

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Christine Campbell,
Thompson

File No. 2017-020

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between the Thompson Public Schools (hereinafter "Respondent"), acting through the Superintendent of Schools, Melinda Smith, 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.¹ In accordance herewith, the parties agree that:

1. Complainant alleged that Respondent violated the provisions of Section 9-369b by using the Thompson Public School's "One Call" system on three occasions to disseminate automated phone messages that advocated for the town and school budget referendum to be held in Thompson on June 9, 2016.
2. It is undisputed that these calls were made on a community notification system to urge a vote at the June 9, 2016 referendum but argued that the content was identified as being from the PTO and that the call system was also paid for by the PTO. Further, Respondent admits that the messages incorporated the benefits of passage versus the negative impacts on students and schools of the budget cuts resulting in the failure of the proposed budget.²
3. 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

¹ Ms. Smith began as Superintendent of Schools on July 1, 2017. Although the acts at issue occurred before her arrival, she is the appropriate party to enter into this agreement on behalf of the Thompson Public Schools.

² Attached are transcripts of the three messages that form the basis for Complainant's allegations and are the subjects of this complaint and investigation.

as its legislative body, the board of selectmen shall be deemed to be the legislative body of such municipality.

...

(3) (A) For purposes of this subdivision, "community notification system" means a communication system maintained by a municipality that is available to all residents of such municipality and permits any resident to opt to receive notifications of community events or news from such municipality via electronic mail, text, telephone or other electronic or automated means.

(B) At the direction of the chief elected official of a municipality or, with respect to a referendum called for by a regional school district, the request of the chairperson of the regional school board of education having jurisdiction over such municipality included in such regional school district, a municipality that maintains a community notification system may use such system to send or publish a notice informing all residents enrolled in such system of an upcoming referendum. Such notice shall be limited to (i) the time and location of such referendum, (ii) a statement of the question as it is to appear on the ballot at the referendum, and (iii) if applicable, the explanatory text or other material approved in accordance with subdivision (1) or (2) of this subsection. *Any such notice shall not advocate the approval or disapproval of the proposal or question or attempt to influence or aid the success or defeat of the referendum.* [Emphasis added.]

4. Upon investigation, the Commission finds that an invoice in the amount of \$625.66 from "One Call Now" was issued on November 28, 2016 to the Mary R. Fisher Elementary School, PTO in Thompson for services from January 13, 2017 to January 12, 2018. Further, a check in the amount of \$625.66 was issued to "One Call Now" on the account of "Mary R. Fisher, PTO" on December 12, 2016 for the aforementioned "renewal of services."³

³ The Commission notes that above billing and payment information was provided in response to this complaint by counsel for Thompson Public schools. It illustrates the approximate annual costs for "One Call Now," which is the telephone notification system that is used by Thompson Public Schools. For its part, Thompson Schools notes that the

5. Counsel for Respondent, on behalf of Thompson Public Schools, in response to this complaint and investigation indicated:

The [School] District admits, however, that it had some role in the crafting of these recordings. More specifically, the District hired an outside consultant ... to assist it in regard to communications, including communications relating to the budget process for the 2016-2017 school year. [The consultant] suggested language for the phone calls, and that suggested language was provided to the PTO. ... Accordingly and to the extent the District's limited involvement was a violation of § 9-369b, it was an unintentional violation by the District.

6. After investigation, it was found that a June 1, 2016 town meeting adjourned to a June 9, 2016 budget referendum that included questions on the 2017 town and school budgets. Further, the investigation indicated that three automated voice messages were delivered on June 3, 6, and 8, 2016, which were *after* the adjourned town meeting and while the referendum was pending.
7. The Commission has previously determined that compliance with the procedural requirements of § 9-369b is the exclusive method by which a municipality may issue and fund explanatory texts concerning pending referendum question and hereby applies that same reasoning to regional school boards. See Complaint of Valerie Friedman, File No. 2002-160; *Complaint by Walther Grunder, et al*, File No. 1998-256; *Complaint by Barbara Stambo; et al*; File No. 1996-227; *Complaint by Donald Hassinger*, File No. 1994-104; *Complaint by G. Wilbur, et al*, File No. 1994-133.
8. 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 Section 9-369b.*" *Complaint by Jennifer Iannucci, Bridgewater*, File No. 2006-166. Moreover, the

telephone notification system was "paid for by the Thompson Parent Teacher Organization," and stresses that it is not "paid for by [Thompson] Board of Education Funds."

Commission has historically concluded that communications which urge a particular result, either by express wording of advocacy or when considered as a whole, would make the ordinary reasonable person believe that a particular result is urged, constitute advocacy. *Complaint by Marie Egbert*, Hebron, File No. 2010-056. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. *See also Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).

9. Finally, the Commission has found that, “stated threats of program cuts and dire consequences of failing to approve the referendum, as well as statements of need and justification ... constitute implied advocacy.” *Complaint by Tina LaPorta*, East Windsor, File No. 2005-171; *See also Complaint of Valerie Friedman*, Washington, File No. 2002-160 and *Complaint of Michael Doyle*, New London, File No. 2003-238.
10. After investigation, the Commission finds that the automated telephone message contained content that warned of the negative consequences for school programs if the June 9, 2016 budget did not pass. Further, in analyzing the automated voice messages that included content identifying them as being from the PTO and urging a vote in support of Thompson Public Schools, the Commission finds that a reasonable person could conclude, as alleged, that they contained advocacy for purposes of § 9-369b.
11. The Commission concludes therefore that the June 3, 6 and 8, 2016 automated voice messages, which were designed by a consultant hired at public cost to promote and provide messaging for the 2017 Thompson town and school budget while the June 9, 2016 referendum was pending, did not satisfy the requirements of General Statutes § 9-369b and its prohibition against advocacy.
12. Further, the Commission concludes that the aforementioned voice messages contained content that was impermissible in light of the limited scope and authority provided by Section 9-369b, which governs the use of a community notification system to reference the pendency of referendum.

13. The Respondent admits all jurisdictional facts and agree that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b -56 of the Regulations of Connecticut State Agencies.
14. It is understood and agreed that this agreement will be submitted to the Commission at its next available meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission by any party in any subsequent hearing, if the same becomes necessary.
15. The Respondent waives:
 - (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 contest the validity of the Order entered into pursuant to this agreement.
16. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth Respondent and the Thompson Board of Education shall strictly comply with the requirements of General Statutes § 9-369b.

Respondent:

For the State of Connecticut:

BY: Melinda A. Smith
Melinda Smith M.Ed.,
Superintendent of Schools
Thompson Public Schools
785 Riverside Drive
North Grosvenordale, Connecticut

Dated: 8/29/17

BY: Michael J. Brandi
Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Agent of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 8/30/17

Adopted this 20th day of Sept, 2017 at Hartford, Connecticut by vote of the Commission.

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