

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Craig Powers, Town of Woodstock

File No. 2009-050

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Woodstock Board of Education (“BOE”) spent public funds to advocate a position on a referendum pending in the Town of Woodstock and that the website “Woodstockctcafe.com” failed to include an attribution on a webpage advocating a position on the same referendum.

1. At all times relevant to the instant Complaint, the members of the Woodstock BOE were: Lindsay Paul, Chair; William Loftus III, Vice-Chair; Carol Andrzejcik, Secretary; Francis Corden; Kevin Ford; Brian Musumeci; Kirsten Rigney; Steven Rosendahl and Christine Swenson.
2. On or about May 5, 2009 the Town Clerk of the Town of Woodstock received a petition by a citizen of the town proposing an ordinance to be voted on at a Town Meeting.
3. The minutes of the May 13, 2009 special meeting of the Town of Woodstock Board of Selectmen (“BOS”) reflect that at that meeting, held at 4:00 p.m., the BOS set a date of June 9, 2009 for a referendum to be held regarding the aforementioned proposed ordinance.
4. At said special meeting of the BOS, all of the conditions required under the Town of Woodstock Charter 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).
5. The proposed ordinance would, as of the next regularly scheduled November election, make certain changes to the election and makeup of the Woodstock BOE and end the terms of the current Woodstock BOE.
6. Complainant alleges that, sometime after the BOS set the date for the aforementioned referendum: a) Using the town computer system, BOE Chair Lindsay Paul circulated two emails to the members of the BOE containing a proposed “position statement” advocating a public position on the referendum by the BOE; b) on May 14, 2009, the BOE held a special meeting in a town building to discuss and take action on the aforementioned position statement; c) at the aforementioned special meeting, “certain members” of the BOE voted to approve spending of public funds to advocate a BOE position on the referendum; and d) at the special meeting, the BOE voted to approve and release the position statement proposed by the Chair.

7. According to the website of the BOE, on May 13, 2009 the BOE noticed a special meeting to be held May 14, 2009 at 6:30 p.m.; the single noticed agenda item was "Discussion and Possible Action on Petition Presented to the Town Clerk dated May 5, 2009."
8. On May 13, 2009, Chair Lindsay Paul prepared on her home computer a draft "statement for the community" regarding the proposed ordinance.
9. At approximately 5:30 p.m. on May 13, 2009 Chair Lindsay Paul, using the BOE email system, distributed the "statement" to the other members of the BOE to be considered by the members at the special meeting to be held the next evening; a second version of the draft statement was sent in the same manner later that same evening.
10. The draft statement contained words of advocacy which explicitly urged the voters in the town of Woodstock to vote "No" on the proposed ordinance.
11. On May 14, 2009 at 6:30 p.m., the BOE held a special meeting in which the members discussed the proposed ordinance and the "statement" prepared by the Chair and distributed to the members the prior evening via the BOE email system.
12. According to the minutes of the May 14, 2009 BOE special meeting, the BOE passed a motion "[t]o support the statement distributed dated May 14, 2009 and to authorize Mrs. Paul to release it to news media as a press release and to speak on WINY to the document."
13. Of the members present at the BOE special meeting, members Andrzejcik, Paul, Rigney, Ford, and Corden voted in favor of the motion with members Rosendahl and Musumeci voting against.
14. Subsequent to the aforementioned special meeting, Chair Lindsay Paul, using her personal computer, distributed the "statement" bearing words of advocacy to, *inter alia*, the newspapers the Woodstock Villager, the Norwich Bulletin, the Worcester Telegram and the Putnam Town Crier, as well as to "Woodstocketcafe.com," a local World Wide Web "site" whose content largely consisted of issues relating to the Town of Woodstock.
15. General Statutes § 9-369b 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. . . . This subsection shall not apply to a written, printed or typed summary of an 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. (Emphasis added.)

16. The Commission finds that using the BOE email system to send the "statement" to the other members of the BOE constituted an expenditure, albeit de minimus, of municipal funds.
17. However, the Commission finds that the aforementioned expenditure of municipal funds was exempted from the general prohibition in General Statutes § 9-369b (a) because it was directly related to the preparation of a written, printed or typed summary of an official's views on a proposal or question, which was prepared for the news media and which was not distributed with municipal funds to a member of the public.
18. The Commission declines to find that noticing and holding a meeting of a public agency was itself an expenditure in violation of General Statutes § 9-369b(a).
19. Similarly, the Commission does not construe General Statutes § 9-369b in a manner that precludes elected officials from freely discussing issues and business on a meeting agenda. *See Complaint by Jesse Haskill*, File No. 2005-264 (No violation found where a statement of advocacy on a pending referendum question was made by a Town Council member at a regularly scheduled public meeting in which the subject matter of the question was on the meeting agenda); *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). The single exception to that in the Commission's jurisprudence was when an elected official, unrelated to any item on a meeting agenda, and aware that the meeting was being broadcast using public funds, 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." *Complaint of Joseph Valys*, File No. 2005-165.
20. Turning to the attribution allegation, the Internet domain "Woodstockcafe.com" is controlled by Respondents John and Becki Leavitt, who also pay for the hosting of the World Wide Web content on said domain and have complete editorial control over said content, which is available to the general public.
21. "Woodstockcafe.com" is in no way owned, maintained or otherwise legally controlled by the Town of Woodstock and/or any of its constituent boards or commissions.
22. On or about May 15, 2009, John and Becki Leavitt publicly posted the "statement" in its entirety on "Woodstockcafe.com," which "statement" remained accessible to the general public throughout the pendency of the referendum, up to and including the date of the vote.
23. General Statutes § 9-621, provides in pertinent part:
 - (a) No individual shall make or incur any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, and no candidate or committee shall make or

incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication, or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or solicits funds to benefit any political party or committee unless such communication bears upon its face (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer; or (C) in the case of a party committee, the name of the committee, and (2) the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual; or (B) in the case of a candidate committee, the name of the candidate.

...

(c) *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: (1) In the case of a business entity, organization or association, the name of the entity, organization or association and the name of its chief executive officer; (2) in the case of a political committee, the name of the committee and the name of its campaign treasurer; (3) in the case of a party committee, the name of the committee; or (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.*

(d) The provisions of subsections (a), (b) and (c) of this section do not apply to (1) any editorial, news story, or commentary published in any newspaper, magazine or journal on its own behalf and upon its own responsibility and for which it does not charge or receive any compensation whatsoever, (2) any banner, (3) political paraphernalia including pins, buttons, badges, emblems, hats, bumper stickers or other similar materials, or (4) signs with a surface area of not more than thirty-two square feet. . . . (Emphasis added.)


24. The Commission concludes that, even assuming that "Woodstockctcafe.com" did not qualify for the news exemption enumerated in General Statutes § 9-621 (d), "General Statutes § 9-621 (c) only requires an attribution on 'written, typed or other printed communications.'" *See Complaint of Judy Aron*, File No. 2008-073 (noting that subsection (a) had been amended to include web based written communications, but that subsection (c) had not, in concluding that web based referendum expenditures did not require an attribution).
25. Accordingly, because subsection (c) General Statutes § 9-621, unlike subsection (a), does not require an attribution on "web-based, written communication[s]," no attribution was required on the BOE "statement" posted on the website "Woodstockctcafe.com."
26. The Commission further finds that although Becki Leavitt is a bus driver for the Woodstock school system and an employee of the Woodstock BOE, there is no evidence that Becki Leavitt's activities vis-à-vis "Woodstockctcafe.com" were related to her employment as a bus driver for the Woodstock public schools.
27. After considering the aforesaid, no violation of General Statutes §§ 9-369b (a) or 9-621 (c) is found under the facts and circumstances of this case.

ORDER

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

That the Complaint be dismissed.

Adopted this 1st day of July of 2009 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission