

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Calvin A. Mellor, Lisbon

File No. 2010-129

FINDINGS AND CONCLUSIONS

Complainant is a resident and elector in the town of Lisbon and an owner of real property in Norwich and brings this complaint pursuant to General Statutes § 9-7b. The Complaint alleges: (1) that the City of Norwich (“Norwich”) violated General Statutes § 7-6 by limiting a referendum, held on November 2, 2010, to Norwich electors; (2) that Norwich violated General Statutes § 9-369d (d) by failing to publish a warning of election for such referendum that included a location where voters who are not Norwich electors may vote.

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

1. Norwich held a referendum on November 2, 2010 with questions placed before the Norwich electors (“the referendum”).
2. The Norwich City Clerk issued the warning of the referendum on or about October 19, 2010.
3. Such warning did not include a location where voters who are not electors may vote.
4. The Norwich City Clerk issued such warning with the advice of Attorney Michael Driscoll, corporation counsel (“corporation counsel”).
5. The Complainant is a resident and elector in the town of Lisbon.
6. The Complainant is not a Norwich elector.
7. The Complainant, in his correspondence with corporation counsel, does not dispute that he is a Lisbon elector and not a Norwich elector.
8. The Complainant states that he is liable to Norwich for taxes assessed against him on an assessment of not less than one thousand dollars on Norwich’s last-completed grand list.
9. Operating under municipal charter, Norwich’s legislative body is the city council and the mayor.
10. At all times relevant hereto, Norwich did not use the town meeting form of government.
11. The referendum questions were on the ballot, as advised by corporation counsel, pursuant to the Norwich City Charter, Chapter VIII, section four, requiring that the bonds in question must be approved by at least fifteen percent of Norwich electors.

12. The Commission lacks jurisdiction to construe or enforce provisions of a municipal charter, or to reconcile the provisions of such charter with the General Statutes. See, Opinion of Counsel 1997-20: *Watertown Bonding Referendum, May 20, 1997 Alleged Denial of Constitutional Rights of Non Resident Taxpayers to Vote* at 1.
13. Eligibility to vote at a town meeting is prescribed by General Statutes § 7-6, which provides:

At any *town meeting* other than a regular or special town election or at any meeting of any fire, sewer or school district or any other municipal subdivision of any town incorporated by any special act, any person who is an elector of such town may vote and any citizen of the United States of the age of eighteen years or more who, jointly or severally, is liable to the town, district or subdivision for taxes assessed against him on an assessment of not less than one thousand dollars on the last-completed grand list of such town, district or subdivision, or who would be so liable if not entitled to an exemption under subdivision (17), (19), (22), (23), (25) or (26) of section 12-81, may vote, unless restricted by the provisions of any special act relating to such town, district or subdivision. [Emphasis added.]

14. The Connecticut Supreme Court overturned a trial court decision where the trial court had found that the local “legislative body” of the Town of Manchester, at least for bonding purposes, was comprised of the town’s board of directors together with its voters exercising legislative power through a referendum. *Sadlowski, et al v. Town of Manchester, et al* 206 Conn. Sup. 579 (1988). The Supreme Court stated:

This ruling can only be sustained if voters exercising legislative power by voting on a referendum can be said to be a town meeting. We hold that they cannot For us to imply such an equivalence would fly in the face of reality. In ordinary usage the term “meeting” means an assembly or gathering for political, social, religious or economic purposes. N. Webster, Third New International Dictionary. We have taken judicial notice of the fact that “[i]n a Connecticut town which has a town-hall, the words ‘town meeting’ connotes a meeting in the town-hall.” Citations omitted. In *Pollard v. Norwalk*, 108 Conn 145, 145, 142 A. 807 (1928), upon which the plaintiffs attempt to rely, this court cited *Brooklyn Trust Co. v. Hebron*, 51 Con. 22, 29 (1883), for a description of a town meeting as an occasion on which “[t]he assembled voters’ are upon proper ‘warning,’ empowered to act. Thus a referendum in which individual voters cast individual ballots in individual voting booths does not constitute a town meeting.” pages 589, 590.

15. The Commission concludes the referendum was not a town meeting, therefore the provisions of § 7-6, with respect to voting rights of certain nonresident taxpayers, does not apply. See, Opinion of Counsel 1997-20.

16. The General Statutes § 9-369d provides:

(a) Whenever by law a question may be submitted to voters who are not electors of a municipality, the municipality may submit the question to a vote by electors and voters held in conjunction with an election. Except as otherwise provided, the general statutes shall apply to such vote.

(b) (1) *The procedures set forth in this subsection shall only apply if a municipality so chooses and only upon approval of such procedure by its legislative body or in any town in which the legislative body is a town meeting, by the board of selectmen.* (2) *Voters who are not electors shall vote by separate voting machine or paper ballot, containing solely the question, at one separate location which may be a separate room in the location at which electors vote.* Such separate location shall be treated as a separate voting district and polling place for such voters, except that the registrars of voters shall appoint a moderator who shall be the head moderator for the purpose of this question only, and such other officials as the registrars deem necessary. The moderator of such separate location shall add the results of the vote by electors on the question to the results of the vote by voters who are not electors, and shall file such results in the office of the municipal clerk. The moderator of such separate location shall be the moderator for the purposes of a canvass of a close vote on such question under section 9-370a. The head moderator of the town shall indicate on the return of vote of such question filed with the Secretary of the State that such return does not include the return of vote of voters who are not electors.

(c) Voters who are not electors and who are entitled by law to vote by absentee ballot shall be entitled to vote by separate absentee ballot containing solely such question. Such absentee ballot shall be issued beginning on the thirty-first day before the election, or, if such day is a Saturday, Sunday or legal holiday, beginning on the next preceding day.

(d) *The warning of the election shall include the location where voters who are not electors may vote.* [Emphasis Added.]

17. Norwich has not elected to adopt the procedures set forth in § 9-369d.

18. In applying the Norwich City Charter, with the advice of corporation counsel, Norwich limited the referendum to Norwich electors. Accordingly, there was no location where voters who are not electors may have voted in the referendum.

19. The Complainant, in his correspondence with corporation counsel, does not dispute that Norwich's adoption of the procedures set forth in § 9-369d is voluntary.

20. As stated above, the Commission lacks jurisdiction to construe or enforce provisions of a municipal charter, or to reconcile the provisions of such charter with the General Statutes. See, Opinion of Counsel 1997-20.

21. The Commission concludes that Norwich did not violate § 9-369d (d) as alleged by the Complainant.
22. The acts alleged by the Complainant do not violate any statutes under the jurisdiction of the Commission.

ORDER

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

That the case be dismissed.

Adopted this 26th day of January of 2011 at Hartford, Connecticut.



Stephen F. Cashman

Chairperson

By Order of the Commission