

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of
Brian Testa, North Haven

File No. 2011-076

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b. The Complainant alleges that Joanna Papa Kenney, a member of the North Haven Parent-Teacher Association, placed flyers in North Haven Elementary school teachers' mailboxes, which advocated support for a pending referendum. The Complainant states that he wishes to know if the alleged actions violated General Statutes §§ 9-369b or 9-364a.

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

1. The Complainant alleges that a member of the North Haven Parent-Teacher Association (the "PTA") placed flyers in North Haven Elementary school teachers' mailboxes, which advocated a position on a pending referendum.
2. The Respondent, Joanna Papa Kenney, is a member of the North Haven Parent-Teacher Association.
3. The Respondent acknowledges that private, non-municipal funds were used in the production of the flyers at issue and provided supporting documentation reflecting a flyer production cost of \$158.08.
4. The Respondent acknowledges she personally distributed many of the flyers, including placement in teacher mailboxes.
5. General Statutes § 9-369b (a) provides, in relevant part:

Except as provided in subsection (d) of this section, *no 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. [Emphasis added.]

6. The Complainant has offered no factual allegation that the alleged placement of flyers by a member of the PTA constituted the expenditure of municipal funds or that it was conducted by municipal officers or employees. In similar matters, when municipal officers or employees have authorized the use of public school resources, such as teacher mailboxes,

the Commission has found them in violation of § 9-369b. See, *In the Matter of a Complaint by John Gremelsbacker, Cheshire*, File No. 1989-201 and *In the Matter of a Complaint by Ethel Standish, Windham*, File No. 1989-201. In the instant matter, the Respondent is a private citizen and her actions are not those of a municipal officer or employee. Accordingly, there is no evidence to support a conclusion that she could have made an expenditure of municipal funds.

7. General Statutes § 9-369b (a) provides:

Any person who influences or attempts to influence by *force or threat the vote, or by force, threat, bribery or corrupt means*, the speech, of any person in a primary, caucus, referendum convention or election; or wilfully and fraudulently suppresses or destroys any vote or ballot properly given or cast or, in counting such votes or ballots, wilfully miscounts or misrepresents the number thereof; and any presiding or other officer of a primary, caucus or convention who wilfully announces the result of a ballot or vote of such primary, caucus or convention, untruly and wrongfully, shall be fined not more than one thousand dollars or imprisoned not more than one year or be both fined and imprisoned. [Emphasis added.]

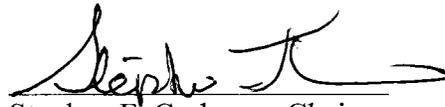
8. As a matter of comparison to the instant matter, the Commission has applied the above subsection in instances where, for example, a political advocacy flyer included, "Vote Yes or DIE!!!"
9. The Complainant has offered no factual allegation meriting investigation of the use of force or threat the vote, or by force, threat, bribery or corrupt means to influence a referendum.
10. The Respondent has cooperated fully with this investigation.

ORDER

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

That the matter be dismissed.

Adopted this 16th day of November, 2011 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", written over a horizontal line.

Stephen F. Cashman, Chairperson
By Order of the Commission