

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Christine Campbell,
Thompson

File No. 2017-019

FINDINGS AND CONCLUSIONS

Complainant Christine Campbell filed this Complaint pursuant to General Statutes § 9-7b. The Complainant alleged violations of General Statutes § 9-369b by Town of Thompson Superintendent of Schools, Dr. Michael W. Jolin. After its investigation, the Commission makes the following findings and conclusions:

1. Complainant alleged that the Thompson Superintendent of Schools Jolin violated the provisions of Section 9-369b by expending public funds to prepare and distribute a postcard advocating support for a May 25, 2016 municipal budget referendum in Thompson. Complainant alleged that the aforementioned postcard was issued by Thompson Public Schools on May 11, 2016, while the town budget referendum was pending.
2. By way of background, a legal notice was issued in Thompson on May 6, 2016 indicating that the annual town meeting would be held on May 16, 2016, and that the town and school budget referendum would follow on May 25, 2016.
3. Respondent has no prior history with the Commission. Complainant filed a companion complaint in File No. 2017-020 also alleging violations of General Statutes § 9-369b by Superintendent Jolin and Thompson Public Schools that is treated in a separate disposition.
4. Thompson Public Schools does not dispute that they produced and disseminated the postcard that is subject of this complaint and investigation, which is excerpted as follows:

What will happen if the proposed budget does not pass?

If the proposed budget does not pass at Town Referendum, it will have a devastating impact on the schools. Sports and after school programs will be cancelled, teachers and support staff will be laid off and services to students will be drastically reduced. The current budget is at the bare minimum to provide services to students.

5. General Statutes § 9-369b provides in pertinent part:
(a)(1)(A) Except as provided in subdivision (2) of this subsection, any municipality may, by vote of its legislative body, authorize the preparation, printing and dissemination of concise explanatory texts or other printed material with respect to local proposals or questions

approved for submission to the electors of a municipality at a referendum. For the purposes of this section, in a municipality that has a town meeting as its legislative body, the board of selectmen shall be deemed to be the legislative body of such municipality....

...
(C) *Any such other printed material* shall be prepared by the person or persons so authorized by the legislative body, *shall not advocate either the approval or disapproval of the proposal or question* and shall be subject to the approval of the municipal attorney.

...
(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.

[Emphasis added.]

6. Upon investigation, the Commission finds that the May 6, 2016 legal notice of the May 16, 2016 annual town meeting and May 25, 2016 referendum in Thompson was approved by the Board of Selectman and published by the Town Clerk.
7. Further, the Commission finds that several purposes for that annual town meeting were for the Thompson Board of Selectmen to consider and act upon: (1) a resolution to set the amount of the school budget; (2) adoption of the specific question to appear on the ballot regarding the school budget; and, (3) a motion to adjourn to a referendum on May 25, 2016 that included the ballot question regarding the school budget.
8. The Commission has historically stressed that in determining whether the prohibition in § 9-369b applies to an expenditure the “threshold question” is “whether the referendum was ‘pending’ at the time of the public expenditure.” *See In the Matter of a Complaint by David w. Bolton*, Union File No. 2007-186.

9. Furthermore, the Commission has in prior cases determined 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. Karhl*, Old Lyme, File No. 2007-185; *Complaint by Kirk Carr*, Clinton, File No. 2014-053; and *Complaint by Matthew Paulson*, Bethel, File No. 2015-030.
10. The Commission finds, after investigation, the “motion to adjourn to referendum” was not approved until the May 16, 2016. The Commission further finds that the conclusion of the May 16, 2016 Thompson annual town meeting was “last legal condition” required to trigger the May 25, 2016 referendum. Finally, the Commission finds that in this instance the “last legal condition” necessary to trigger the Thompson May 25, 2016 budget and school referendum occurred *after* the production and dissemination of the postcard on May 11, 2016.
11. The Commission concludes therefore that the budget and school referendum was not pending at the time Thompson Public Schools produced and disseminated the postcard, as detailed herein, and therefore the prohibition on the expenditure of public funds contained in General Statutes § 9-369b did not apply. See *Bolton, Karhl, Carr and Paulson infra* (where the Commission indicates that in order to apply § 9-369b, the last legal condition to ensure that a referendum will occur must be supported by the facts after investigation).
12. It is concluded consequently, that the production and dissemination of the post card that serves as the basis of this complaint did not violate General Statutes § 9-369b because that section and its prohibitions, under the narrow and specific circumstances set out above, were not yet applicable. The allegation is therefore dismissed.

ORDER

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

That the Complaint be dismissed.

Adopted this 20th day of September 2017 at Hartford, Connecticut



Anthony J. Castagno, Chairman
By Order of the Commission