

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Matthew Paulson, Bethel

File No. 2015-030

FINDINGS AND CONCLUSIONS

Complainant Mathew Paulson brings this Complaint pursuant to Connecticut General Statutes § 9-7b. The Complainant in alleged possible violations of General Statutes § 9-369b by the Bethel Superintendent of Schools, Dr. Christine Carver (hereinafter the "Respondent"). After its investigation of this complaint, the Commission makes the following findings and conclusions:

1. Complainant alleged that the Respondent violated the provisions of Section 9-369b by expending municipal funds to prepare and distribute an electronic newsletter that pertained to a likely recount of a recently failed budget referendum and the likelihood of an additional referendum regarding the school budget.
2. By way of background, on April 21, 2015, the Town of Bethel held its first budget referendum. By a narrow vote margin, the Board of Education Budget was defeated, making it subject to a recount which took place on April 28, 2015 that confirmed the narrow defeat of the school budget. Further, on May 4, 2015 a budget meeting was held and the date for a second referendum was set for May 14, 2015.
3. The newsletter that is subject of this complaint and investigation was issued on Friday April 24, 2015, and was the Superintendent's "regular Friday newsletter." The Commission notes that at that point, the initial Bethel budget referendum had occurred and a recount was being scheduled to determine whether another referendum would be necessary.
4. The Respondent Superintendent's newsletter contained in part the following:

Dear Parents, Care Givers, and Community Members;
As you are aware, the Board of Education budget failed by three votes! If the recount, which is tentatively scheduled for Tuesday, April 28th, does not change the outcome, there is the potential for significant impact to both curricular and extracurricular programs within the schools.
Parental participation in the budget process is critical to maintaining the quality of education we provide to the students of Bethel. We need parents and all voting members within their household to:

 - * *Attend the board of Finance Meeting, Wednesday, April 29th.*
 - * *Attend the next town meeting, Monday May 4th.*
 - * *Vote the next referendum, TBD.*

5. 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, 2015 referendum was “pending” when the expenditure was made to disseminate the Respondent Superintendent’s April 24th newsletter pertaining to the recount of the failed April 21st budget referendum and possible second referendum.
6. 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.
7. 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; *Complaint by Donna G. Rusgrove and Jacqueline B. Sheehan*, Burlington, File No. 2014-066; and, most recently, *Complaint by Kirk Carr*, Clinton, File No. 2014-053.
8. 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.]
9. After investigation, the Commission finds the following timeline supported by the facts pertaining to the May 14, 2014 Bethel referendum:
 - a. April 6, 2015 Annual Budget Meeting at which April 21, 2015 (First) Referendum is scheduled.
 - b. April 21, 2015 (First) Referendum Held.
 - c. April 24, 2015 Superintendent’s Newsletter Issued.
 - d. April 28, 2015 recount of April 21, 2015 Budget Referendum.
 - e. May 4, 2015 (Second) Budget Meeting at which (second) Referendum is **scheduled**.
 - f. May 14, 2015 (Second) Referendum **Held**.

10. The Town of Bethel Municipal Charter, provides in pertinent part:

Chapter C, C6-3 (B) (1): The Budget Referendum shall be by machine vote not less than seven (7) nor more than fifteen (15) days, excluding Saturdays, Sundays and legal holidays, from the date of approval by the Budget Meeting. ***The Budget Meeting shall set the date of the Budget Referendum*** and the Board of Selectmen shall set the hours and designate the place for the Budget Referendum. Notice of the same shall be given in the manner provided by law.

Chapter C, C6-3 (C) (1): ***In the event that the majority of those voting who are entitled to vote in the Budget Referendum reject either the proposed Town Operating Budget, the Board of Education Budget, or both, the Board of Finance shall revise the rejected portion(s) of the budget and submit proposed revisions thereof to the Budget Meeting on the date and time as set by the Board of Finance within seven (7) days after said Budget Referendum. The Budget Meeting and any subsequent Budget Meetings as to such proposed revision(s) will be conducted in the same manner as set forth in § C6-3A herein until such time that the previously rejected portion(s) of the budget as revised shall be approved by the Budget Referendum. The Budget Referendum and any subsequent Budget Referendums will be conducted in the same manner as set forth in Section C6-3B herein until such time that the proposed budget shall be approved by the Budget Referendum. [Emphasis added.]***

11. The Commission finds after investigation that based on the above Charter provision, the date of a referendum on the budget is set at the Budget Meeting. In the event that a budget does not pass, another Budget Meeting is set at which the date of the subsequent referendum is set.
12. The Commission further finds that a legally pending referendum pursuant to the Bethel Charter necessitated the following "necessary legal conditions" pursuant to Section C (1): (1) the budget had to be determined to have failed to pass, (2) the Board of Finance had to then revise the budget, (3) a Budget Meeting had to be held on May 4, 2015 and then, at that meeting, a date had to be set for referendum on May 14, 2015. On the date of the second Budget Hearing (May 4, 2015), the May 14, 2015 referendum became legally pending.

13. The Commission finds, after investigation, that the timeline in which the newsletter was issued is dispositive for the purposes of its Section 9-369b analysis in this case. Further, the Commission finds that newsletter was issued on April 24, 2015. At that point, as detailed in paragraph 9 above, the initial referendum had occurred and a recount was being conducted *to determine whether another referendum would be necessary*. Further, the necessity of any subsequent referendum could not be determined until the recount of April 28th, some four days *after* the issuance the newsletter in question.
14. The Commission finds, after investigation, that until the May 4, 2015 (second) Bethel Budget Meeting was adjourned to referendum, the legally necessary conditions to hold the (second) budget referendum on May 14, 2015 were *not* satisfied.
15. The Commission concludes therefore that because Superintendent's April 24, 2015 weekly newsletter was disseminated at public cost *prior* to the pendency of the May 14, 2015 Bethel budget referendum, the prohibitions of General Statutes § 9-369b did not apply under these specific and narrow circumstances.
16. Complainant's allegation is therefore dismissed as it was not supported by the facts or the law after investigation. However, the Commission cautions Respondent regarding the timing, tenor and tone of future newsletters as they pertain to the potential subject matter of referenda, which may, as they did in this instance, invite or result in the filing of complaints because of perceived prohibited advocacy.

ORDER

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

That the Complaint be dismissed.

Adopted this 18th day of August of 2015 at Hartford, Connecticut


Anthony J. Castagno, Chairman
By Order of the Commission