

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

In the Matter of a Complaint by  
Robert Burke, Bethel

File No. 2011-127

**FINDINGS AND CONCLUSIONS**

Complainant Robert Burke brings this complaint pursuant to General Statutes § 9-7b alleging that Respondent Matthew Knickerbocker used public funds to promote his 2011 candidacy for first selectman of the Town of Bethel in violation of General Statutes § 9-610 (d). Specifically, Complainant alleged that Respondent Knickerbocker, then incumbent first selectman for the Town of Bethel, had published a newsletter that promoted his candidacy using public funds and had distributed the newsletter at the Bethel Town Hall shortly before the November 2011 municipal election. After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. Respondent was elected as Bethel's first selectman in 2009. He successfully ran for reelection in November 2011.
2. The Town of Bethel has published a newsletter on a generally monthly basis since February 2010, shortly after Respondent took office. Each of the newsletters included a message under the heading "From the desk of the First Selectman," and the majority of those messages have focused on ongoing projects in the town, such as road paving, maintenance, and other initiatives.
3. In October 2011, Respondent wrote a message in the newsletter titled "Thoughts on the Bethel economy." That message, which forms the basis for this complaint, differed in several ways from earlier messages. Specifically, the October 2011 message focused on things that the town had done to promote the local economy, such as creating a local farmer's market, which Respondent had promoted in the May 2011 newsletter, stating, "I see it as an important component of the town's economic health."
4. The October 2011 message also noted that the first selectman had started a review of the town's fee structure to "make Bethel a more business-friendly town." Instead of talking about the regulatory review in the first-person plural, Respondent's October 2011 message used the first-person singular. After discussing the farmer's market, which the first selectman called "a definite hit," the paragraph regarding the regulatory review process stated:

This is just the beginning. In July, the Chairman of the Economic Development Commission (EDC) and I conducted the first of a series of meetings with Bethel property owners to explore new ways the Town can make their job of finding qualified tenants easier. As a result, on September 26<sup>th</sup> I announced to the property owners that I was launching a review of Bethel's fee structure for building permits, with a goal of simplifying the process to make Bethel a more business-friendly town.

Streamlining our regulatory process and establishing a new dialog between property owners, business operators and the town government to explore ideas for new events to bring visitors to Bethel will help our local economy grow.

5. General Statutes § 9-610 (d) comprises two different prohibitions on the use of public funds to promote the candidacy of a public official. First, § 9-610 (d) (1) prevents an incumbent within the three months preceding an election from using public funds "to mail or print flyers or other promotional materials" that are intended to promote the candidacy of the incumbent. General Statutes § 9-610 (d) (1). Second, § 9-610 (d) (2) bans any individual from authorizing the use of public funds during the 12-months preceding an election for any promotional campaign or advertisement that "features the name, face or voice of a candidate for public office" or promotes the nomination or election of a candidate. Section 9-610 (d) (2) would not apply here because this communication was not a "promotional campaign or advertisement."
6. The Commission has applied a two-pronged test for determining whether a communication violates Connecticut General Statutes §9-610 (d) (1). A communication is deemed to violate §9-610 (d) (1) if it (1) expressly advocates the candidate's reelection or (2) is so laudatory as to implicitly advocate such reelection. *See* In the Matter of a Complaint by Karen Mulcahy, Waterbury, File No. 2005-292A & B (State Elections Enforcement Comm'n, Feb. 8, 2006); In the Matter of a Complaint by Peter Torrano, Norwalk, File No. 99-214 (State Elections Enforcement Comm'n, June 14, 2000). In the Matter of a Complaint by Ann Piscottano, New Haven, File No. 97-221 (State Elections Enforcement Comm'n, Oct. 29, 1997) ; and In the Matter of a Complaint by Joseph Travagliano, East Haven, File No. 91-170 (State Elections Enforcement Comm'n, Oct. 9, 1991).
7. The newsletter that is the focus of this complaint expressly advocates for neither the reelection of the Respondent nor the defeat of Respondent's opponent in the election. Therefore, the Commission must determine if message in the newsletter appears so laudatory as to advocate implicitly for Respondent's reelection. In making this determination, the Commission must consider the consistency of the language of the communication in relationship to its governmental purpose. In spite of its governmental purpose, such communication will be deemed to violate §9-610 (d), if it makes reference to any of the following:
  - (1) the candidacy or party affiliation of any elected official;
  - (2) the record of any elected official; or
  - (3) a solicitation for contributions or other support for any official's campaign for re-election, or promoting the support of any other candidate, political committee or political party.
8. The Respondent's message in the October 2011 newsletter presents the town government's efforts to promote the Bethel economy, listing new businesses that had opened in town in the past year, discussing recently installed "wayfinding" signs that purportedly will foster tourism, and the new farmer's market, which, according to Respondent's message, was intended to establish a "steady stream of visitors to downtown Bethel . . ." The release does not mention the Respondent's party affiliation and does not solicit contributions or other support for his reelection.

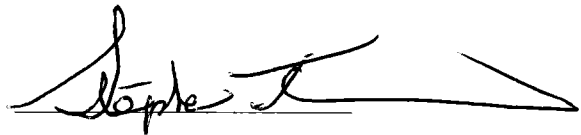
9. The message, however, includes Respondent's picture and name. And, as stated previously, the message lists many accomplishments that Respondent believes the town achieved under his leadership. It does not, however, present a narrative or language that affiliates these accomplishments with the Respondent's efforts. Respondent concluded the message by referring to his efforts to improve the economy of Bethel by revising the fee structure for building permits to help property owners fill vacant properties.
10. While the message "Thoughts on the Bethel economy" comes very close to the being so laudatory as to advocate implicitly for Respondent's reelection, the Commission declines to conclude that it crosses that line and violates § 9-610 (d) (1).
11. The Commission, however, will take this opportunity to introduce two new factors that it will consider when making the determination of whether a communication is so laudatory that, in spite of its governmental purpose, it implicitly advocates for the reelection of an incumbent – timing of the communication and its relationship to other communications. If a communication is released shortly before an election and appears to be one of a series of communications that collectively seem to advocate for the reelection of an incumbent, then the Commission will take those factors into its determination of whether a communication violates the prohibition in § 9-610 (d) (1) on the use of public funds to promote an incumbent candidate's reelection.

### ORDER

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

That the complaint be dismissed.

Adopted this 22 day of AUGUST of 2012 at Hartford, Connecticut.



Stephen F. Cashman

By Order of the Commission