

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by

George Gallo, East Hampton

Allison M. Tokarz and William E. Tokarz, East Hampton

File No. 2013-082

File No. 2013-090

**FINDINGS AND CONCLUSIONS**

Complainants George Gallo, Allison M. Tokarz and William E. Tokarz of East Hampton brought this complaint pursuant to Connecticut General Statutes § 9-7b alleging that the former East Hampton interim Superintendent of Schools, Mark L. Winzler, used public funds by way of the emergency school notification system to alert parents to vote for a town referendum on June 4, 2013. Complainants allege that those who did not have children in the East Hampton school system were disenfranchised due to this targeted approach.

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

1. On May 21, 2013, a special East Hampton town meeting approved a referendum question set for June 4, 2013 that proposed the appropriation of \$51,695,000 for the East Hampton High School renovations, improvements and additions.
2. Complainants, residents of East Hampton, alleged that the former Interim Superintendent of Schools, Mark L. Winzler, violated General Statutes § 9-369b when he used public funds for an automated telephone call alerting parents and guardians of school children of the upcoming June 4, 2013 referendum.
3. The automated phone message was made on June 3, 2013. Mr. Winzler used the school notification system to reach all parents. The messages stated: *“Good Evening. This is Mark Winzler, Interim Superintendent of Schools. Tomorrow, June 4, 2013 is the Referendum on the High School Building Project. The polling place is at East Hampton High School during the hours of 6 a.m. to 8 p.m. (repeating).”* The message was sent once.
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 In a Matter of a Complaint by William A Michael, Bethel*, File No. 2008-069.
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. Upon investigation, it was determined that prior to authorizing the automated message, Mr. Winzler contacted legal counsel and the Commission regarding the legality of the "get-out-the-vote" message. Mr. Winzler was told that the Commission considers the content of the message and whether the communication contained advocacy. Further, he was informed that the Commission had not yet considered the implications of a "targeted audience," when interpreting and applying General Statutes § 9-369b.


8. The Commission notes that Public Act 13-247, effective July 1, 2013, amends General Statutes § 9-369b to prohibit use of the school notification systems to promote any referenda, including those messages limited to time, date and place. However, the Commission notes that P.A.13-247 does not apply to the June 4, 2013 referendum that pertains to this complaint because of its July 1, 2013 effective date.
9. Complainant Gallo also alleges that Superintendent Winzler coordinated with a newly-formed PAC organized to advocate for the High School Renovation project. Members of the PAC attended a public meeting of the High School Building Committee on May 2, 2013 where Superintendent Winzler announced his plan to use the school notification system to remind parents to vote. Complainant Gallo claims that members of the PAC used this information to target their efforts.
10. In response to this complaint, Legal counsel representing the East Hampton Board of Education and Superintendent Winzler asserted that Mr. Winzler was *not* working with any PAC. Further, the Commission, after investigation, finds that there is insufficient evidence to establish any impermissible relationship between Mr. Winzler and the referendum PAC.
11. The Commission concludes that the automated telephone call through the school notification system containing only the time, date and place of the pending June 4, 2013 referendum were not a violation of General Statutes § 9-369b, as it existed on said date, and prior to the amendment of § 9-369b through P.A. 13-247, effective July 1, 2013.

**ORDER**

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

That the case is dismissed.

Adopted this 21<sup>st</sup> day of August, 2013 at Hartford, Connecticut.

  
Anthony J. Castagno, Chairperson  
By Order of the Commission