

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

File No. 2015-088

Date: February 27, 2017

In the Matter of a Complaint by Mark Dumas

RESPONDENT:

John A. Harkins
1036 Whippoorwill Lane
Stratford, Connecticut 06614

STIPULATED AGREEMENT

This agreement, by and between Mayor John A. Harkins, of the Town of Stratford, County of New Haven, State of Connecticut (hereinafter "Respondent"), 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. Complainant alleged that Respondent and the Town of Stratford did not comply with Conn. Gen. Stat. §9-369b when responding in July 2015 to the petition for referendum submitted to challenge the sale of the assets of the Stratford Water Pollution Control Authority ("SWPCA") to the Greater New Haven Water Pollution Control Authority ("GNHWPCA").
2. Conn. Gen. §9-369b provides in pertinent part:

(a) (1) 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.

(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 any such 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. For purposes of this section, the maintenance of a third-party comment posted on social media or on an Internet web site maintained by the state, a municipality or a regional school district permitting such third-party comments shall not constitute an expenditure of state or municipal funds.

3. Respondent contends that he complied with Conn. Gen. Stat. §9-369b, balancing his obligations as the chief elected officer of the town to communicate timely his position on the referendum without improperly using public funds to oppose the referendum.
4. On January 29, 2015, the town's Stratford planning commission passed a motion recommending to the Town Council that the town sell real property and assets owned by the town for its water pollution control authority to a regional water authority and to have the town become part of that regional water authority. On April 9, 2015, the Stratford Town Council approved a resolution in support of this sale. Following that vote, town residents initiated a petition for referendum to challenge the resolution.
5. On May 5, 2015, following advice of the town's Corporation Counsel, the Town Clerk rejected the petitions. On May 11, 2015, a lawsuit challenging the rejection of that petition was filed in Superior Court. On June 4, 2015, a Superior Court judge issued a ruling directing the Town Clerk to proceed and review the petitions.

6. On June 25, 2015, the Appellate court denied the Town of Stratford's appeal seeking expedited review of the Superior Court's decision. On June 28, 2015, the Town of Stratford withdrew its appeal of the Superior Court's decision.
7. On July 13, 2015, the Stratford Town Council, pursuant to Section 8.3.3 of the Stratford Charter, voted to hold the referendum on November 3, 2015.
8. Respondent issued the customary Mayor's Monthly Minutes for July on or around July 20th and included the following statement:

The issue of whether the town should regionalize its sewer operations will appear on the ballot when voters go to the polls on Nov. 3. I believe the proposal to regionalize already approved by the WPCA and Town Council will win at referendum on its merits. Regionalizing will result in lower sewer rates, a stabilized budget and allows us to continue the progress we have made together over the last five years. As with all decisions I make as Mayor, I believe this is the best course of action for our town and our collective future.

9. In addition to placing this statement on the town website, Respondent also caused to have printed copies of the Mayor's Monthly Minutes placed in certain locations in the town, including the Town Hall and diners, for residents who do not regularly use the internet.
10. The aim of Conn. Gen. Stat. §9-369b is to ensure that the government, be it local or state, does not use public funds in order to influence the outcome of the election. Recognizing that officials must still govern, the statute allows for certain conduct by, and communications from, public officials and prohibits other kinds.
11. The Commission concludes, for its part, that Respondent by leaving advocacy materials contained in his June 2015 and July 2015 Mayors' Monthly Minutes at public cost on Stratford's website and in printed form for public inspection while the November 3, 2015 ballot question was approved to appear on the ballot in and during its pendency did not

comport with the requirements of General Statutes Section 9-369b. The Commission notes that the June Mayors' Monthly Minutes were prepared prior to the Town Council's vote on July 13th to hold the referendum but remained on the town website for a period of time after that vote.

12. The Commission concludes, for its part, that Respondent by using public funds to produce and disseminate advocacy materials in the form of a "Regionalization Fact Sheet" pertaining to the pending November 3, 2015 ballot question did not comport with General Statutes § 9-369b.
13. The Commission finds that the application of General Statutes § 9-369b to allegations pertaining Stratford's decision pertaining litigation, occurred *prior* to the November 3, 2015 ballot question being authorized to appear on the ballot, is unwarranted under these narrow and specific circumstances. The Commission therefore dismisses this allegation.
14. Conn. Gen. Stat. §9-369b(a)(4) provides that the prohibition on communications "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." Respondent asserts that, at their core, the Monthly Minutes are indistinguishable from a press release. They provide news and limited commentary from the Mayor. The comments were made in anticipation of the fact that the Mayor has an obligation to inform constituents of his view of important developments such as a referendum with significant consequences for the municipal budget.
15. Respondent fully agrees and embraces the core purpose of Conn. Gen. Stat. §9-369b which is to ensure that no official may use the public fisc to influence any person to vote either for

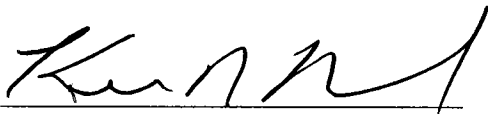
or against a local proposal or question. At the same time, Respondent recognizes his duty to communicate timely with his constituents on matters of importance.

16. Respondent firmly believes that the emergence of the referendum in July 2015 obviously was a noteworthy event in Stratford, demanding the Respondent's comment. Further, that if Respondent had failed to comment on the referendum, to many, that would suggest that he is either not paying attention to his job or, alternatively, that he is unconcerned about the opinion of his constituency.

Order

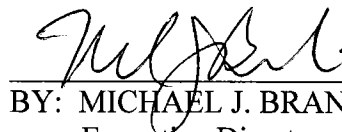
- Respondent pledges to work closely with SEEC in the future when his duties as chief executive officer and his commitment to adhere to General Statutes § 9-369b.
- In recognition of SEEC's commitment to assist elected officials and to protect public funds, Respondent will make a voluntary payment in the amount of \$250.00.

The Respondent



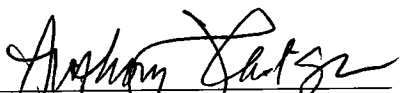
BY: KEVIN N. REYNOLDS, ESQ.
On behalf of
John A. Harkins
1036 Whippoorwill Lane
Stratford, CT 06614

For the State of Connecticut



BY: MICHAEL J. BRANDI
Executive Director and General Counsel
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street, Suite 1, Hartford, CT 06106

Adopted this 22nd day of March, 2017 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission