

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Robert Burke, Bethel

File No. 2011-128

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, used public funds to publish the Bethel Taxpayer Report, which was mailed to residents of Bethel in September 2011. 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. In September of 2011, the Town of Bethel sent to all residents the Bethel Taxpayer Report, which included the name and photograph of Respondent as well as those of two other incumbent members of the Board of Selectmen, Richard Straiton and Paul Szatkowski.
3. According to Respondent, this report is mailed to taxpayers semi-annually and is factual, containing "no reference to elections or political campaigns." *See* Letter from Matthew Knickerbocker to Gilberto Oyola (November 22, 2011).
4. The Bethel Taxpayer Report includes photographs of and the names of the incumbent first selectman as well as the two incumbent members of the Board of Selectmen Straiton and Szatkowski. The "Message from the First Selectman" indicates that Respondent wanted to bring the public up-to-date on the "progress" that the town had made on several projects. The narrative of the taxpayer report lists a number of projects, including:
 - road recovery ("Although this is a good start, many miles of roads needing extensive repair remain for which we still need to obtain voter approval for financing. This will be addressed during the 2011-2012 budget development process.");
 - identification of an economic development strategy and projects underway to promote Bethel and make it "business friendly" ("Bethel now has two commissions focusing on the economic health of our town.");

- new farmers' market as a "community asset" ("The new Municipal Farmer's Market, which was designed not only to provide fresh, healthy food choices, but also [to] bring people downtown, continues to grow each week.");
 - "Old Railroad Station Becomes an Asset" (Train station building "occupied now by a highly successful Bethel business that is bringing new visitors to town and a completely refurbished municipal parking area that serves the village district *at no cost to Bethel taxpayers!*" (Emphasis in original));
 - new Energy Conservation Commission ("This new commission has been working hard since last year looking for ways to save the town money on energy."), and;
 - temporary relocation of teen center to town hall and "plan" to renovate space to house teen center and provide new space for senior center ("The plan calls for the construction of a permanent teen center annex on the east side of the municipal gym wall, and we are aggressively seeking grant monies to complete this process. Once the annex is built, the temporary teen center will be turned over to the Senior Center to allow for expansion of their very popular programs and activities. The Board of Selectmen recently approved funding for a space study for the Senior Center to prepare for this future move.").
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 §9-61 0 (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 taxpayer report that is the focus of this complaint expressly advocates for neither the reelection of the Respondent or the sitting Board of Selectmen nor promotes the defeat of Respondent's opponent or other candidates for the Board of Selectmen in the election. Therefore, the Commission must determine if the taxpayer report appears so laudatory as to advocate implicitly for

Respondent's re-election. 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 Bethel Taxpayer Report bears the designation "Summer 2011" and was mailed in September 2011. Section 9-610 (d) (1) will apply here since Respondent was an incumbent seeking reelection in 2011. The second prerequisite regarding timing of the publication is satisfied since the report was printed within the three month period before the November election, which in 2011 fell on November 8. The 90-day period before the November 2011 election began on August 8 of that year.
9. The Commission faces more difficulty in determining whether the language in the publication promoted Respondent's reelection. As in the companion cases (File Nos. 2011-127 and 2011-129), the language here did not specifically promote the candidate's reelection. It did not discuss his candidacy, his party affiliation, or seek support or contributions. The report, however, did discuss the city's "progress" related to road construction, economic development, creation of municipal farmer's market, renovation of community properties, and efforts to ensure energy conservation. The Bethel Taxpayer Report did not elaborate on Respondent's direct role in these accomplishments, but it did imply that Respondent and the other members of the Board of Selectman had a hand in the town's achievements of the past year.
10. The Commission concludes that the language in the Bethel Taxpayer Report does not violate the § 9-610 (d) (1) prohibition on incumbents' use of public funds to promote their reelection.
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.

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

Stephen F. Cashman

By Order of the Commission