

**STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by  
Roger Wise, et al, New Fairfield

File No. 2009-03

**FINDINGS AND CONCLUSIONS**

Complainants Roger Wise, Douglas Thielen, Peggy Katkochin, and Lucy DiRocco bring this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the New Fairfield Board of Selectmen ("BOS") spent public funds to advocate a position on a referendum pending in the Town of New Fairfield at a regular meeting of the BOS that was broadcast on public access television.

1. At all times relevant to the instant Complaint, the members of the BOS were: John Hodge, First Selectman; Ronald R. Oliveri, Selectman; and Thomas M. Corbett, Selectman.
2. The minutes of the November 24, 2008 5:00 p.m. special meeting of the BOS reflect that at that meeting, the BOS, pursuant to General Statutes § 7-7, set a date of December 13, 2008 for referendum to be held regarding a proposed resolution which would appropriate funds to upgrade the town's emergency communications system.
3. At said special meeting of the BOS, all of the conditions required under General Statutes § 7-7 were met and the referendum became "legally pending" at that time. *See Complaint of William & Kathleen Oppenheimer, et. al., File No. 2003-180* (a referendum is legally pending when all of the necessary legal conditions have been satisfied to require that a referendum be held).
4. The agenda for the regular meeting of the BOS held on December 11, 2008 reflect no items relating to the subject matter of the pending referendum, however the minutes of said meeting reflect that First Selectman John Hodge made a motion, which was seconded by Selectman Thomas M. Corbett and passed unanimously, to replace an agenda item with a discussion of the emergency communications system upgrade.
5. The minutes of the aforesaid regular meeting of the BOS reflect that several members of the public, including some municipal employees, spoke about the proposed appropriation and advocated a position regarding the referendum thereon.
6. Also reflected in the minutes is a discussion in which all three of the Selectmen discussed and voiced their support for the proposed appropriation, including a portion in which Selectman Ronald Oliveri read into the record certain supportive newspaper editorials written by other individuals.<sup>1</sup>

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<sup>1</sup> The minutes of the December 23, 2008 regular meeting reflect that the minutes of the December 11, 2008 regular meeting were approved.

7. Complainants allege that Respondents expended municipal funds to influence those watching the BOS regular meeting by: a) amending the agenda to allow discussion of the subject matter of a pending referendum; b) discussing the subject matter of a pending referendum and advocating for a particular result; and c) allowing members of the public to discuss the subject matter of a pending referendum and advocate a result during the public comment portion of the meeting. Complainants allege that municipal funds were expended to hold the meeting and to have it broadcast on public access television.

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

(a) . . . [N]o 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. . . .

9. The Commission does not, however, construe General Statutes § 9-369b (a) in a manner that precludes elected officials or the public from freely discussing issues and business on a meeting agenda, regardless of the municipal expense associated with holding and/or airing the meeting. *See Complaint by Arthur Screen*, File No. 2005-167 (No violation found where a statement of advocacy on a pending budget referendum was made by a Board of Education member at a regularly scheduled public meeting in which the sole agenda item was the review and discussion of budget items); *see also Complaint by Craig Powers*, SEEC File No. 2009-050 (“Written, printed or typed summary” exception applies to uses of municipal facilities and/or funds to hold a special meeting in order to solely to discuss the preparation of a “written, printed or typed summary of an official’s views on a [pending] proposal or question, which is prepared for any news medium . . .”). *But see, Complaint by Joseph Valys*, SEEC File No. 2005-165 (Violation found where, during a Board of Education meeting broadcast on public access television at municipal expense, municipal official, unrelated to any item on a meeting agenda, announced to the viewing audience that there was an hour left to vote on a referendum and urged the viewing audience to “get out and vote no.”)

10. Complainants allege that adding an agenda item for discussion that was the subject of a pending referendum caused an expenditure in violation of General Statutes § 9-369b.

11. In that regard, General Statutes § 1-225 (c) provides, in pertinent part:

(c) The agenda of the regular meetings of every public agency, except for the General Assembly, shall be available to the public and shall be filed, not less than twenty-four hours before the meetings to which they refer. . . . *Upon the affirmative vote of two-thirds of the members of a public agency present and voting, any subsequent business not included in such filed agendas may be considered and acted upon at such meetings.* [Emphasis added.]

12. The Commission declines to extend the prohibition in General Statutes § 9-369b to reach conduct expressly permitted by Chapter 14 of Title 1 of the General Statutes, the Freedom of Information Act.
13. Accordingly, since the BOS was permitted by the Freedom of Information Act to add the item to their meeting agenda and, the Commission will not interpret § 9-369b to preclude them or the public from freely discussing such issues and business at a meeting of a public agency, irrespective of whether the agenda item was added, pursuant to General Statutes § 1-225 (c), or was part of a previously published agenda.
14. After considering the aforesaid, no violation of General Statutes § 9-369b (a) is found.

### ORDER

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

That the Complaint be dismissed.

Adopted this 30<sup>th</sup> day of September of 2009 at Hartford, Connecticut



Stephen F. Cashman, Chairman  
By Order of the Commission