

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
George. A Ruhe, Wethersfield

File No. 2012-047

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that unidentified persons violated General Statutes § 9-369b (a) by authorizing the expenditure of municipal funds to distribute a flyer advocating that electors vote in support of a pending referendum question concerning renovating Wethersfield High School.

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

1. The Complainant alleges that a flyer paid for by the Town of Wethersfield was made in violation of General Statutes § 9-369b (a) (the “flyer”).
2. The Complainant notes, among other alleged issues, that the flyer included a bulleted list of proposed renovations. To introduce the bulleted list, the flyer states that the, “bullets define the key elements required for a 21st century education.”
3. At all times relevant hereto, a referendum was pending before the Wethersfield electors concerning appropriating funds for the renovation of Wethersfield High School.
4. The Town of Wethersfield (the “Town”) acknowledges that it did timely prepare, print and distribute the flyer as an explanatory text pursuant to § 9-369b (a).
5. The Town states that it is significant to note the process by which the flyer was developed. Initially, the Town, in consultation with the architectural firm of Quisenberry Arcari Architects, LLC, which had prepared the project design for the high school additions and improvements, developed a draft explanatory text. The initial draft was reviewed by the Town’s counsel. The draft was then forwarded as an attachment to correspondence dated March 19, 2012 to the Commission and directed to the Compliance Unit. An appropriate commission staff member then contacted and spoke to the Town Manager, Jeff Bridges, suggesting specific revisions to the initial draft. Revisions were made to the initial draft, and the revised explanatory text was again forwarded to the same Commission staff member by Town Clerk Sassano as an attachment to email correspondence dated March 23, 2012.

6. The investigation has reviewed the flyer and confirmed that the specific edits recommended by the Commission's staff were made to the flyer before its distribution.
7. Regarding the revised draft, the Commission's staff member responded to Town Clerk Sassano by email dated March 26, 2012. The entirety of the substance of the communication reads as follows: "I have reviewed your changes to the material and it appears more neutral and less likely to be advocacy." While such a response is short of a clear assurance of statutory compliance, unlike the previous recommendations to the earlier draft, no further specific recommendations were made.
8. Connecticut General Statutes § 9-369b (a) provides, in relevant part:

[A]ny 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 ... 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 ... [N]o 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....

9. Connecticut General Statutes § 9-369b (c) provides, in relevant part:

The State Elections Enforcement Commission, after providing an opportunity for a hearing in accordance with chapter 54, may impose a civil penalty on any person who violates subsection (a) or (b) of this section by authorizing an expenditure of state or municipal funds for a purpose which is prohibited by subsection (a) of this section....

10. The Commission has consistently concluded, "that communications that recommend or urge support or opposition to a referendum question are subject to the restrictions found in Section 9-369b." See *Complaint of Jennifer Iannucci, Bridgewater*, File No. 2006-166, ¶ 8.
11. 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, constitute advocacy. *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).

12. The application of the above statute and legal standards to a particular set of evidence, such as the flyer, is an issue of fact.
13. The Commission finds that the Town and its agents sought, received and complied with advice issued by the Commission's staff, specifically relied on such advice and made a good faith attempt to comply with § 9-369b (a).
14. Based on the above findings, the Commission declines to investigate the matter further and need not reach any factual or legal determinations regarding the alleged violation.

ORDER

IT IS HEREBY ORDERED that no further action be taken.

Adopted this 27 day of June, 2012 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chair
By Order of the Commission

