

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Kirk Carr, Clinton

File No. 2015-032

FINDINGS AND CONCLUSIONS

The Complainant alleged that the public expenditure for the production and dissemination of “Citizen’s Guide Town of Clinton Budget 2015-2016” violated General Statutes § 9-369b.¹

BACKGROUND

1. On or about April 29, 2015, the Clinton Board of Selectmen voted to approve preparation and printing of a document entitled “Citizen’s Guide Town of Clinton Budget 2015-2016” (“Guide”).
2. On or about May 15, 2015, the Town of Clinton held a referendum in which the electors of the town voted on elements of the proposed town budgets.

ALLEGATIONS

3. The Complainant alleges that the Guide’s use of certain statistics, as well as the word “recommended” in referring to the budget, advocated for a “yes” vote in the pending budget referendum and therefore violated the prohibition on spending public funds on referenda in General Statutes § 9-369b.
4. Specifically, the Complainant alleges as follows:

During a pending budget referendum period, having been noticed by respondent Willie Fritz as First Selectman on April 22, 2015 did publish and distribute using public funds a “Citizens Guide Town of Clinton

¹ The following are the Commission’s findings and conclusions based on those portions of the Complainant’s statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission’s jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission’s jurisdiction.

Budget 2015-2016” [The Guide] dated April 27, 2015. The Guide was approved by the Board of Selectmen on April 29, 2015, on representation by Willie Fritz that it had been approved by the Town Clerk and Town Counsel. The Guide characterizes the budget as “The recommended budget ...” Recommend is defined in the Merriam-Webster Dictionary as follows: “to say that (someone or something) is good and deserves to be chosen.” etc. The budget should have been characterized as proposed or submitted for consideration The Guide included an example of a tax calculation that used the current mill rate, which is 3.4% less than the proposed mill rate if the budget passed at referendum. It used a home value that was arbitrarily picked out of thin air that is 7.4% lower than the median home value in Clinton. That produced an estimated tax 10.4% less than the proposed tax if applied to a median home value in Clinton. The tax calculation also failed to include currency signs. The Guide also claimed that median household income in Clinton is \$84,914, which is 19.9% higher than the U.S Census Bureau 2013. This characterization as “recommended” and distorted and inaccurate “facts” was highly manipulative and misleading and intending to influence people to Vote Yes. The piece also failed to provide the required “paid for by” disclosure required on all political advertising. The Board of Selectmen were provided ample information to revise this Guide to comply with SEEC regulations. They were negligent and were enabling a repeat offender. This justifies the Commission leveling the full fine of double the expense that was incurred to be shared among the 5 Selectmen.

LAW

5. General Statutes § 9-369b reads, in pertinent part:

(a)(1) Except as provided in subdivision (2) of this subsection, 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. *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.*

...
(4) *Except as specifically authorized in 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 or to otherwise influence or aid the success or defeat of the referendum.* The provisions of this subdivision shall not apply to a written, printed or typed summary of any 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.
...[Emphasis added]

6. 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 *In the Matter of a 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.

7. 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.]

FACTUAL FINDINGS

8. The allegations here implicate the provisions of General Statutes § 9-369b, which concerns the activities of public officials in association with a referendum. Such provisions are not effective unless the referendum is “pending.” The Commission has held that a referendum is legally pending when all of the necessary legal conditions have been satisfied to require that a referendum be held. *In the Matter of a Complaint by Alex Ruskewich, Wilton*, File No. 2014-118A.
9. The parties here do not dispute that the Guides that are the subject of the instant Complaint were produced, printed, and/or distributed during the time that the May 15, 2015 referendum was “pending.”
10. The parties also do not dispute that the Guide was produced with public funds. As such, the provisions of General Statutes § 9-369b applied.
11. The remaining question is them whether the Guide advocated for a “yes” vote as alleged by the Complainant. Insofar as the Guide utilizes the term “recommended,” it does so in two locations. First, the term appears in the opening paragraphs on the first page in a section entitled, “Message from Town Hall,” as follows:

Welcome to this issue of the Citizen's Guide to the Town of Clinton Annual Budget.

It is important that we communicate with you as residents regarding the status of our proposed 2015/2016 budget. The recommended budget represents a major fiscal initiative that has been achieved by thorough analysis and documentation of all revenue and expenditures. There is ample opportunity, by attending the various hearings, for you as a taxpayer to directly participate in the budget process.

12. The Guide utilizes the term “recommends” in a section entitled “The Budget Process” in which the Town of Clinton budget process is explained in detail. The relevant portion reads as follows:

The finalized Board of Selectmen and the Board of Education budgets are presented to the Board of Finance (BOF) at budget workshops. The Board of Finance discusses and deliberates on the proposed budget and also holds a public hearing to gather citizen input. After considering all input, the Board of Finance recommends its proposed budget to a Town Meeting. Clinton's Town Charter sets forth the requirements for the Annual Budget Meeting and ultimately the referendum vote to approve or reject the proposed spending plans..

RESPONSE

13. The Respondent Board of Selectmen responded through Counsel on its behalf, in pertinent part:

The Affidavit of Complaint, at Page 3, Section III, suggests; I. that the complainant objects to the phrase “recommended budget” and its inclusion in the Citizens Guide; II. further suggests that examples used in the Guide to illustrate the budget and tax impacts were not accurate, . . .

I. The use of the phrase “recommended budget” is a statutory descriptor which is part of the required statutory scheme for budget approval. Indeed presenting a proposed budget or making appropriations that were not recommended by the Board of Finance of the Town would be illegal. I would refer you to Connecticut General Statutes § 7-344(5) . . .

Including the phrase “recommended budget” in the Citizens Guide is simply using the statutory classification of the budget as that which has gone through the process of Board of Finance review and recommendation. It has nothing to do with emphasizing a positive or negative vote for the budget. It identifies the budget as that which has been submitted through the process and properly stands ready for consideration. Surely it cannot be a violation of election law to use the terms of art specifically required by the Connecticut General Statutes as part of the budgetary process. In this context, it simply identifies the status of the proposed budget, it does not encourage voting for or against it.

II. The second aspect of the complaint is that the examples chosen for calculation of the impact of the budget recommended by the Board of Finance use figures which the complainant simply did not like. The formula is nothing more than a theoretical mathematical calculation and not an effort to encourage anyone to vote for or against the budget. It provides citizens, by example, with a formula that they can themselves utilize to realize the potential impact on them. Any citizen could plug in the assessed value of their property and run the calculation for themselves. This is a tool to allow voters to gain the maximum information, nothing more. Indeed, it is the complainant who would prefer to manipulate the figures to suggest the worst possible budgetary impact, no doubt to serve his desire to influence and discourage voters. The statement that this was an effort to influence voting on the budget is without substantiation.

ANALYSYS AND CONCLUSION

14. The question that the Commission must answer here is whether the Guide advocated for or against the outcome of a referendum.
15. 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.” *In the Matter of a Complaint by Kirk Carr, Clinton*, File No. 2014-054; *see also A Guide to Financing a Referendum Question*, SEEC, May 2013.

16. The Complainant alleges that the Guide's use of certain statistics, as well as conjugations of the word "recommend" in referring to the budget, advocated for a "yes" vote in the pending budget referendum.
17. As an initial matter, the Respondent is correct, insofar as they assert that the term "recommended" is a term of art found in General Statutes § 7-344, which reads:

Not less than two weeks before the annual town meeting, the board shall hold a public hearing, at which itemized estimates of the expenditures of the town for the ensuing fiscal year shall be presented and at which all persons shall be heard in regard to any appropriation which they are desirous that the board should recommend or reject. The board shall, after such public hearing, hold a public meeting at which it shall consider the estimates so presented and any other matters brought to its attention and shall thereupon prepare and cause to be published in a newspaper in such town, if any, otherwise in a newspaper having a substantial circulation in such town, a report in a form prescribed by the Secretary of the Office of Policy and Management containing: (1) An itemized statement of all actual receipts from all sources of such town during its last fiscal year; (2) an itemized statement by classification of all actual expenditures during the same year; (3) an itemized estimate of anticipated revenues during the ensuing fiscal year from each source other than from local property taxes and an estimate of the amount which should be raised by local property taxation for such ensuing fiscal year; (4) an itemized estimate of expenditures of such town for such ensuing fiscal year; and (5) the amount of revenue surplus or deficit of the town at the beginning of the fiscal year for which estimates are being prepared; provided any town which, according to the most recent federal census, has a population of less than five thousand may, by ordinance, waive such publication requirement, in which case the board shall provide for the printing or mimeographing of copies of such report in a number equal to ten per cent of the population of such town according to such federal census, which copies shall be available for distribution five days before the annual budget meeting of such town. The board shall submit such estimate with its recommendations to the annual town meeting next ensuing, and such meeting shall take action upon such estimate and recommendations, and make such specific appropriations as appear advisable, but no appropriation shall be made exceeding in amount that for the same purpose recommended by the board and no appropriation shall be made for any purpose not recommended by the

board. Such estimate and recommendations may include, if submitted to a vote by voting tabulator, questions to indicate whether the budget is too high or too low. The vote on such questions shall be for advisory purposes only, and not binding upon the board. Immediately after the board of assessment appeals has finished its duties and the grand list has been completed, the board of finance shall meet and, with due provision for estimated uncollectible taxes, abatements and corrections, shall lay such tax on such list as shall be sufficient, in addition to the other estimated yearly income of such town and in addition to such revenue surplus, if any, as may be appropriated, not only to pay the expenses of the town for such current year, but also to absorb the revenue deficit of such town, if any, at the beginning of such current year. The board shall prescribe the method by which and the place where all records and books of accounts of the town, or of any department or subdivision thereof, shall be kept. The provisions of this section shall not be construed as preventing a town from making further appropriations upon the recommendation of its board of finance at a special town meeting held after the annual town meeting and prior to the laying of the tax for the current year, and any appropriations made at such special town meeting shall be included in the amount to be raised by the tax laid by the board of finance under the provisions of this section. (Emphasis added.)

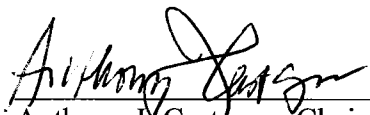
18. Accordingly, the Commission agrees with the Respondent that the use of the term “recommend” (and its conjugations) in this instance was consistent with the statutory syntax in General Statutes § 7-344 and not indicative of an intent to advocate for a “yes” vote in the referendum.
19. As to Complainant’s allegations regarding the Guide’s use of statistics, the standard of review is not whether or not the author of a communication has chosen to “cherry-pick” certain facts and/or statistics or even whether such facts and/or statistics are true. Rather, the Commission must review whether or not the communication constitutes a piece of advocacy.
20. Considering the aforesaid, and after a review of the entire Guide, the Commission concludes that it is not more likely than not that a reasonable person would believe that the Guide urges them to vote in a particular manner. Accordingly the Guide was compliant with General Statutes § 9-369b. This matter should be dismissed.

ORDER

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

Dismissed

Adopted this 20th day of October, 2015 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission