

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Ronald C. Eleveld, Windsor

File No. 2013-078

FINDINGS AND CONCLUSIONS

Complainant Ronald C. Eleveld brought this complaint pursuant to General Statutes § 9-7b alleging that the Windsor Superintendent of Schools, without the authority of his governing body, utilized the emergency school notification system excessively to alert parents of school children of the upcoming budget referendum on Tuesday, May 14, 2013. He alleges that the Superintendent used public funds to intentionally target a specific subset of voters and his actions were to “possibly disenfranchise all other voters not notified.”

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

1. On April 25, 2013, legal notice of the May 14, 2013 budget referendum was posted on the town’s meeting board. The proposed budget included funds for the Board of Education.
2. The Complainant, a resident of Windsor, Connecticut, alleged that the Superintendent of Schools violated General Statutes § 9-369b by using public funds for automated telephone calls alerting parents of school children of the upcoming May 14, 2013 budget referendum without prior authorization from his governing body, the Windsor Board of Education.
3. The automated phone messages were made on May 9, 12 and 13, 2013. They used the school notification system to reach all Windsor school parents. The messages stated: “*Good evening, on Tuesday, May 14th, the Town of Windsor is holding its annual budget referendum. Please remember to vote.*” Additionally, emails were also sent out along with the aforementioned messages through the school notification system and contained an identical message.
4. Connecticut 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. ... Such text shall not advocate either the approval or disapproval of the proposal or question. ... 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. This subsection shall not apply to a written, printed or typed summary of an official's views on a proposal or question, which is prepared for any news medium or which is not distributed with public funds to a member of the public except upon request of such member. [Emphasis added.]

5. The Commission has consistently held that public funds may be used for publications and printed materials limited to the "time, date and place" of a pending referendum. Such materials have not been found to advocate approval or disapproval of referenda, and therefore are not in violation of General Statutes § 9-369b. See for example *In a Matter of a Complaint by William A. Michael, Bethel*, File No. 2008-069. Complainant concedes that the content of the messages that are subject of this Complaint do not advocate *per se*.
6. Though the statutes reference printed materials only, the Commission applied the "time, date and place" rule to automated telephone calls in *In a Matter of a Complaint by William A. Michael, Bethel*, File No. 2008-069. The Bethel Superintendent used the school notification system to encourage parents to vote in the upcoming referendum in a similar automated message. The Commission concluded that such messages, which do not attempt to influence a vote by advocating approval or disapproval of the referendum question, do not violate General Statutes § 9-369b.

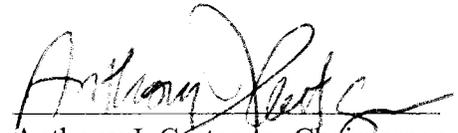
7. General Statutes § 9-369b does not specify a limit for the number of times a neutral “get out the vote” message can be sent using public funds, nor has the Commission determined that neutral messages *in the aggregate* transform such messages into impermissible advocacy as prohibited by § 9-369b.
8. The Complainant also alleged that the Superintendent of Schools sent this message without authority of his governing body. Upon investigation, it was found that the Superintendent authorized this message along with the Chairperson of the Board of Education.
9. The Commission notes that Public Act 13-247, effective July 1, 2013, amends General Statutes § 9-369b, to prohibit the use of municipal school notification systems to promote any referenda, including those limited to the time, date and place of a referendum. Due to its July 1, 2013 effective date P.A. 13-247 does not affect the analysis under the facts and circumstances pertaining communications prior to the May 14, 2013 Windsor budget referendum.
10. The Commission concludes that the automated telephone calls and their accompanying emails through the school notification system containing only the time, date and place of the pending referendum were not a violation of General Statutes § 9-369b, and therefore dismisses Complainant’s allegations.

ORDER

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

That the case be dismissed.

Adopted this 21st day of August, 2013 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission