

**STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by  
Patricia Ulatowski, Monroe

File No. 2009-062

**FINDINGS AND CONCLUSIONS**

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Respondent, Marsha Motter Beno ("Respondent"), Town Clerk for the Town of Monroe, failed to comport with the requirements of General Statutes § 9-369c in relation to the mailing of absentee ballots for the first and second budget referenda held in April of 2009 in the Town of Monroe. Complainant also questioned the legitimacy of the paper ballots used by the Respondent at the polling places for said referenda. After the investigation, the Commission makes the following findings and conclusions:

1. According to Chapter VIII of the Charter of the Town of Monroe, the budget for each year is set by the Board of Finance (the "First Budget"). The Board of Finance has until March 21 of each year to set the budget and deliver it to the First Selectman. An Annual Budget Referendum is held each year on the first Tuesday in April to vote on the First Budget. In the event the First Budget is defeated, the First Selectman is then tasked with holding a meeting of the Town Council and the Boards of Finance and Education to discuss budget reductions. The First Selectman then sets the Second Budget. Three weeks after the First Referendum, the Second Annual Budget Referendum is held to vote on the Second Budget. In the event the Second Budget is defeated, the First Selectman is again tasked with holding a meeting of the Town Council and the Boards of Finance and Education to discuss further budget reductions. The First Selectman then sets the Third Budget. Two weeks after the Second Referendum, a Third Budget Referendum is held to vote on the Third Budget. Successive budgets, if necessary, follow the procedure for the Third Budget Referendum.

2. Connecticut General Statutes § 9-1, provides in pertinent part:

(d) "Election" means any electors' meeting at which the electors choose public officials by use of voting machines or by paper ballots as provided in sections 9-271 and 9-272;

. . .

(n) "**Referendum**" means (1) a question or proposal which is submitted to a vote of the electors or voters of a municipality at any regular or special state or municipal election, as defined in this section, (2) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters, which meeting is not an election, as defined in subsection (d) of this section, and is not a town meeting, or (3) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters

*pursuant to section 7-7 or pursuant to charter or special act. . . .*  
[Emphasis added.]

3. Three referenda, as defined in subdivision (3) of subsection (n) of General Statutes § 9-1, were held in Monroe regarding the 2009-10 budget. The First and Second Budgets were defeated at referenda held on April 7th and 28th respectively. The Third Budget passed after a mandatory canvass of a close vote at a referendum held on May 12, 2009.
4. According to the minutes of the March 18, 2009 meeting, the Board of Finance set the 2009-10 budget amount by a majority vote.
5. On or about March 20, 2009, the Respondent was informed of the budget amount by the Chief Financial Officer of the Town of Monroe.
6. On or about March 23, 2009, and at the direction of the Respondent, the Respondent's office mailed absentee ballots to those electors who had submitted applications. Additionally, applications were made available in the office of the Town Clerk.
7. At the First Referendum, held on April 7, 2009, the budget was not approved by the electors.
8. On April 14, 2009 the First Selectman held a meeting of the Town Council and the Boards of Finance and Education at which budget reductions were discussed and a new budget was set.
9. On or about April 17, 2009, and at the direction of the Respondent, the Respondent's office mailed absentee ballots to those electors who had submitted applications. Additionally, applications were made available in the office of the Town Clerk.
10. At the Second Referendum, held on April 28, 2009, the budget was again not approved by the electors.
11. On April 30, 2009 the First Selectman held a second meeting of the Town Council and the Boards of Finance and Education at which budget reductions were discussed and a new budget was set.
12. On or about May 5, 2009, and at the direction of the Respondent, the Respondent's office made absentee ballot applications available only in the office of the Town Clerk.
13. At the Third Referendum held on May 12, 2009, the budget was approved by the electors after a canvass of the votes cast.
14. General Statutes § 9-369c, provides in pertinent part:

*(a) Whenever a referendum, as defined in subdivision (2) or (3) of subsection (n) of section 9-1, is to be held on any question or proposal, *the question or proposal shall be submitted to the**

*municipal clerk in the form in which it will appear on the ballot at least three weeks prior to the date on which the referendum is to be held, and the municipal clerk shall make absentee ballots available for use at the referendum in accordance with the provisions of this section, provided, if any other provision of the general statutes, a special act, a charter provision or an ordinance specifically authorizes a referendum to be held with less than three weeks' notice, absentee ballots shall be made available for each such referendum within four business days after the question or questions which are to be voted on at the referendum are finalized. Notwithstanding any provision of the general statutes to the contrary, a municipal clerk may only provide an absentee ballot for such referendum held with less than three weeks' notice to a person who applies in person at the office of the municipal clerk for an absentee ballot (1) for himself or (2) for a prospective applicant who designates such person for such purpose. The designee may be a licensed physician, registered or practical nurse or any other person who is caring for the applicant because of the applicant's illness, a member of the applicant's family or a police officer, registrar of voters or deputy registrar of voters in the municipality in which the applicant resides. The designee may also return the ballot in person to the municipal clerk not later than the close of the polls.*

...

(e) Any person who is eligible to vote by absentee ballot as provided in this section may apply in person or by mail to the municipal clerk for an absentee ballot. Application shall be made on a form furnished by the Secretary of the State, as provided in subsection (d) of this section. Upon receipt of an application or upon the nineteenth day before the date of the referendum, whichever is later, the municipal clerk shall give to the applicant or mail, as the case may be, the absentee ballot and the envelopes furnished by the Secretary of the State. No absentee ballot shall be issued after the opening of the polls at the referendum, except as provided in section 9-150c.

(f) The procedures for issuing, returning, casting and counting absentee ballots, declaring the count and packaging the ballots at elections, *shall apply, as nearly as may be, to absentee ballots at referenda.* [Emphasis added.]

15. General Statutes § 9-140, provides in pertinent part:

(g) On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, within twenty-four

hours, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the clerk shall comply with the request. . . . [Emphasis added.]

16. General Statutes § 9-369c specifically prescribes the procedures for issuing absentee ballots for certain standalone municipal referenda, as defined in subdivision (2) or (3) of subsection (n) of section 9-1. As such, the Commission finds as a preliminary matter that when such referenda are held, the more specific provisions of § 9-369c concerning referenda held with less than three weeks notice govern over those provisions prescribing the procedures for issuing absentee ballots in elections, as prescribed by General Statutes § 9-140.
17. Further, the Commission concludes that when a referendum, as defined in subdivision (2) or (3) of subsection (n) of section 9-1, is held with less than three weeks notice, the requirement in subsection (a) of General Statutes § 9-369c—that absentee ballots be issued to only those electors or their legal designees who appear in person at the office of the municipal clerk—is mandatory, not advisory.
18. Respondent avers that for long before she became Town Clerk, approximately ten years ago, it was the practice of the Town Clerk’s office to accept absentee ballot applications and deliver absentee ballots via the mail for the annual budget referendum, when possible. Respondent has followed this practice and also applies it in the event that there is a second referendum. In the event that there is a third and successive referenda, it is the Respondent’s practice to make absentee ballot applications and absentee ballots available only by visiting the Town Clerk’s office.
19. Moreover, Respondent sought the advice of the then town attorney concerning her responsibilities and limitations under General Statutes § 9-369c for the aforementioned referenda.
20. The town attorney at the time advised the Respondent that it was his legal opinion that she could follow the “three week plus” procedure for the First and Second Referenda, because according to his reading of the statute, the “notice” enumerated in General Statutes § 9-369c was the notice to the electors of the holding of the referendum.
21. The town attorney reasoned that because the First Referendum is automatic, the electors are on constructive notice that it will be held. His analysis for allowing the Respondent to follow the “three week plus” procedure in the Second Referendum was that the Second Referendum is also noticed constructively in the Charter to be held three weeks after the First Referendum in the event that the First Referendum is defeated. He reasoned that in Monroe the votes are counted and certified, and the result published online by the Town Clerk, on the night of the First Referendum.<sup>1</sup> Accordingly, in his view the electors are on constructive notice of the Second Referendum on the condition that the first is defeated and once the First Referendum is defeated, the electors are on *actual* notice that the Second Referendum will be held three weeks hence.

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<sup>1</sup> The Respondent corroborates this statement.

22. This is an issue of first impression for the Commission and the Office of the Secretary of the State has no prior opinions on this issue to guide the commission per General Statutes § 9-3. As such, while the Commission sympathizes with the policy reasons behind the interpretation of the town attorney—encouraging increased voter participation in the municipal referendum process—it finds that this argument is unavailing.
23. The dispositive and novel issue here is what “notice” means in General Statutes § 9-369c (a) for the purpose of determining when the “three weeks notice” period begins. For the foregoing reasons, the Commission finds that “notice,” which triggers the “less than three weeks” procedure in § 9-369c (a), refers to the submission of the referendum question to the Town Clerk, not the notice to the electors that a referendum is to be held.
24. General Statutes § 1-2z provides, in pertinent part
- Relevant legislation and precedent guide the process of statutory interpretation., the meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the statute shall not be considered. (Emphasis added.)
25. First, it is clear from a reading of the text of the statute that “notice” in § 9-369c (a) is used synonymously with the act of submitting the question or proposal to the Town Clerk. Subsection (a) specifically requires that the question be submitted three or more weeks prior to the referendum, but then immediately—within the same sentence in the subsection—outlines an alternate procedure in the event that a referendum could be “noticed” in less than three weeks. The two enumerated time periods are both identical and proximately contained within the same sentence, indicating two sides of one continuum with a single dividing event determining which procedure to follow. And, the single event enumerated in the first sentence of the subsection is the submission of the question to the Town Clerk.
26. Second, a broad reading of the statute, as is suggested, could lead to the absurd and unworkable result of unavoidable liability being thrust upon a Town Clerk by, in this instance, another authority within the town submitting the question in an untimely manner. If “notice” was given more than three weeks from the referendum date, then the prescriptions contained in subsection (e) concerning distribution of absentee ballots would apply and the Respondent would be required “upon receipt of an application or upon the nineteenth day before the date of the referendum, whichever is later . . . [to] give to the applicant or mail, as the case may be, the absentee ballot and the envelopes furnished by the Secretary of the State.” (Emphasis added.)
27. If the interpretation of the town attorney were correct, had the Board of Finance exercised its full authority under the Town of Monroe Charter, it could have waited

until March 21 to submit a budget figure to the First Selectman, leaving a period of up to three or more days in which the Town Clerk would be under a legal obligation to mail absentee ballots without the ability to do so because she would not yet know the wording of the question and the ballot could not be prepared.

28. Here, the wording of each of the three questions was not even *set* by the town authorities until less than three weeks prior to each corresponding referendum. And, since notice to the Respondent could only have occurred subsequent to the setting of each question, each notice also occurred under the three week threshold.
29. Accordingly, the Respondent was required to follow the absentee ballot procedure outlined in subsection (a) of General Statutes § 9-369c.
30. Considering the facts and circumstances of this case, the Commission sympathizes with the desire to read and apply the statute in the least disenfranchising manner. Nevertheless, the rule must be understood in its historic context. Compared to elections, there are relatively few state laws governing local referenda, which are largely governed by local rules, such as ordinances and charters. The provision of absentee ballots for referenda was only legislatively extended on the conditions prescribed in § 9-369c and is not a matter of right. The legislative history of the provision indicates a concern about the short time frame and the ability to issue and return such ballots. Ultimately, the statute is mandatory and expressly provides that if a referendum is held with less than three weeks notice, absentee ballots shall only issue in person and the Commission must give effect to that legislative determination.
31. However, while the Respondent's provision of absentee ballots for the first two referenda in this case violates the provisions of General Statutes § 9-369c (a), the Commission only reaches that conclusion after considerable legal analysis in a case of first impression. Moreover, the Respondent acted in good faith, including consulting the town attorney to guide her conduct and relying on this advice. Notably, while the Commission does not have civil penalty authority over § 9-369c (a), this is not a circumstance where the Commission would seek to impose such a penalty.
32. In light of the above, the Commission makes two recommendations. First, that when the Town of Monroe next considers revising its charter that it revisit the provisions related to the timing of its budget referenda, as well as consider adding language whereby a procedure is adopted for officially noticing the Town Clerk of the language of each referendum question. Second, the Commission recommends that the Connecticut General Assembly reexamine General Statutes § 9-369c during its next session in light of the facts and circumstances of this case.
33. Turning to the allegation regarding the content and presentation of the ballots for the aforesaid referenda, all ballots at the First Budget referendum, whether mailed as absentee ballots or disseminated at the polling place on the date of the referendum, consisted of a 8 ½" x 5 ½" piece of colored paper upon which the text of the question was printed. Below the text of the question were two boxes, which were labeled to the right with the words "Yes" and "No".

34. The makeup and content of the ballots at the Second and Third Referenda were substantially similar to that for the ballots used in the First Budget referendum, but for the change in the budget amount and the color of the paper on which the ballot was printed. The Complainant suggests that these smaller ballots did not appear "official."
35. The Secretary of the State produces a publication entitled "**ADVISORY GUIDELINES CONCERNING MUNICIPAL REFERENDA NOT HELD IN CONJUNCTION WITH A REGULAR OR SPECIAL ELECTION,**" (Emphasis added.) which, *inter alia*, **recommends** a form for such ballot questions to follow:

Unless otherwise provided for in specific sections of the Connecticut General Statutes or your local charter, we **recommend** that the municipalities follow the form prescribed when questions are submitted to the voters at a regular or special election. Section 9-250 of the Connecticut General Statutes **should be consulted for direction** on the ballot label. In addition, Section 9-369\* should be consulted for the form of the question designation. We feel this practice should be followed for referenda being held separately from any election because there already exists a working knowledge of these formats among all parties concerned. (\*Also see sections 7-7, 7-171, 7-295, 7-304, 10-45, 10-63n, 11-36, 13a-11, 30-11 for specific referenda)  
(Emphasis added.)

36. While the Commission supports the Secretary of the State's recommendation it notes that it is advisory only and it finds that no statute or regulation within the Commission's jurisdiction specifically prescribes the form and content of a ballot prepared for a municipal referendum, as defined in subdivision (3) of subsection (n) of General Statutes § 9-1—that is, a municipal referendum not held in conjunction with an election. Accordingly, this allegation is dismissed.

Recommended by hearing officer

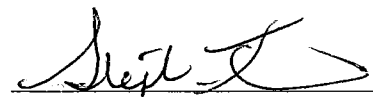


Stephen F. Cashman

7-28-10

Dated

Adopted this 28<sup>th</sup> day of July of 20 10 at Hartford, Connecticut



Stephen F. Cashman, Chairman  
By Order of the Commission