

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Kirk Carr, Clinton

File No. 2014-054

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between William J. Fritz, Jr., of the Town of Clinton, County of Middlesex, and the State of Connecticut and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Respondent is the First Selectman of the Town of Clinton and was so at all times relevant to this complaint and investigation. The Respondent does not have a prior history with the Commission.
2. Complainant filed this complaint, alleging the public expenditure for the production and dissemination of "*Citizen's Guide Town of Clinton Budget 2014-2015*" (hereinafter "Guide") violated General Statutes § 9-369b.
3. Specifically, Complainant alleged that failure to get the approval of the Clinton legislative body and town attorney for the expenditure to publish and disseminate the Guide pertaining to the May 14, 2014 budget referendum violated § 9-369b.
4. 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***. In a municipality that has a town meeting as its legislative body, the board of selectmen shall, by majority vote, determine whether to authorize an explanatory text or the dissemination of other neutral printed material. Thereafter, each such explanatory text shall be prepared by the municipal clerk, subject to the approval of the municipal attorney, and shall specify the intent and purpose of each such proposal or question. Such text shall not advocate either the approval or disapproval of the proposal or question. The municipal clerk shall cause such question or proposal and such explanatory text to be printed in sufficient supply for public distribution and shall also provide for

the printing of such explanations of proposals or questions on posters of a size to be determined by said clerk. At least three such posters shall be posted at each polling place at which electors will be voting on such proposals or questions. Any posters printed in excess of the number required by this section to be posted may be displayed by said clerk at the clerk's discretion at locations which are frequented by the public. 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.

...

(c) The State Elections Enforcement Commission, after providing an opportunity for a hearing in accordance with chapter 54, may impose a civil penalty on any person who violates subsection (a) or (b) of this section by authorizing an expenditure of state or municipal funds for a purpose which is prohibited by subsection (a) of this section. ***The amount of any such civil penalty shall not exceed twice the amount of the improper expenditure or one thousand dollars, whichever is greater.*** In the case of failure to pay any such penalty imposed under this subsection within thirty days of written notice sent by certified or registered mail to such person, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to pay the penalty imposed. Notwithstanding the provisions of sections 5-141d, 7-101a and 7-465, any other provision of the general statutes, and any provision of any special act or charter, no state or municipal officer or employee shall be indemnified or reimbursed by the state or a municipality for a civil penalty imposed under this subsection. ...

[Emphasis added]

5. By way of background, the Commission historically uses a three prong analysis as a guide to reviewing printed communications where there is an alleged violation of General Statutes § 9-369b. The aforementioned analysis balances the following elements: (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. Further, this standard of analysis has appeared in longstanding Commission publications regarding the application of § 9-369b including instructional guides and fact sheets.

6. The Town of Clinton Municipal Ordinance, provides at *Chapter V, The Town Meeting, Section 4-4* the following:
 - (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.]

7. After investigation, the Commission finds following timeline supported by the facts pertaining to the May 14, 2014 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 May 7, 2014 the Clinton Annual Budget Meeting is held *and adjourned to referendum* to be held on May 14, 2014.
- e. On May 8, 2014, the referendum was noticed in a newspaper.
- f. On May 9, 2014, a work order for the Guide was made out to the Town of Clinton in the amount of \$1,510.15.
- g. On May 14, 2014, the referendum as held in the Town of Clinton.

8. *Does the Communication Contain "Advocacy?"*

One prong of the Commission's General Statutes § 9-369b analysis focuses on whether the communication advocated for or against the outcome of a referendum. The Commission finds that the gravamen of this complaint turns on whether Respondent obtained approval pursuant to the requirements of § 9-369b. Nevertheless, the Complainant *did* raise the issue of advocacy by referencing the Guide's inclusion of the following language that was incorporated in a message from Respondent as Clinton First Selectman:

As you review the proposed budgets and available information, it should become evident that these budgets represent a responsible, responsive and financially prudent spending plan. [Emphasis added].

9. The Commission has previously interpreted and published the meaning of advocacy and "... utilizes an objective standard and evaluates whether a 'reasonable person' would believe that a communication urged them to vote in a particular manner." See *A Guide to Financing a Referendum Question*, SEEC, May 2013. Moreover, the Commission has determined that where a communication *stresses the benefits* of the success of a referendum it can be deemed advocacy. See *Complaint by Tom Nicholas*, Guilford, File No. 2011-091 (where communication stressed benefits of project through slideshow and a lack of alternatives to project while referendum was pending).
10. The Commission finds after review of the Guide, and consistent with its publications and precedent, that the declaration "*these budgets represent a responsible, responsive and financially prudent spending plan*" is "advocacy" for purposes of analyzing alleged violations of General Statutes § 9-369b.

11. The Commission concludes therefore that Respondent violated General Statutes § 9-369b by incorporating laudatory language in the Guide that described the benefits and prudence of the proposed 2014 Clinton budget, which would lead a “reasonable person” to believe they were urged to vote in support of the proposed budget at the May 14, 2014 referendum.
12. *Was the Communication Made with Public Funds?*
Upon investigation, the Commission finds that On May 9, 2014, an invoice from Technique Printers for the Guide was made out to the Town of Clinton in the amount of \$1,510.15. Specifically, the invoice indicated: “*Description – Citizens Guide – Prints Block on 60# Bond (paper) – Collate, Fold to 5 ½ x 8 ½ -- Ink Jet, water seal, sort, deliver to CPO (Clinton Post Office).*” Further, the Commission finds that on May 13, 2014, the aforementioned invoice for the Guide was marked “received” by the Clinton Board of Selectman. Finally, the Commission finds that on May 28, 2014 a Town of Clinton check in the amount of \$1,530.15 was made to Technique Printers.
13. The Commission finds after investigation, and as detailed above, that the invoice for the printing of the Guide and the check for its payment are in the name of the Town of Clinton. The Commission further finds that the Guide was produced by and for the Town of Clinton with public funds and concludes therefore that the Guide and the expenditure for the same is subject to the requirements and prohibitions of General Statutes § 9-369b.
14. After investigation, the Commission finds that Respondent did *not* seek or receive the authorization of the Clinton Board of Selectmen, or approval of the Guide by the town attorney pertaining to the public expenditure funding its production and dissemination.
15. *Was the Communication Made while a Referendum was “Pending?”*
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*.

16. Upon investigation, the Commission finds that on May 9, 2014, an invoice for the Guide was made out to the Town of Clinton in the amount of \$1,510.15. The invoice was to the “Town of Clinton Selectman’s Office” and included the description deliver to “CPO” or Clinton Post Office. The Commission further finds that the delivery to the Clinton Post Office occurred on or about May 9th. Finally, the Commission finds that the subsequent delivery of the Guide to Clinton residents occurred *after* its May 9th delivery to the post office and was received on or about the 13th of May, one day prior to the referendum.
17. The Commission, after applying its standard of analysis to the public distribution of the Guide, as described above, concludes that the distribution of the printed communication in this instance *occurred while a referendum was pending* and therefore the guide was subject to the requirements and prohibitions of General Statutes § 9-369b.
18. Complainant alleged that failure to get the approval of the Clinton legislative body and town attorney for the expenditure to publish and disseminate the Guide while the May 14, 2014 budget referendum was pending violated General Statutes § 9-369b. The Commission finds that it has in prior cases and as early as 1989 addressed this issue. Specifically, in *Complaint by Jeffrey Kreite*, Westbrook, File No. 93-118 the Commission concluded that:

*The Commission has consistently ruled that Section 9-369b provides for **the exclusive means by which a municipality may fund printed explanatory material concerning the subject matter of a referendum at any time after a referendum is pending.** See Complaint of Salvatore Iritano, File No. 90-147 [and] Complaint of Ethel Standish, File No. 89- 201. [Emphasis added.]*

19. Upon investigation, the Commission finds that in this instance General Statutes § 9-369b would have required the Guide, as printed materials concerning the May 14, 2014 referendum to be prepared and disseminated by the exclusive means of a vote by the legislative council and subject to approval of the town attorney. The Commission further finds that Respondent did *not* seek approval for the preparation and dissemination of the Guide from the Clinton legislative council or obtain the approval of the town attorney prior to the public expenditure detailed herein as required by § 9-369b.
20. The Commission concludes, based on the factual findings after investigation and detailed herein, that Respondent violated § 9-369b by failing to implement its *exclusive means* of approval by legislative vote and the town attorney by which he could fund the printed Guide that concerned the May 14, 2014 referendum.

