

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by  
Cynthia McCorkindale, Bethel

File No. 2011-079

**AGREEMENT CONTAINING CONSENT ORDER**

This agreement, by and between Dr. Gary C. Chesley (the "Respondent") and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. At all times relevant hereto, the Respondent was the Superintendent of Schools for the Town of Bethel, Connecticut.
2. This complaint contains a single allegation, that Respondent expended public funds by using public school's email and electronic systems to advocate a position on a pending referendum scheduled for May 12, 2011.
3. The Respondent admits that on or about May 5, 2011, during the pending referendum, he utilized the town school system's email system to send an email asking electors to "please vote" regarding such referendum and "approve this budget and preserve existing programs for your children." (the "communication")
4. The Respondent admits that to send the communication he remotely accessed the public school's email systems, utilized the school's email directly and issued the communication as part of a "Bethel Public Schools E-Newsletter."
5. Connecticut 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*. ... 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.*

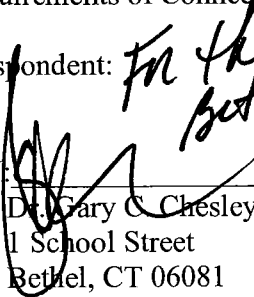
[Emphasis added.]

6. General Statutes § 9-369b prohibits the use of public funds to advocate for a referendum while a referendum is “pending.” The Commission has determined that a referendum is pending when the necessary legal conditions have been satisfied to require publication of a warning (notice) that a referendum question will be submitted to a vote of the eligible voters of a municipality on a certain date. *In the Matter of a Complaint by Marie Egbert, Hebron*, File No. 2010-056 at ¶ 6.
7. The Commission has found that the use of town or school district websites and servers are public expenditures. *In the Matter of a Complaint by Matthew Grimes, Brookfield*, File No. 2008-070, ¶ 8 (finding that communication posted on town website while referendum pending and which urged support for budget violations General Statutes § 9-360b; *In the Matter of a Complaint by Matthew Paulsen, Bethel*, File No. 2002-157, ¶ 7 (finding school principal’s communication posted on a web site owned by town board of education “caused an expenditure of municipal [funds], albeit small, for a communication that advocates a position on the referendum”); *see also In the Matter of a Complaint by Marie Egbert, Hebron*, File No. 2010-056, ¶¶ 12-16 (concluding that using publicly funded web server to advocate question on pending referendum constitutes expenditure of public funds violates General Statutes § 9-369b).
8. The Commission has consistently concluded “that communications that recommend or urge support of or opposition to a referendum question are subject to the restrictions found in Section 9-369b.” *In the Matter of a Complaint by Jennifer Iannucci, Bridgewater*, File No. 2006-166, ¶ 8.
9. The Commission has historically concluded that communications which urge a particular result, either by express wording of advocacy or when considered as a whole, would make the ordinary reasonable person believe that a particular result is urged, would constitute advocacy. *In the Matter of a Complaint by Marie Egbert, Hebron*, File No. 2010-056 at ¶ 15. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. *Id.*; *see also Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).
10. The Commission has found that “stated threats of program cuts and dire consequences of failing to approve the referendum, as well as statements of need and justification, to constitute implied advocacy.” *Complaint of Tina LaPorta, East Windsor*, File No. 2005-171, ¶ 7; *see also Complaint of Valerie Friedman, Washington*, File No. 2002-160, ¶ 4; *Complaint of Michael Doyle, New London*, File No. 2003-238, ¶ 4, 7.


11. Whether a § 9-369b expenditure of public funds violation occurred in this case hinges on the following elements: (1) were public funds expended (2) to advocate the success or defeat of (3) a pending referendum question.
12. Based on the above findings, the Respondent's communication constituted a public expenditure made to advocate a position on a pending referendum question, in violation of General Statutes § 9-369b.
13. The Commission notes that it has previously found that the use of town or school district web sites to promote a referendum constitutes a violation of General Statutes § 9-369b. *In the Matter of a Complaint by Marie Egbert, Hebron*, File No. 2010-056 at ¶ 6. *In the Matter of a Complaint by Matthew Grimes, Brookfield*, File No. 2008-070; and *In the Matter of a Complaint by Matthew Paulsen, Bethel*, File No. 2003-152A. It nevertheless deems the nature of the violations detailed herein as an emerging issue.
14. Under these circumstances, the Commission will not seek civil penalties and/or restitution against the Respondent. Instead, the Commission and Respondent agree to the Order hereinafter stated in this agreement.
15. The Respondent admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
16. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
17. The Respondent waives:
  - (a) Any further procedural steps;
  - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
  - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
18. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

**ORDER**

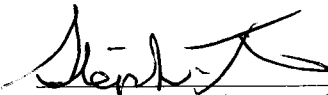
IT IS HEREBY ORDERED that henceforth, the Respondent shall strictly comply with the requirements of Connecticut General Statutes § 9-369b.

Respondent: *For the Board of Education*  
BY:  *of* 10/11/11  
D. Gary C. Chesley  
1 School Street  
Bethel, CT 06081

For the State of Connecticut

BY:   
Shannon Clark Kief, Esq.  
Legal Program Director,  
and Authorized Representative  
Of the State Elections  
Enforcement Commission  
20 Trinity Street, Suite 101  
Hartford, Connecticut

Adopted this 19<sup>th</sup> day of October, 2011 at Hartford, Connecticut by vote of the Commission.

  
Stephen F. Cashman, Chair  
By Order of the Commission