

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Cynthia J. McCorkindale, Bethel

File No. 2016-085

AGREEMENT CONTAINING A CONSENT ORDER

The parties, The Office of the Registrar of Voters and the undersigned authorized representative of the State Elections Enforcement Commission (the "Commission"), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

PARTIES

1. At all times relevant hereto, Matthew Knickerbocker was the First Selectman of the Town of Bethel and a Commissioner of the Bethel Public Utilities Commission.
2. At all times relevant hereto, Richard Straiton was a Selectman in the Town of Bethel Selectman and a Commissioner of the Bethel Public Utilities Commission.
3. At all times relevant hereto, Paul Szatkowski was a Selectman in the Town of Bethel Selectman and a Commissioner of the Bethel Public Utilities Commission.
4. At all times relevant hereto, Deno Guatierei was a Commissioner of the Bethel Public Utilities Commission.
5. At all times relevant hereto, Peter Valenti was a Commissioner of the Bethel Public Utilities Commission.

ALLEGATIONS

6. The Complainant alleges that the Respondents used municipal funds to prepare and distribute a letter that advocated for passage of a referendum concerning bonding of a local project by the Public Utilities Commission ("PUC").¹

LAW

7. General Statutes § 9-369b provides, in relevant part:

¹ Allegations concerning other Respondents shall be addressed in a separate document.

(a) (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.

(b) 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 this section by authorizing an expenditure of state or municipal funds for a purpose which is prohibited by 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.

FACTUAL BACKGROUND

8. In the summer of 2016, officials in the Town of Bethel believed it was necessary to pursue upgrades to the town's water delivery systems. Because these upgrades would require a bond of more than one million dollars, Bethel's Town Charter required the issue be put to a town meeting and referendum.
9. On or around August 18, 2016, Respondent Knickerbocker, who was both the First Selectman and a Commissioner on the PUC by operation of the law, instructed PUC staff to prepare a letter to be duplicated and sent to the public explaining the need for the funding (hereinafter the "Letter"). From the beginning, it was clear that the Letter was to be sent by the PUC. The letter included language favoring passage of the referendum including "the loan will be used to perform essential upgrades to Bethel's public water system" and "will pay for the replacement of . . . a critical facility[.]"

10. The Letter specifically encouraged residents to attend a town meeting on September 6, 2016 and then vote when the issue was adjourned to a referendum, which would be scheduled for September 13, 2016.
11. On August 26, 2016, Kathy Gabis, the PUC employee charged with ensuring the Letter was distributed, received an email from the printer of the Letter, advising her that "It will go in the mail Tuesday after Labor Day... September 7 to hit September 8 and/or 9 OK?" There is no record of any response to this email. The Complainant asserts that she received the Letter on September 9, 2016.
12. Bethel records show that the Letter was paid for out of the PUC's funds, from an account that is kept separate from the Town of Bethel general funds, but were managed by Town of Bethel personnel. The top of the check reads "Town of Bethel Accounts Payable."
13. Despite information and evidence that the letter to the public was to be mailed prior to the Town Meeting, it was not forwarded to the public until the day of the Town Meeting.

Discussion

14. 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.
15. Concerning the advocacy prong, 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. In this case, there is no question as to advocacy. The Letter used language such as, "critical water pumping facility" and "necessary upgrades" to emphasize the need for the project. The Letter further minimized the impact on the voters with language like "There will be no impact on the town budget nor will they affect your property taxes in any way." This language would lead a reasonable person to believe that the communication urged them to vote in favor of the bonding.

17. Whether public funds were used to finance the Letter is a more difficult question in this case. The evidence clearly shows that the Letter was paid for by the PUC. Thus, the question is whether such funds are considered “municipal funds.” The PUC is a municipal corporation in the town of Bethel, formed pursuant to § C7-11 of the Town Charter. The PUC primarily receives their funds from rate payers that utilize the public water system, but can also collect assessments and receive municipal bonds. The Commissioners of the PUC are, by operation of the Bethel Town Charter, the three Selectmen and two members appointed by the selectmen.
18. The Commission has previously held that the funds of similar municipal corporations are public funds for the purposes of the election laws. See *In the Matter of a Complaint by Kevin Poruban, Norwalk*, File No. 2001-199. See also *In the Matter of a Complaint by John Pillar, Groton*, File No. 1997-286 (“It is evident, however, that the fire districts are funded with public funds, which would still warrant an inquiry into whether the prohibition in § 9-369b had been violated”). The Connecticut Supreme Court further endorsed a broad reading of the definition of “municipal funds” finding that the funds of a Regional School District are “municipal funds” for the purposes of General Statutes § 9-369b. *Sweetman v. State Elections Enforcement Comm’n*, 249 Conn. 296, 309-10 (1999).
19. In light of the fact that a majority of the Commissioners of the PUC are the elected selectmen, that the funds are managed and maintained by the town, and that the PUC may receive assessments and bonds, the Commission finds that the funds expended by the PUC were municipal funds.
20. With regard to whether or not the referendum was 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. In this case, the Town voted at the September 6, 2016 Town Meeting to adjourn the issue to a referendum. It was on this date that the referendum was pending. Thus, if the expenditure was made prior to September 6, 2016, the limitations of General Statutes § 9-369b would have no application. In this case, it is clear that it was the intent of the Respondents that the Letter be sent out prior to the September 6, 2016 Town Meeting. This is evidenced by both the timing the letter was prepared and, more importantly, the letter explicitly asks town member to attend the September 6, 2016 meeting.
21. Nevertheless, the evidence indicates that the Letter was not, in fact, sent out until September 7, 2016 and not received by residents until September 9, 2016. The Commission has held that the date a communication is distributed is the date relevant to the analysis of whether an expenditure of public funds was made in violation of General Statutes § 9-369b. See *In the Matter of a Complaint by Kirk Carr, Clinton*, File No. 2014-054.

22. Thus, while it may have been the intention of the Respondents to distribute the Letter prior to the Town Meeting, the Letter was not, in fact, distributed until after that date. Accordingly, the Letter was distributed while the referendum was pending.

23. As the Letter was authorized and paid for by the PUC while a referendum was pending, the Commission finds that each commissioner is liable for violating General Statutes § 9-369b.²

TERMS OF GENERAL APPLICATION

24. The Respondents admit to all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.

25. The Respondents waive:

- 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 to contest the validity of the Order entered into pursuant to this Agreement.

26. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.

27. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.

28. This Agreement may be signed in counterparts.


² The Complaint also lists Town Counsel Martin Lawlor as a Respondent. However, nothing in the Complaint or subsequent investigation reveals that Mr. Lawlor had any involvement in the distribution of the Letter. Accordingly, because there is no evidence linking Martin Lawlor to the transaction, the allegations against him are dismissed.

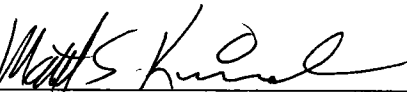
ORDER

It is hereby ordered that the Respondents shall henceforth strictly adhere to the requirements of General Statutes § 9-369b.

For the State of Connecticut:

Respondent Knickerbocker:

By: 
Michael J. Brandi
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St.
Hartford, CT 06106


By: 
Matthew S. Knickerbocker
10 Colonial Drive
Bethel, CT 06801

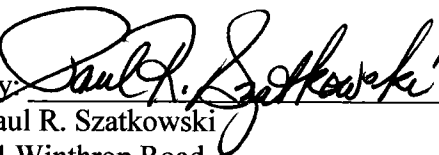
Dated: 4/13/17

Dated: 4/4/2017

Respondent Straiton:

Respondent Szatkowski:

By: 
Richard Straiton
7 Codfish Hill Road
Bethel, CT 06801

By: 
Paul R. Szatkowski
24 Winthrop Road
Bethel, CT 06801

Dated: 4/4/2017

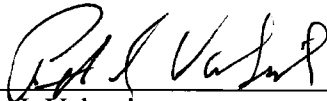
Dated: 04/04/2017

Respondent Gualtieri:

By: 
Deno S. Gualtieri
26 Codfish Hill Road
Bethel, CT 06801

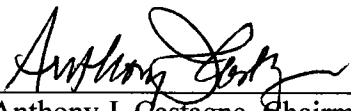
Dated: April 7, 2017

Respondent Valenti:

By: 
Peter J. Valenti
7 Hoyt Road
Bethel, CT 06801

Dated: 4/6/2017

Adopted this 19th day of April, 2017 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

APR 13 2017

ENFORCEMENT COMMISSION