21. The Commission stresses that the prohibited expenditure of public funds for the Guide totaled \$1,510.15. Further, the Commission notes that the Respondent could be exposed after a hearing to twice the amount of the aforementioned prohibited expenditure of public funds pursuant to General Statutes § 9-369b (c). More specifically, the Commission could impose a civil penalty on Respondent, "...the amount of [which] shall not exceed twice the amount of the improper expenditure or one thousand dollars, whichever is greater," or in this instance a total of \$3,320.30.
22. The Commission finds therefore that Respondent's agreement to reimburse the Town of Clinton the \$1,510.15 cost of the Guide and agrees to henceforth comply with General Statutes § 9-369b is fair and reasonable under the facts and circumstances pertaining to his violations of § 9-369b and would serve as a deterrent of future similar conduct regarding expenditures of public funds while a referendum is pending.
23. The Respondent admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
24. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission by either party in any subsequent hearing, if the same becomes necessary.
25. The 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.
26. Upon the Respondent's agreement to comply with the hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth, the Respondent shall strictly comply with the requirements of General Statutes § 9-369b.

IT IS FURTHER ORDERED that Respondent on or before May 19, 2015 provide to the Commission receipt and acknowledgement from a proper authority of the Town of Clinton that it has received and deposited a reimbursement in the amount of \$1,510.15.

Respondent:

For the State of Connecticut

BY: 

BY: 

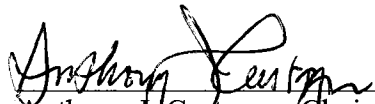
William J. Fritz, Jr.
54 East Main Street
Clinton, Connecticut

Michael J. Brandi, Esq.
Executive Director and
General Counsel
And Authorized Representative
Of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

5-12-15
Dated

5/15/15
Dated

Adopted this 19th day of May, 2015 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chair
By Order of the Commission



William Stanton Andrews Memorial Town Hall

TOWN OF CLINTON

54 East Main Street
Clinton, Connecticut 06413

William W. Fritz, Jr.
First Selectman

**RECEIVED
STATE ELECTIONS**

MAY 15 2015

ENFORCEMENT COMMISSION

May 12, 2015

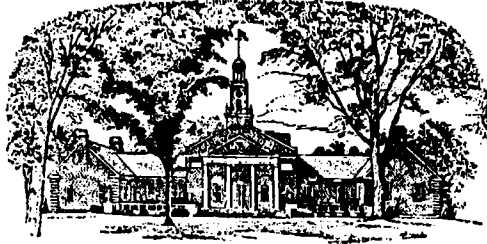
To: State Elections Enforcement Commission
Law Enforcement Unit
20 Trinity Street, Suite 101
Hartford, CT 06106-1628

From: William W. Fritz Jr.
First Selectman

Re: SEEC fine

Please find signed agreement regarding File No. 2014-054 along with a letter from the Clinton Finance Director, Janet Murphy, stating payment was received and a copy of the certified check.

Cc; J. Murphy



TOWN OF CLINTON, CONNECTICUT

**RECEIVED
STATE ELECTIONS**

MAY 15 2015

ENFORCEMENT COMMISSION

May 12, 2015

State of Connecticut
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Ct 06106-1628

RE: Complaint of Kirk Carr, Clinton, File No. 2014-054

Commission,

Please be advised that I am certifying that the Town of Clinton has received a check in the amount of \$1,510.15 in settlement of the above-referenced complaint.

A copy of this check is attached as proof of reimbursement.

Sincerely,

A handwritten signature in cursive script that reads "Janet Murphy".

Janet Murphy
Finance Director

THIS DOCUMENT IS PRINTED ON TONER ADHESION PAPER

LIBERTY BANK

315 Main Street • Middletown, CT 06457
(888) 570-0773 • www.liberty-bank.com

Official Check

239139

51-7028 / 2111

May 12, 2015

Pay to the
Order of:

****Town of Clinton****

\$1,510.15

One Thousand Five Hundred Ten and 15/100*****

Memo SEEC - Pmc

Jaqueline J. Jan
Authorized Signature

⑈ 239139 ⑈ ⑆ 211170282⑆ 6573400115⑈

RECEIVED
STATE ELECTIONS

MAY 15 2015

ENFORCEMENT COMMISSION