

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Richard W. White, Trumbull

File No. 2011-142

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Suzanne Burr Monaco, Town Clerk, Town of Trumbull, County of Fairfield, hereinafter referred to as 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 to this complaint, Respondent was the Town Clerk of the Town of Trumbull, and remains so at the time of this agreement.
2. Three ballot questions appeared on the ballot at the November 8, 2011 election in the Town of Trumbull relating to proposed changes to the municipal charter.
3. An explanatory text was duly and properly prepared by the Respondent in compliance with General Statutes § 9-369b(a) and approved by the Trumbull Town Attorney, pertaining to three ballot questions on the charter revision appearing on the ballot at the November 8, 2011 municipal election.
4. The Respondent was also in compliance with General Statutes § 9-369b(a) because she caused the "Explanatory Text of Proposed [Charter] Revisions," described in paragraph 3 above, to be printed in sufficient supply for public distribution and the Explanatory Text for Proposed [Charter] Revisions was available for review upon request through the moderators at each polling place during the November 8, 2011 election.
5. Complainant agrees with the underlying facts regarding the preparation and availability of the explanatory texts as described in paragraphs 3 and 4 above. The Complainant and Respondent disagree as to whether the materials were "misleading" as alleged, and whether their availability, as described above, satisfied the requirements of § 9-369b(a).
6. Complainant alleged that Respondent failed to provide three posters with the ballot question in each of the polling places in Trumbull. Specifically, Complainant alleged that while the explanatory text was available through the moderator in each polling place, such text and the ballot questions were not posted in each polling place as required by General Statutes § 9-369b(a).

7. General Statutes § 9-369b, provides in pertinent part:

(a) 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. 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. Any municipality may, by vote of its legislative body and subject to the approval of its municipal attorney, authorize the preparation and printing of materials concerning any such proposal or question in addition to the explanatory text if such materials do not advocate the approval or disapproval of the proposal or question. ... [Emphasis added.]

8. Respondent denies any wrongdoing but in consideration of this Consent Order, has chosen not to contest the allegations contained herein. The Respondent strongly believes and asserts that she fully and properly complied with the provisions of Connecticut General Statutes Section 9-369b(a) and provided the voting public with as much neutral information as they needed to cast an informed vote on the three questions on the ballot concerning the Town Charter Revision Proposals.” Furthermore, Respondent strongly believes and asserts that she complied with the provisions of General Statute §9-369b(a)

by providing for the printing of the explanatory texts in sufficient supply on posters of a size which she determined as Town Clerk and by providing and delivering these posters to the registrar of voters.

9. While Complainant incorporates an allegation regarding the “misleading” nature of the explanatory text, the Commission pursuant to General Statutes § 9-369b(a) would not make such determination, but rather, would determine whether explanatory text contains advocacy and therefore is prohibited by General Statutes § 9-369b(a).
10. Upon review of the explanatory texts against the Commission’s historic standard for advocacy¹, the Commission concludes that the explanatory text in question does not contain advocacy, and therefore the Complainant’s allegation does not have any merit. Therefore, it is recommended that the allegation pertaining to same be dismissed.
11. The remaining issue of this complaint is whether the Respondent violated § 9-369b(a) by failing to post three posters with the explanatory text and ballot questions in each polling place in Trumbull at the November 8, 2011 election.
12. Pursuant to statute if an explanatory text is authorized pertaining to a ballot question it shall be prepared by the municipal clerk, subject to approval by the town attorney, and shall be printed in sufficient supply for public distribution. General Statutes § 9-369b(a). General Statutes § 9-369b(a) further requires that: *At least three such posters shall be posted at each polling place at which electors will be voting on such proposals or questions.*
13. Upon investigation, the Commission finds that in this instance there is no dispute as to the fact that the Respondent as Town Clerk was authorized to prepare an explanatory text, and that she did so upon approval of the town attorney. Furthermore, there is no dispute that the Respondent provided the moderators at each polling place at the November 8, 2011 Trumbull election with a copy of the “Explanatory Text of Proposed [Charter] Revisions,” which Complainant agrees was made available upon request of the November 8, 2011 moderators in each polling place, and further was taped to the wall at Madison Middle School District 6 polling place.
14. The Commission concludes, for the reasons detailed in paragraphs 12 and 13 above, that Respondent failed to meet the requirements of § 9-369b(a), in violation of that section, which would have required Respondent to post in poster format in each polling place explanations and proposals that were subject to the ballot on November 8, 2011.

¹ The Commission has issued henceforth orders for violations of § 9-369b, in *Stambo* where the town clerk failed to comply with that section and its processes as the “exclusive means” for disseminating information and in *Stedman* where a town clerk has failed to put a referendum in the form of a “yes” or “no” question as required.

15. 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.
16. 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.
17. Upon the Respondent's signing of the Order hereinafter stated, the Commission shall not initiate any further proceedings against her pertaining to this matter.
18. This Agreement and the following Order shall become final upon acceptance and approval by the Commission. When so entered, this Order shall have the same force and effect as if entered after a full hearing. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
19. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if the Commission does not accept it, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.

ORDER

IT IS HEREBY ORDERED that Respondent shall henceforth strictly comply with General Statutes § 9-369b.

The Respondent

For the State of Connecticut

BY: *Suzanne Burr Monaco* Dated: *10/23/12*

BY: _____ Dated: *10/23/12*

Suzanne Burr Monaco
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Adopted this ___ day of _____, 2012 at Hartford, Connecticut by a vote of the Commission.

Stephen F. Cashman
Stephen F. Cashman, Chairperson
By Order of the Commission