

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Kimberly A. Martin,  
Scotland

File No. 2016-052

**FINDINGS AND CONCLUSIONS**

Complainant brought this complaint pursuant to § 9-7b, General Statutes of Connecticut, alleging that Jennifer Nixon the Administrative Assistant in the Town of Scotland violated § 9-369b, by using public funds to produce communications that advocated pertaining to the June 23, 2016 Regional School District Number 11 (“RSD No. 11”) referendum. After investigation of the matter, the Commission makes the following findings and conclusions:

1. Complainant alleged violations of General Statutes § 9-369b, in that:
  - (1) A post on the Town of Scotland’s website provided the wrong date pertaining to the June 23, 2016 RSD #11 referendum;
  - (2) A post on the town’s website provided a “misleading” explanatory text pertaining to the RSD # 11 referendum;
  - (3) A re-post of the wrong date pertaining the date of the RSD #11 referendum was posted to the town website under “Upcoming Events;” and,
  - (4) The “misrepresentations” of the posts on the website and on a sign on the Scotland Town Green were explanatory texts that were not written by the town clerk and approved by the town attorney as required by statute.
2. At all times relevant to this complaint Jennifer Nelson was employed by the Town of Scotland as an Administrative Assistant to the First Selectman. Further, as such, Ms. Nixon reported directly to Scotland First Selectman Daniel D. Syme. By way of background, the towns of Chaplin, Hampton and Scotland make up RSD No. 11.
3. General Statutes § 9-369b, provides 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. Upon investigation, the Commission finds that on June 16, 2016 the Town of Scotland's legislative body approved that a vote by referendum be scheduled for June 23, 2016 pertaining to the dissolution of RSD # 11.
5. The June 23, 2016 referendum in Scotland contained the following question on its official ballot:

*SHOULD THE TOWN OF SCOTLAND SUBMIT AN APPLICATION TO THE BOARD OF EDUCATION OF REGIONAL SCHOOL DISTRICT NO. 11 **FOR INSTITUTION OF THE PROCEDURE FOR DISOLUTION OF REGIONAL SCHOOL DISTRICT NO. 11?***

[Emphasis added.]

6. Allegation One A post on the Town of Scotland's website provided the wrong date pertaining to the June 23, 2016 RSD #11 referendum in violation in General Statutes § 9-369b.

7. The Commission's *standard for review* in applying General Statutes § 9-369b is whether or not the communication contains advocacy. The Commission has consistently concluded that communications that recommend or urge support of, or opposition to, a referendum question, are subject to the restrictions found in General Statutes § 9-369b. In its determination of whether a publicly funded communication advocates the approval or disapproval of a referendum, the Commission considers the communication as a whole, its content, style, tenor and timing. *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).

8. Upon investigation, the Commission finds that the town of Scotland posted the following on its website that served as the basis for Allegation One:

*A referendum is scheduled for June 23rd, Wednesday, 12 noon-8 PM at the PSC on Brook Road to vote on the question of whether the town should initiate a study of dissolution of Regional District 11. Absentee ballots are available from the town clerk.*

The Commission further finds that the above post was available on or about June 17, 2016 on Scotland's town website pertaining to the June 23, 2016. Finally, the Commission notes that June 23, 2016 was indeed a Thursday *not* a Wednesday as indicated by Complainant.

9. In this instance, while the Commission finds that there was an error as to the *day* that the referendum was scheduled to occur, the *date* itself was accurate. Further, the Commission finds that taking the communication as a whole and in light of the Commission's standard of review the communication did *not* contain advocacy for purposes of applying General Statutes § 9-369b.
10. The Commission concludes that the website posting by the Town of Scotland prior to the June 23, 2016 RSD #11 referendum did *not* violate General Statutes § 9-369b and therefore Allegation One is dismissed.
11. Allegation Two *A post on the town's website provide a "misleading" explanatory text pertaining to the RSD # 11 referendum in violation in General Statutes § 9-369b ;*
12. Pertaining to the website post, as detailed in paragraph 9 above, Complainant's claim that it was "misleading" served as a basis for Allegation Two, because it does not accurately set out the "intent and purpose" of the referendum as required by General Statutes § 9-369b.

13. General Statutes § 10-63a provides that

(b) Any two or more towns which are members of a regional school district composed of three or more towns may, pursuant to a vote of the legislative bodies of the respective towns, apply to the regional board of education *to institute procedure for the dissolution of the district as hereinafter provided.*

[Emphasis added.]

14. In response to this complaint and investigation Ms. Nelson explained her reasoning for the post in part:

*In June of this year, Scotland, Hampton, and Chaplin held a referendum on June 23<sup>rd</sup> to ask the public for their permission to initiate the procedure to dissolve the regional school district, as authorized by CGS §10-63a. This statute necessarily leads to CGS §10-63b which outlines the parameters to conduct a study if the referendum is affirmative.*

*The First Selectman requested I change the language on the website to reflect the question that would appear on the referendum ballot, and I complied with that request. The website originally stated it was a referendum to ask whether or not Scotland should conduct a study (as opposed to institute procedure) to dissolve Regional School District 11. Connecticut General Statutes §§ 10-63a and 10-63b were combined in an effort to define what "institute procedure", as stated in §10-63a, meant since many residents had inquired.*

15. The Commission finds that the narrow dispute if Allegation Two lies between: (1) Complainant's view that the June 23, 2016 referendum vote should be characterized as a *vote to dissolve* RSD #11 and (2) Ms. Nelson's view that, pursuant to § 10-63a, the referendum vote should be characterized as a *vote to decide to set the "process" to dissolve* RFD #11 in place.

16. While the Commission declines to weigh in on the detailed requirements of either General Statutes § 10-63a (b) or the dissolution of RSD #11, it finds that Respondent Nelson's characterization of the June 23, 2016 referendum in Scotland reasonable in the context of the aforementioned statute. Moreover, the Commission finds that the communication's tone and tenor did *not* advocate for purposes of applying and concluding violations of § 9-369b.

17. The Commission therefore dismisses Allegation Two because it was not supported by the facts or the law after investigation.

18. Allegation Three *A re-post of the wrong date pertaining the date of the RSD #11 referendum was posted to the town website under "Upcoming Events" in violation in General Statutes § 9-369b.*
19. Upon investigation, the Commission finds that the "re-post" on the Town of Scotland website that served as the basis for Allegation Two appeared under the heading "Upcoming Events" as follows:
- Wednesday, June 22<sup>nd</sup>*  
*Board of Selectman Meeting*
- Thursday, June 23<sup>rd</sup>*  
*Tri-town referendum for dissolution study*
20. The Commission further finds that the above post was available on or about June 20, 2016 on the town's website pertaining to the June 23, 2016 RSD #11 referendum. The Commission notes that it correctly identifies June 23<sup>rd</sup> as a Thursday.
21. The Commission finds, after applying its *standard of review* for advocacy pursuant to General Statutes § 9-369b, that it is not more or less likely that a reasonable person would believe that the above post regarding "Upcoming Events" urges them to vote in a particular manner on the June 23, 2016 RSD #11 referendum.
22. Accordingly, the Commission concludes that the town website post that is subject to Allegation Three pertaining to the June 23, 2016 RSD #11 referendum did *not* contain advocacy in violation of General Statutes § 9-369b. Allegation Three is therefore dismissed.
23. Allegation Four *The "misrepresentations" of the posts on the website and on a sign on the Scotland Town Green were explanatory texts that were not written by the town clerk and approved by the town attorney in violation in General Statutes § 9-369b.*
24. A municipality may authorize an "explanatory text or the dissemination of other neutral printed material" that is prepared by the town clerk and approved by the town attorney. Further, that section requires that the town clerk assure that such explanatory text "...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." *See* General Statutes § 9-369b.

25. More specifically, the Commission finds that General Statutes § 9-369b, sets out the following criteria for explanatory texts:

(a) sets forth the following conditions for such explanatory texts:  
(a) a vote of the municipality's legislative body is needed to authorize it; (b) the municipal clerk must prepare the text and the municipal attorney must approve it; (c) it must specify the intent and purpose of each referendum; and (d) cannot advocate either the approval or the disapproval of the referendum.

26. Upon investigation, the Commission finds that the sign posted on the Scotland town green by the town served as a basis for Allegation Three and indicated:

*PH Study – Referendum Vote – 12 Noon-8PM June 23 –  
SVFD*

The Commission notes that the sign was on the town green on or about June 20, 2016.

27. The Commission, after thorough review and consideration of the criteria for “explanatory texts” pursuant to General Statutes § 9-369b, finds that the website posts and the sign posted on the Scotland town green were *not* explanatory texts as per the parameters of § 9-369b. It follows that the requirements of § 9-369b as they relate to “explanatory texts,” including that they be written by the town clerk and approved by the town attorney, did *not* apply to the website posts and sign under these specific circumstances. The Commission therefore dismisses Allegation Four.

28. After thorough investigation and review, the Commission finds that the communications that are subject to this complaint and investigation neither contained prohibited advocacy based on its standard of review and pursuant to General Statutes § 9-369b, nor procedural violations of § 9-369b pertaining to the production and dissemination of such communications.

**ORDER**

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

That the complaint is dismissed.

Adopted this 14<sup>th</sup> day of September, 2016 at Hartford, Connecticut

  
\_\_\_\_\_  
Anthony J. Castagno, Chairman  
By Order of the Commission