

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Nancy Sharp,
Woodbury

File No. 2011-010

FINDINGS AND CONCLUSIONS

The Complainant filed this complaint with the Commission pursuant to General Statutes § 9-7b concerning a referendum held by the Board of Education for Regional School District 14. The Complainant alleges that the phraseology on the ballot for the referendum question was unclear and ambiguous and, as such, prejudicial to the outcome of the referendum. The Complainant further alleges that the language on the ballot was different from language appearing in newspapers, mailings and other publications and that there were no posters containing explanatory texts available at the polling place.

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

1. On January 3, 2011 the Board of Education for Regional School District 14 (the "Board") voted to, "authorize the chair to create a public information flyer for distribution to both towns to include information on the public hearings and referendum vote..." (the "flyer").
2. The flyer was printed and mailed to the electors of the district.
3. On January 14, 2011 the Board voted to put the referendum question before the electors of Regional School District 14 (the "District") on February 17, 2011 (the "referendum").
4. The Board's counsel was not provided with the specific text of the flyer prior to its publication. However, according to such counsel's representation, the flyer was compiled from a larger report, which was approved by the same counsel.
5. There is no allegation that the explanatory text included in the flyer advocated support or opposition to the referendum, nor does the text of the flyer raise concerns suggesting an investigation for an advocacy communication prohibited by § 9-369b (a).

6. Although the Complainant states that the language of the referendum question was different from the language in other published material, a review of records related to the referendum and provided by the relevant municipal clerks and the Board demonstrates consistent language regarding the text of the referendum question.
7. The evidence support that posters with explanatory texts were not placed at the municipal polling places for the referendum.
8. General Statutes § 9-369b provides, in relevant part:

Whenever at any regular or special state or municipal election any vote for approval or disapproval of ... any question or proposal is taken pursuant to ... the general statutes or any special act, unless otherwise provided, such election shall be warned ... The warning for such election shall state that a purpose of such election is to vote for the approval or disapproval of such amendment, question or proposal and shall state the section of the Constitution or of the general statutes or the special act under authority of which such vote is taken. The vote on such amendment, question or proposal shall be taken by a "Yes" and "No" vote on the voting machine, and the designation of such amendment, question or proposal on the voting machine ballot label shall be "Shall (here insert the question or proposal, followed by a question mark)"....

9. The form of the referendum question comported with the requirements of § 9-369 by beginning with "shall" and ending with a question mark. Accordingly, the allegations concerning the Complainant's confusion regarding the referendum question itself do not allege a violation of the law.
10. General Statutes § 9-369b (b) provides:

For any referendum called for by a regional school district, the regional board of education shall authorize the preparation and printing of concise explanatory texts of proposals or questions approved for submission to the electors of a municipality at a referendum. *The regional school board of education's secretary shall prepare each such explanatory text, subject to the approval of the regional school board of education's counsel, and shall undertake any other duty of a*

municipal clerk, as described in subsection (a) of this section.
[Emphasis added.]

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

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. In a municipality that has a town meeting as its legislative body, the board of selectmen shall, by majority vote, determine whether to authorize an explanatory text or the dissemination of other neutral printed material. Thereafter, each such explanatory text shall be prepared by the municipal clerk, subject to the approval of the municipal attorney, and shall specify the intent and purpose of each such proposal or question. Such text shall not advocate either the approval or disapproval of the proposal or question. *The municipal clerk shall cause such question or proposal and such explanatory text to be printed in sufficient supply for public distribution and shall also provide for the printing of such explanations of proposals or questions on posters of a size to be determined by said clerk. At least three such posters shall be posted at each polling place at which electors will be voting on such proposals or questions. Any posters printed in excess of the number required by this section to be posted may be displayed by said clerk at the clerk's discretion at locations which are frequented by the public...*[Emphasis added.]

12. The Commission concludes that because the secretary of a regional school board of education shall undertake any other duty of a municipal clerk, as described in subsection § 9-369b (a), such duties specifically include providing for the printing of posters for explanatory texts.
13. The Commission concludes that the provisions in § 9-369b, concerning advocacy communications, apply to any explanation of the referendum that is printed and/or disseminated by the town or regional board of education and not to the wording of the actual referendum question. *Complaint by Daniel Mederios, Southington*, File No. 1991-229, at paragraphs 6-7.

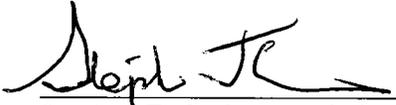
14. Pursuant to General Statutes § 9-369b (c), the Commission only has civil penalty authority for violations subsection §§ 9-369b (a) and (b) that result in an expenditure of state or municipal funds for a purpose which is prohibited by § 9-369b (a), such as advocacy communications. The scope of the instant complaint is limited to procedural questions regarding § 9-369b (b). Such procedural issues alone, absent a related prohibited expenditure, do not subject the respondents to a potential civil penalty by the Commission.
15. The Commission concludes that, pursuant to § 9-369b (b), when a regional board of education authorizes explanatory texts, such texts are subject to the approval of the regional school board of education's counsel.
16. The Commission has not yet had reason to articulate how a secretary of a regional board of education may fulfill the responsibility to ensure placement of posters of any explanatory texts approved, pursuant to § 9-369b (b), at the polling place when the control of such polling place rests with municipal elections officials. As an instructional matter, any such secretary may fulfill this obligation by producing and providing the posters in sufficient quantity to the relevant municipal clerks, prior to the referendum date, accompanied by a cover letter explaining the secretary's duty to ensure the placement of such posters at the polling place in the manner prescribed by § 9-369b (a).

ORDER

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

That no further action be taken.

Adopted this 21 day of March, 2012 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission