

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Philip J. White, Monroe

File No. 2013-134

FINDINGS AND CONCLUSIONS

The Complainant filed this complaint pursuant to General Statutes § 9-7b alleging that Steve Vavrek, Monroe's incumbent First Selectman, (the "Respondent") used public funds to promote his 2011 candidacy for first selectman of the Town of Monroe in violation of General Statutes § 9-610 (d). Specifically, the Complainant alleges that the Respondent used public funds to send email newsletters to town residents and that the frequency of these emails increased prior to the 2011 municipal election. After an investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. At all times hereto, the Respondent was Monroe's First Selectman.
2. Acting in his official capacity, the Respondent issued or authored numerous email newsletters using municipal property. The Complainant has attached to the complaint specific communications, which he alleges violate General Statutes § 9-610 (d) (the "Email Newsletters"). Such Email Newsletters include information relevant to the Town of Monroe such as information concerning art camp registration and lists of local restaurants.
3. None of the Email Newsletters provided by the Complainant as allegedly violating General Statutes § 9-610 (d) include information concerning: (1) the candidacy or party affiliation of any elected official; (2) the record of any elected official; or (3) a solicitation for contributions or other support for any official's campaign for re-election, or otherwise promoting the support of any other candidate, political committee or political party.
4. General Statutes § 9-610 (d) (1) provides:

No incumbent holding office shall, during the three months preceding an election in which he is a candidate for reelection or election to another office, use public funds to mail or print flyers or other promotional materials intended to bring about his election or reelection.

5. The Commission has applied the limitations on the use of “mail” under § 9-610 (d) (1) to electronic mail. See *Complaint of Donald Steinbrick, et al., Putnam*, File No. 2010-006 at ¶ 6
6. The Commission has applied a two-pronged test for determining whether a communication violates Connecticut General Statutes § 9-610 (d) (1). A communication is deemed to violate § 9-610 (d) (1) if it (1) expressly advocates the candidate's reelection or (2) is so laudatory as to implicitly advocate such reelection. See *Complaint by Karen Mulcahy, Waterbury*, File No. 2005-292A & B; *Complaint by Peter Torrano, Norwalk*, File No. 1999-214; *Complaint by Ann Piscottano, New Haven*, File No. 1997-221; *Complaint by Joseph Travagliano, East Haven*, File No. 1991-17; and *Complaint by Robert Burke, Bethel*, File No. 2011-129.
7. The Email Newsletters do not expressly advocate for the reelection of the Respondent nor do they promote the defeat of the Respondent's opponent in the election. Therefore, the Commission must determine if the Email Newsletters appear so laudatory as to implicitly advocate for the Respondent's re-election. In making this determination, the Commission considers the consistency of the language of the communication in relationship to its governmental purpose. In spite of its governmental purpose, such communication will be deemed to violate § 9-610 (d), if it makes reference to any of the following:
 - (1) the candidacy or party affiliation of any elected official;
 - (2) the record of any elected official; or
 - (3) a solicitation for contributions or other support for any official's campaign for re-election, or promoting the support of any other candidate, political committee or political party.

See *Complaint by Karen Mulcahy, Waterbury*, File No. 2005-292A & B; *Complaint by Peter Torrano, Norwalk*, File No. 1999-214; *Complaint by Ann Piscottano, New Haven*, File No. 1997-221; *Complaint by Joseph Travagliano, East Haven*, File No. 1991-17; and *Complaint by Robert Burke, Bethel*, File No. 2011-129.

8. Aside from the content of the Email Newsletters, the Complainant also alleges that the increased frequency of the Email Newsletters prior to the election should be relevant to the Commission's determination on this issue.
9. In examining the application of § 9-610 (d) (1), the Commission made the following conclusion:

The Commission ... will take this opportunity to introduce two new factors that it will consider when making the determination of whether a

communication is so laudatory that, in spite of its governmental purpose, it implicitly advocates for the reelection of an incumbent –timing of the communication and its relationship to other communications. If a communication is released shortly before an election and appears to be one of a series of communications that collectively seem to advocate for the reelection of an incumbent, then the Commission will take those factors into its determination of whether a communication violates the prohibition in § 9-610 (d) (1) on the use of public funds to promote an incumbent candidate’s reelection.

Complaint by Robert Burke, Bethel, File No. 2011-129 (dated August 22, 2012).

10. As cited above, these self-described “new factors” regarding the timing and frequency of the communication were only identified by the Commission in August of 2012. Accordingly, the Commission declines to retroactively apply such factors to the examination of conduct occurring in 2011.
11. General Statutes § 9-610 (d) (2) provides:

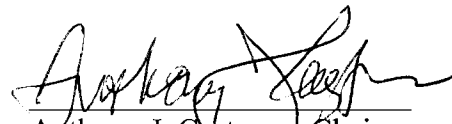
No official or employee of the state or a political subdivision of the state shall authorize the use of public funds for a television, radio, movie theater, billboard, bus poster, newspaper or magazine promotional campaign or advertisement, which (A) features the name, face or voice of a candidate for public office, or (B) promotes the nomination or election of a candidate for public office, during the twelve-month period preceding the election being held for the office which the candidate described in this subdivision is seeking.
12. Section 9-610 (d) (2) does not apply to the instant allegations because email is not among the restricted media for purposes of that subdivision.
13. Based on the above findings and standard, the Commission finds that the Email Newsletters, as represented in the complaint, did not violate § 9-610 (d).

ORDER

The following is ordered on the basis of the aforementioned findings:

That the complaint be dismissed.

Adopted this 20th day of November of 2013 at Hartford, Connecticut.



Anthony J. Castagno, Chair
By Order of the Commission