

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Donald Hassinger, Woodbury

File No. 2010-050

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b and alleges that the Regional School District No. 14 (Bethlehem/Woodbury) Board of Education (hereinafter "The Board of Education") improperly used public funds to prepare and distribute materials which advocated the approval of a referendum question. The referendum at issue concerned the Board of Education's proposed 2009-2010 budget.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. Regional School District No. 14 is composed of the towns of Bethlehem and Woodbury and is governed by an elected regional Board of Education from both towns pursuant Connecticut General Statutes § 10-46.
2. General Statutes § 9-369b provides the prohibition on the use of municipal funds:

"(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. . . . [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."

3. In prior cases of this kind, the Commission has consistently held that the prohibition on the use of public funds in to advocate a position on a referendum only applies when a referendum is "legally pending." *See, e.g., Complaint of Thomas A Kahrl, Old Lyme*, File No. 2007-185; *see also Complaint of Donald Hassinger, Woodbury*, File No. 1997-137.
4. According to the Commission, 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.*; *compare Complaint of George Fensick, Plainville*, File No. 2007-225 (Commission reiterates "legally pending" rule but relies on the Commission's prior conclusion in *Complaint of Donald Snow, Madison*, File No. 2000-151 to hold that a violation of § 9-369b occurs when a Respondent knows or should have known that advocacy materials delivered to the U.S. Postal Service for mailing would be received by its intended recipients after a referendum would likely be legally set, even though the expenditure of public

funds was made for those materials prior to the date from which the referendum is legally pending).

5. Furthermore, it is well established that for the purposes of the aforementioned provision, communications which urge a particular result, either by express wording of advocacy or when considered as a whole, would make a reasonable person believe that a particular result is urged, indicate that that communication was made to influence any person to vote for approval or disapproval of any referendum question. *See, e.g., Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999). In determining whether a communication contains advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. *Id.*
6. In the present case, the evidence establishes, and the Board of Education admits, that the communication at issue (a one page, two-sided color flyer) was paid for with public funds. In addition, the communication states, inter alia, as follows:

The Region 14 Board of Education
is recommending a budget decrease

* * *

SUPPORT EDUCATION IN
BETHLEHEM AND WOODBURY
VOTE YES ON MAY 4TH

Polls open from 6:00 am to 8:00 pm

*To review the budget, visit our website
www.ctreg14.org*

[Emphasis added.]

7. With respect to the date on which the referendum was “legally pending”, the Commission finds as follows:
 - April 20, 2010, the communication at issue is presented to the U.S. Postal Service for delivery but, do to insufficient funds, is not sent out for delivery;
 - April 21, 2010, the communication at issue is sent out for delivery via the U.S. Postal Service & *is received by the Complainant*;
 - **April 22, 2010, the Board of Education sets the date for the annual district meeting and the referendum;**
 - May 3, 2010, the Board of Education holds the annual district meeting; and
 - May4, 2010, the budget referendum takes place.
8. The evidence therefore establishes that the referendum was “legally pending” on April 22, 2010. *See* General Statutes §§ 10-47 and 10-51 (a) (providing the date of the annual meeting setting the proposed budget and the date on which the annual budget is first presented for adoption.)

9. The Commission therefore concludes that the referendum was not legally pending at the time the expenditures for the flyer (i.e., for production and mailing) were made.
10. Furthermore, the evidence is insufficient to establish that the communication was distributed or received by its intended recipients after April 22, 2010. The Complainant admits in his Complaint that he received the flyer at issue on April 21, 2010 and has not provided any evidence that it was received by any other intended recipient after the referendum was legally pending.
11. It is therefore concluded that the Board of Education did not violate General Statutes § 9-369b in connection with the allegations set forth in the complaint.

ORDER

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

That the case be dismissed.

Adopted this 23rd day of June, 2010 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission