot during the municipal election held on November 6, 2007 in the Town of Middlebury was a referendum question concerning a revision to the Town of Middlebury Charter that would have impact on the MVFD.
3. In his Complaint, Complainant Heidkamp alleges that prior to the aforementioned referendum, but during such time as the referendum was pending, the MVFD expended funds to advocate a "no" vote in the referendum. Specifically, Complainant Heidkamp alleges that the MVFD used its funds to print fliers and signs advocating a "no" vote and to post advocacy on the a website that the Complainant alleges is funded by the MVFD. In his Complaint, Complainant includes a copy of a flier which advocates for a "no" vote at the referendum, a copy of an MVFD "palm card" advocating for a "no" vote which he alleges was handed on at the polling place, photographs of the aforementioned signs and an address linking to the MVFD website, portions of which also advocate for a "no" vote at the referendum.
4. Complainant Heidkamp further alleges that on the date of the referendum, the MVFD set up a tent at the town's single polling place at which MVFD volunteers wore their uniforms while handing out free food, passing out fliers and urging voters entering the polling place to vote "no" on the referendum.
5. Finally, Complainant Heidkamp alleges that MVFD member Albert Smith stood less than 75 feet from the entrance door to the polling place and advocated for a "no" vote and had to be asked to leave on three different occasions. No evidence was provided in support of this allegation.
6. In his Complaint, Complainant DeAngelis alleges that on November 8, 2008, members of the MVFD handed out fliers advocating a "yes" vote on an upcoming referendum to be held in the town of Middlebury on November 12, 2008. Included in his Complaint is a copy of a flyer which advocates for a "yes" vote at the 2008 referendum. Complainant further alleges that on the day of the referendum, the

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MVFD “set up operations” at the polling place, including: displaying an MVFD fire engine, handing out free hot dogs, and speaking to voters as they approached the polling place.

7. General Statutes § 9-369b (a), provides, in pertinent part:

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. . . .

8. General Statutes § 9-236 (a), provides, in pertinent part:

On the day of any primary, referendum or election, no person shall solicit in behalf of or in opposition to the candidacy of another or himself or in 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, except as provided in section 9-294. . . .

9. Paul J. Perrotti, Chief of the MVFD responded to the instant Complaints. Regarding the allegations brought by Respondent Heidkamp, Chief Perrotti specifically denies that any municipal funds were used for the fliers and the signs, as alleged. Chief Perrotti asserts that the signs and fliers were created by members and supporters of the MVFD using their own personal funds. While he is unable to determine the exact amount of fliers created or the exact amount of personal funds spent to create such fliers and signs, he asserts that a relative few were made and at a total cost of no more than \$500.
10. Further Chief Perrotti asserts that the website to which the Complainant refers is designed, maintained and funded solely by a volunteer supporter of the MVFD, not by any officer or paid employee; the MVFD has no official control over the website and/or its content.
11. Finally, Chief Perrotti denies that any MVFD member actively advocated and/or offered advocacy materials within the 75 radius at the 2007 referendum. He asserts that firefighter Smith, after casting his ballot in the polling place was asked a question by another voter about the referendum question and he answered. However, while he admits that Mr. Smith was asked to leave the polling place and did comply, he asserts that there is no evidence that the content of what he said in the polling place constituted advocacy for or against the referendum such that it would constitute a violation of General Statutes § 9-236.
12. In response to Complainant DeAngelis’ Complaint, Chief Perrotti asserts that again only personal funds were used to create and distribute the 2008 fliers at a cost of less than \$500.

13. Further, Chief Perrotti asserts that no evidence has been presented that any member of the MFVD advocated within the 75' radius of the polling place.
14. Finally, he asserts that no MFVD fire engine was present at the polling place as alleged, but rather an MVFD truck, which Chief Perrotti was authorized to operate for personal use because, as chief of the MVFD, he is always on call. Furthermore, he asserts alternatively that the truck was not being used to advocate and that there is no evidence that any sign or other advertizing matter was present on the vehicle.
15. Turning first to the Complainants' allegations that members of the MVFD violated General Statutes § 9-236 during the 2007 and 2008 referenda, the Commission finds that the evidence is insufficient to show that such electioneering occurred within 75' of the polling place at either referendum. Accordingly, these allegations are dismissed.
16. The Commission turns next to the Complainants' allegations that the MVFD expended public funds to advocate an outcome in the November 2007 and 2008 referenda. Regarding the MVFD's use of a publicly funded website to promote a "no" vote, the Commission finds that there is insufficient evidence to establish that such website was created, maintained and/or hosted using municipal funds. As such, this allegation is dismissed.
17. Regarding the use of MVFD uniforms, the Commission has previously held that the wearing of a municipal uniform in such a manner does not constitute a violation of General Statutes § 9-369b. *See In the Matter of a Complaint by Sloka Briggs, East Haven, 1997-126.* As such, this allegation is dismissed.
18. Regarding the use of the MVFD vehicle, there is no evidence that any municipal funds were utilized by Mr. Perrotti's authorized use of the fire department vehicle. As such, this allegation is dismissed.
19. Regarding the fliers and the signs printed and used in the 2007 referendum and the fliers printed and used in the 2008 referendum, the Commission finds that there is insufficient evidence to support the allegation that such items were created using public funds. As such, this allegation is dismissed.
20. However, the Commission notes that at the time of the aforementioned referenda, groups of two or more individuals who spent less than \$1,000 to advocate on behalf of any referendum question were required to file a certification with the town clerk. Here, while there is no evidence that the MVFD spent more than \$1,000 for either referendum, there is also no evidence that such a certification had been filed. General Statutes § 9-605 (d)¹ (Rev. to 2008) reads, in pertinent part:

A group of two or more individuals who have joined solely to promote the success or defeat of a referendum question shall not be required to file as a political committee, make such designations in accordance with subsections (a) and (b) of this section or file statements pursuant to

¹ General Statutes § 9-605 was recodified on January 1, 2008 and was formerly General Statutes § 9-333g at the time of the 2007 referendum.

section 9-608, if the group does not receive or expend in excess of one thousand dollars for the entire campaign and the agent of such individuals files a certification with the proper authority or authorities as required under section 9-603 before an expenditure is made. The certification shall include the name of the group, or the names of the persons who comprise the group, and the name and address of the agent which shall appear on any communication paid for or sponsored by the group as required by section 9-621. If the group receives or expends in excess of one thousand dollars, the agent shall complete the statement of organization and file as a political committee not later than three business days thereafter. . . .

21. At all times relevant to the instant matter, the members and supporters of the MVFD who joined to advocate in the referenda were required by § 9-605 (d) to file a certification with the Middlebury town clerk. However, Public Act. No. 10-187 of the 2010 Public Acts removed the certification requirement for groups of two or more individuals who expend less than \$1,000 to advocate for or against any referendum. In light of this legislative action, the Commission declines to pursue this portion of the matter further.
22. However, regardless of whether a group of two or more individuals are required to file a certification or a registration statement with the town clerk, certain requirements under Chapter 155 must still be met. Written, typed or other printed communications promoting the success or defeat of a referendum must bear information identifying who paid for them, General Statutes § 9-621 (c) (Rev. to 2008)² reads, in pertinent part:

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 and is required to file a certification in accordance with subsection (d) of section 9-605, 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 the words "paid for by" and the following: . . . (4) in the case of such a group of two or more individuals, the name of the group as it appears on the certification filed in accordance with subsection (d) of section 9-605, and the name and address of its agent.³

23. Here, because the aforementioned fliers advocated in support and/or opposition to referenda, they were required to contain an attribution identifying who paid for them. However, the evidence shows that neither of the two fliers, nor the palm card contained an attribution identifying who paid for them. Accordingly, the Commission concludes that the three fliers constitute three separate violations of General Statutes § 9-621 (c) (Rev. to 2008).

² General Statutes § 9-621 was recodified on January 1, 2008 and was formerly General Statutes § 9-333w at the time of the 2007 referendum.

³ The reference to subsection (d) of section 9-605 was deleted in Public Act No. 10-187 of the 2010 Public Acts.

24. The Respondent, while denying any intentional wrongdoing or misconduct, admits all jurisdictional facts and agrees for the sake of settling this matter 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 Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
25. 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 Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
26. 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 contest the validity of the Order entered into pursuant to this Agreement.
27. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with the requirements of Connecticut General Statutes § 9-621.

IT IS HEREBY FURTHER ORDERED THAT for his violations of General Statutes § 9-621 (c), the Respondent shall pay a civil penalty of one hundred fifty dollars (\$150.00) to the Commission on or before February 10, 2011.

The Respondent:



Paul J. Perrotti
277 Porter Avenue
Middlebury, CT

For the State of Connecticut:

BY: 

Shannon C. Kief, Esq.
Legal Program Director
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 2/9/11

Dated: 2/10/11

Adopted this 16th day of February of 2011 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission