

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Ernest U. Stone
Town of Monroe

File No. 2014-010

AGREEMENT CONTAINING A CONSENT ORDER

This Agreement by and between the respondent, Stephen J. Vavrek, hereinafter referred to as "Respondent," and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Complainant Ernest U. Monroe filed this complaint on February 27, 2014, alleging that Stephen J. Vavrek, first selectman of Monroe, had utilized public resources to promote the outcome in a referendum.¹
2. The complainant made five allegations, stating that the town had failed to publish a notification of the referendum at least five days before it occurred and that Vavrek had violated General Statutes § 9-369b on four occasions. In regards to Vavrek, complainant alleged that respondent used public funds to promote the outcome in a referendum by using town facilities and labor to circulate fact sheets advocating on behalf of a referendum question on three occasions, specifically: via email on January 24, 2014 and January 31, 2014 and at a town meeting on January 27, 2014; and that Respondent spoke in favor of the referendum at the January 27 town meeting..²
3. The underlying issue giving rise to this complaint is a proposed \$5 million bonding proposal for repairs to Pepper Street in the town of Monroe. That issue was scheduled to be decided at a town meeting on January 27, 2014. At 10:37 a.m., on January 24, a petition with more than 200 signatures was presented to the town clerk that resulted in an adjourned town-meeting to decide the fate of the project.³

¹ See See Complaint of Ernest U. Stone, Monroe (State Elections Enforcement Comm'n, February 27, 2014).

² *Id.*

³ See Affidavit of Marcy E. LaFollette (Jan. 24, 2014) (showing that petition to force referendum on project arrived in town clerk's office at 10:37 a.m. on January 24, 2014).

4. After the signatures were confirmed, a town-wide referendum on the bond issue was scheduled for February 4. Notice of the adjourned town meeting and scheduled vote on February 4 was published in *The Monroe Courier* on January 30, 2014.⁴
5. At 3:44 p.m. on January 24, 2014, Respondent sent an email to individuals who had subscribed to a town email list. That email came from "Town of Monroe <svavrek@monroect.org>," which Respondent has acknowledged is his email address. Respondent stated that individuals who received the email had previously opted to be included on an email list from the Town of Monroe.
6. Respondent's January 24 email stated:

Pepper Street Reconstruction Project Facts

Folks, I need you to know the facts as the PEPPER STREET Reconstruction Project is now going to a Town Wide Referendum over a Town Meeting. While that is the Charter given right, please know that Our Town Council approved of this project unanimously 9-0 on July 30, 2012 and the project has been very public throughout both regional and town wide meetings.

The Town Meeting will be held on Monday January 27 at 7:00 p.m. in the Town Hall Chambers. The referendum announcement date will be announced, then the meeting will be adjourned.[sic] and go straight into a public informational session.⁵

7. In addition to the text above, Respondent's email included: a news story written by Jake Kara titled *Officials urge support of Pepper Street project bonding*, which discussed the project and was published in *THE MONROE COURIER* on January 24, 2014; and a copy of a letter that Respondent wrote, which was also published in *THE MONROE COURIER* on January 24, 2014, that was written in response to a letter in the newspaper by Monroe resident Bernard Sippin, who opposed the project. Respondent did not include Sippin's letter, which was also published in the January 24, 2014 edition of the newspaper, in the email that he sent through his "Town of Monroe" email address.⁶
8. On January 27, Respondent spoke at the previously scheduled town meeting about the importance of the project. According to the Complainant, Respondent also said that he had contacted several of the individuals who had signed the petition to force the referendum on the project. At that meeting, Respondent also allegedly distributed some

⁴ See Letter from Marsha Motter Beno, Monroe Town Clerk, to John P. Fracassini (April 16, 2014) (reflecting that publication of notice had occurred in weekly newspaper serving Monroe).

⁵ Email from "Town of Monroe <svavrek@monroect.org>" (January 24, 2014, 3:44 p.m.).

⁶ *Id.*

information about the project to individuals who attended that meeting. The distributed information included a sheet that laid out the timeline of the project as well as the two news accounts that Respondent had sent with his January 24th email.

9. On January 31, 2014, Respondent sent out another email using his “Town of Monroe <svavrek@monroect.org> address. That message went to selected constituents using his town-assigned email address and included the same news reports as the January 24 email, which were favorable to the Pepper Street project.
10. General Statutes § 9-369b (a) (4) prohibits the “expenditure of . . . municipal funds . . . to influence any person to vote for approval or disapproval of any such proposal or question or to influence or aid the success or defeat of the referendum.”⁷
11. The Commission has stated that the use of a public email system to send out messages that advocate for passage of a referendum question violates General Statutes §9-369b.⁸
12. In order to reach a decision about whether Respondent violated the prohibition against using public funds to promote the outcome of a referendum, the Commission must apply a three-step analysis to the emails and documents that Respondent distributed prior to the referendum on February 4.
13. The Commission’s three-part analysis to determine if communications violate General Statutes § 9-369b, requires answering the following queries:
 - (1) whether the communications advocate an outcome on a referendum question;
 - (2) whether those communications were made with public funds, and;
 - (3) whether the communications was issued while a referendum was pending.
14. The first step of the analysis under General Statutes Section 9-369b centers on whether the language in the Respondent’s emails regarding the referendum contained advocacy that promoted an outcome. The emails on January 24 and January 31 both included language that encouraged the recipients to “get the facts” related to the Pepper Street Project. The January 24 email, written by Respondent, also pointed out that the project had been unanimously approved by the town council. In addition, both emails also included a news story laying out some of the specifics of the project, which was largely neutral regarding whether the town residents should approve the project at the town meeting.

⁷ General Statutes § 9-369b (a) (4).

⁸ See *In the Matter of a Complaint by Cynthia McCorkindale, Bethel*, File No. 2011-079 (State Elections Enforcement Comm’n, October 19, 2011) (concluding that use of email to promote outcome of referendum would violate § 9-369b).

15. But Respondent also included a letter that he wrote for publication in THE MONROE COURIER that sought to refute, point-by-point, some of the arguments against the Pepper Street improvements. Respondent advocated that Monroe should move quickly to accept the federal and state funding available for the project; “If Monroe doesn’t take advantage of this much needed funding, another Town or the State would get the funds.” The project, Respondent wrote, will not result in higher taxes, “[i]n fact, the project will result in a great savings to the Town.” Those savings, he wrote, would come from other work that would be completed in conjunction with the Pepper Street Project. He concluded by wrapping up all of the advantages that would come with the project:

This project is a fantastic opportunity for the town and will result in cost savings, much needed safety and environmental improvements, infrastructure support for economic development and stability, traffic control, physical support for prior Town planning and rezoning decisions, and facilities that provide other modes of transportation and recreational opportunities for the residents of the Town. It is the right thing to do.

16. The language in Respondent’s letter-to-the-editor, which was included in both emails as well as distributed by Respondent at the June 27th meeting, clearly advocates for a positive vote on the referendum question. The first-step of the analysis reflects that Respondent’s communications clearly advocated a positive outcome in the referendum.
17. The second question related to the Section 9-369b analysis is whether the communication that advocated an outcome on the referendum was paid for using public funds. Respondent has acknowledged that he drafted the emails using his Town of Monroe email address and sent them to individuals who had previously signed up to receive emails from the Town of Monroe. The Town of Monroe maintains its own website and mail servers, so although any expense would be negligible and difficult to calculate, there still is an expense to the town associated with creating and sending these emails using a town-owned computer and email system. Respondent also made approximately 25 copies of a handout that he distributed at the Town Meeting on January 27. He stated that he created and made those copies himself using the Town of Monroe’s computer and copy machine. Given that these communications, including emails and handouts, were made using facilities and assets of the Town of Monroe, the second question – whether the communications at issue were made using public funds – would be answered in the affirmative, specifically, that these communications were paid for using public funds.
18. Finally, the analysis turns to the last question - whether the communications occurred after the referendum was pending. A referendum question is pending when the necessary legal conditions have been satisfied to require the publication of the warning (notice) of

the referendum.⁹ In this matter, the referendum was pending once the town clerk had verified that the necessary number of voters had signed the petition to force a referendum. That tally occurred on January 24, 2014. At that point, the referendum was legally pending.

19. Respondent drafted and sent two emails and created and copied a handout after the referendum was legally pending. In fact, Respondent knew when he sent his January 24th message that the referendum was pending because he noted in the body of the message that the project was “now going to a Town Wide Referendum over a Town Meeting.”¹⁰ The referendum was legally pending on January 24, 2014, before Respondent sent his initial email message to constituents.
20. On the basis of the evidence presented above, it is apparent that Respondent violated General Statutes § 9-369b with the three communications that he created using public resources.
21. General Statutes § 9-369 b (b) allows the Commission to impose a civil penalty of as much as “twice the amount of the improper expenditure or one thousand dollars, whichever is greater.”¹¹
22. As authorized by statute, the Commission has traditionally sought reimbursement for the costs associated with creating and distributing communications that violated Section 9-369b’s ban on public funding for such communications from the respondents who created them.¹²
23. Even though the actual cost of an expenditure using digital means is negligible or seemingly incalculable, those communications still involve the use of public funds.¹³ The growing use of electronic communications in the political sphere has made more difficult properly reckoning the amount of penalties against individuals who use publicly funded email, websites, or other electronic means to promote the outcome of a referendum.

⁹ See generally *In the Matter of a Complaint by Donald Hassinger, Woodbury*, File No. 2010-050 (State Elections Enforcement Comm’n, June 23, 2010).

¹⁰ Email from “Town of Monroe <svavrek@monroect.org>” (January 24, 2014, 3:44 p.m.).

¹¹ General Statutes § 9-369b (b) (setting maximum penalties for using public funds to promote outcome of referenda).

¹² See, e.g., *In the Matter of a Complaint by Kirk Carr, Clinton*, File No. 2014-054 (State Elections Enforcement Comm’n, May 19, 2015) (ordering Respondent to reimburse town for cost of communication that violated General Statutes § 9-369b).

¹³ See *In the Matter of a Complaint by Cynthia McCorkindale, Bethel*, File No. 2011-079 (State Elections Enforcement Comm’n, October 19, 2011) (concluding that use of email to promote outcome of referendum would violate § 9-369b).

24. Here, Respondent orchestrated three communications through publicly funded means to promote a yes vote on the referendum in Monroe.
25. Under General Statutes § 9-369b (b), the civil penalty for each violation may be as much as \$1,000 per offense or the cost of the communication, whichever is greater.¹⁴
26. Respondent waives:
 - 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.
27. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them concerning this matter.
28. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

¹⁴ General Statutes § 9-369b (b) (authorizing civil penalty).

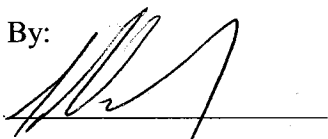
ORDER

IT IS HEREBY ORDERED THAT Respondent shall pay a civil penalty of four hundred fifty dollars (\$450) to the Commission for making three impermissible expenditures to promote the outcome of a referendum using public funds.

The Respondent

For the State of Connecticut

By:



Stephen Vavrek
7 Fan Hill Road
Monroe, CT

By:



Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
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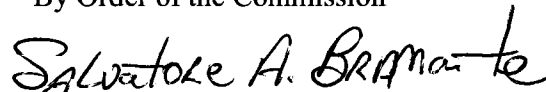
Dated: 1-12-17

Dated: 1/19/17

Adopted this 18th day of January 2017 at Hartford, Connecticut by vote of the Commission.



Anthony J. Castagno, Chairman (Vice)
By Order of the Commission



RECEIVED
STATE ELECTIONS

JAN 19 2017

ENFORCEMENT COMMISSION