

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Kirk Carr, Clinton

File No. 2014-053

FINDINGS AND CONCLUSIONS

Complainant Kirk Carr brings this Complaint pursuant to Connecticut General Statutes § 9-7b. Complainant alleged that Jack Cross, Superintendent of Schools, Clinton Public Schools and Philip Williams, Chairman, Clinton Board of Education, violated General Statutes § 9-369b pertaining to a public expenditure for printed materials regarding the May 14, 2014 Clinton Public Schools budget referendum. After its investigation of this complaint, the Commission makes the following findings and conclusions:

1. Complainant alleged that Respondents by using public funds to produce and disseminate, printed materials titled *Citizen's Guide to the 2014-2015 Public Schools Budget* (hereinafter "Guide") violated General Statutes § 9-369b.
2. Further, Complainant alleged that Clinton Public Schools failed to "obtain approval by the legislative body and municipal attorney" for an expenditure to publish and disseminate the Guide pertaining to the May 14, 2014 budget referendum in violation of § 9-369b.
3. The Commission uses a three prong analysis in applying § 9-369b to communications that balances: (1) whether the communication advocates, (2) whether it was made with public funds, and (3) *whether it was made while a referendum was pending*. See *Complaint by Mary V. Gadbois*, East Lyme, File No. 2010-123. The analysis in this instance turns on the third prong, or, whether the May 14, 2014 referendum was "pending" when the expenditure was made to publish and disseminate the Guide pertaining to the Clinton Public Schools budget referendum.
4. The Commission has consistently held that General Statutes § 9-369b only applies when a referendum is "legally pending," or when "the last legal condition" has been satisfied *to ensure that the referendum will take place*. See *Complaint by Thomas A. Karhrl*, Old Lyme, File No. 2007-185. Additionally, the Commission has determined that a referendum question is *pending* when the necessary legal conditions have been satisfied to require the publication of the warning (notice) of the referendum. See *Complaint by Donald Hassinger*, Woodbury, File No. 2010-50; and *Complaint by Donna G. Rusgrove and Jacqueline B. Sheehan*, Burlington, File No. 2014-066.

5. 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.... 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.* [Emphasis added.]

6. After investigation, the Commission finds the following timeline supported by the facts pertaining to the May 14, 2014 Clinton referendum:
 - a. Between April 10 and 23, 2014, the production, printing and preparation of the Guide occurred.
 - b. On April 22, 2014, a resolution for the Legal Notice of the Town of Clinton Annual Budget Meeting occurred and set the annual budget meeting for May 7, 2014.
 - c. On April 28, 2014, completed Guides were delivered to the United States Postal Service for postal delivery to Clinton residents.
 - d. On or about May 1 and 2, 2014 the Guide was delivered to and received by Clinton residents.
 - e. On May 7, 2014 the Clinton Annual Budget Meeting was held and adjourned to convene a referendum to be held on May 14, 2014.
 - f. On May 8, 2014, a legal notice of a referendum was published in the newspaper.

7. The Town of Clinton Municipal Ordinance, provides in pertinent part:

Chapter V, The Town Meeting, Section 4-4

(A)The Annual Budget Meeting shall be convened to referendum by machine or ballot vote. The call of the Annual Town Budget Meeting shall present as separate resolutions, the Town Government Budget and the Board of Education Budget to be voted upon in a referendum pursuant to Section 4-4(B) of the Charter. *Should the Annual Budget be adjourned prior to it being convened to referendum*, said meeting shall automatically reconvene in succeeding one (1) week intervals until its completion. The Budget Resolutions will be submitted to the persons qualified to vote in a town meeting which shall take place *not less than seven (7) or more than fourteen (14) days thereafter*, on a day to be set by the Annual Budget Meeting. At least five (5) days prior to such referendum the Board of Selectman

shall publish in a newspaper having general circulation in the town a notice of such referendum, setting forth the date on which, the hours (6 a.m. – 8 p.m.) during which, and the location at which the referendum will be held and the text of the questions as they will appear on the voting machine. [Emphasis added.]

8. The above ordinance provides a mechanism that anticipates that the Annual Budget Meeting on May 7, 2014 *may not result in the convening of a referendum*. Thus, based upon a review of town records at the Annual Budget meeting on May 7, 2014 the town meeting adjourned and convened a referendum to be held on May 14, 2014 pursuant to the requirements of Town Ordinances.
9. Effectively, for the referendum to occur on May 14, 2014, the Annual Budget Meeting had to be *approved for submission* to Clinton electors by and at the adjournment of the May 7, 2014 Annual Budget Meeting.
10. Upon investigation, and as detailed in paragraph 6 above, the legal notice required by the above referenced ordinance was published on May 8, 2014 which was subsequent to the May 7th convening of a referendum. It follows that the mailings complained of, that were produced and disseminated on or about May 1st and May 2nd, were therefore disseminated *prior* to the May 14, 2014 Clinton referendum being pending.
11. Specifically, pursuant to the Clinton municipal ordinance, and consistent with Commission precedent, the Annual Budget Meeting on May 7, 2014 was required to *adjourn and convene a referendum* in order that a proposed budget be submitted to Clinton electors. *See In the Matter of a Complaint by Spangler, Simsbury, File No. 93-165* (where as early as 1993 the Commission determined the issue of *pendency* according to requirements of the municipal charter).
12. The Commission finds, as detailed in the timeline above, that until the May 7, 2014 Clinton Annual Budget Meeting was adjourned to referendum and the legally necessary conditions to hold the referendum were *not* satisfied.
13. The Commission concludes for the reasons detailed herein that because the communication subject to this complaint was disseminated at public cost *prior to the pendency of the May 14, 2014 Clinton budget referendum*, the prohibitions of General Statutes § 9-369b did *not* apply and therefore no violation of that statute occurred under the specific and narrow circumstances pertaining to the complaint and investigation in File No. 2014-053 as alleged. Complainant's allegation is therefore dismissed as it was not supported by the facts or the law after investigation.

ORDER

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

That the Complaint be dismissed.

Adopted this 14th day of April of 2015 at Hartford, Connecticut


Anthony J. Castagno, Chairman
By Order of the Commission