

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Matthew Grimes, Brookfield

File No. 2013-076A

AGREEMENT CONTAINING A CONSENT ORDER AND SETTLEMENT PAYMENT

This agreement, by and between the Town of Brookfield and William Davidson, former Brookfield First Selectman, in his official capacity, hereinafter collectively the "Respondents", 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, a referendum question concerning running sewers to certain condominium complexes was pending before the Brookfield electors (the "referendum question").
2. First Selectman Davidson and the Chairman of the Brookfield Water Pollution Control Authority (the "BWPCA") entered into an informal agreement under which the BWPCA would reimburse the municipality for expenditures related to a postcard for a pending referendum question (the "postcard"). It had been common practice in Brookfield for the Town to pay expenses incurred by the BWPCA and then be reimbursed by the BWPCA. This informal agreement was in line with that common practice.
3. The postcard stated, "We urge your support."
4. Mr. Davidson authorized the direct expenditure of \$1,250.40 in municipal funds for the postage. Mr. Davidson did so with the specific agreement and understanding that any and all such costs would be reimbursed by the BWPCA. In accordance with such agreement, the BWPCA ultimately reimbursed the regular municipal accounts the entirety of such postage cost from funds controlled by the BWPCA.
5. The BWPCA paid a vendor directly for the printing of the postcard in the amount of \$1,080.00. The Parties agree that Mr. Davidson did not authorize such expenditure. The Commission reserves any and all causes of action against BWPCA and its members and officers.
6. At the time that the \$1,250.40 was authorized, the Respondents believed that the expenditure was a proper use of funds as they were to be reimbursed by the BWPCA in accordance with the agreement referenced above and then common practice. However, in light of this Consent Order, and the agreed to rulings with respect to the issues of first impression presented by this

matter which were undecided at the time of the expenditure, the Respondents now acknowledge that the postcard was an advocacy communication and was not issued in accordance with the procedure prescribed by General Statutes § 9-369b (a).

7. Connecticut General Statutes § 9-369b (a) provides:

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. The explanatory text shall also be furnished to each absentee ballot applicant pursuant to subsection (d) of section 9-140. 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.

8. The Commission has previously determined that compliance with the procedural requirements of § 9-369b is the exclusive method by which a municipality may issue and fund explanatory texts concerning a pending referendum question. See *Complaint of Valerie Friedman*, File No. 2002-160; *Complaint of Walther Grunder, et al*, File No. 1998-256; *Complaint of Barbara Stambo; et al*; File No. 1996-227; *Complaint of Donald Hassinger*, File No. 1994-104; *Complaint of G. Wilbur, et al*, File No. 1994-133.

9. 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.
10. 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).
11. The Commission hereby articulates that, even when municipal funds are reimbursed by third parties, such reimbursement does not remove the restrictions upon the use of municipal funds set forth in General Statutes § 9-369b. The Commission shall not accept such claims as legal defenses. However, the parties acknowledge that the Respondents’ use of funds in this matter was based on a good faith misunderstanding of the statutory requirements and the lack of such defenses that had previously not been articulated by the Commission.
12. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
 - (1) the gravity of the act or omission;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
13. The parties agree that any settlement payments agreed to herein are to be considered settlement payments, and are not considered to be a civil penalty for purposes of the requirements of Conn. Gen. Stat. §9-369b (c).
14. The Commission has applied the following mitigating factors in its consideration of the present settlement with Mr. Davidson: (1) Mr. Davidson was operating under an informal agreement under which the BWPCA agreed to reimburse the municipality from funds controlled by the BWPCA. At the time of this fact set, the Commission had not yet spoken as to whether funds controlled by the municipal water pollution control authority were municipal funds. It has subsequently formally articulated this position. See File No. 2013-076B. (2) At the time of this fact set, the issue of whether reimbursement by third parties would constitute a defense for a

violation of § 9-369b was a matter of first impression for the Commission. (3) Mr. Davidson has no prior identified history of violating the statutes under the Commission's jurisdiction.

15. The Respondents admit all jurisdictional facts and agree 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 Respondents 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 available meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission by any party in any subsequent hearing, if the same becomes necessary.
17. The Respondents waive:
 - (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 Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents pertaining to this matter. As noted in paragraph five above, the Commission specifically excludes the BWPCA from this agreement and reserves any and all causes of action against the BWPCA and its officers or agents.
19. The Commission acknowledges that the violation set forth herein was not intentional and was based solely on a good faith misunderstanding of applicable law, now further articulated by the Commission pursuant to this Consent Order.

ORDER

IT IS HEREBY ORDERED that henceforth the Town of Brookfield, its officers and agents, including Mr. Davidson should he serve in such capacity, shall strictly comply with the requirements of Connecticut General Statutes § 9-369b.

IT IS HEREBY FURTHER ORDERED that the Town of Brookfield shall take reasonable steps to educate its elected officials and officers of the requirements of General Statutes § 9-369b.

IT IS HEREBY MUTUALLY AGREED that Mr. Davidson will pay two hundred and fifty dollars (\$250.00) as settlement for the unintentional violation of General Statutes § 9-369b (a) as articulated herein.

The Respondents:

By their counsel: 
Jason A. Buchsbaum
Cohen and Wolf, P.C.
158 Deer Hill Ave
Danbury, CT 06810

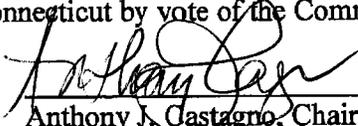
For the State of Connecticut:

BY: 
Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 1-14-13

Dated: 1/24/14

Adopted this 19 day of FEB, 2014 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission