

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Greg Mullen, New Milford

File No. 2017-028

AGREEMENT CONTAINING A CONSENT ORDER

The parties, David Gronbach of New Milford 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:

ALLEGATIONS

1. The Complainant in this matter alleges that the Respondent violated General Statutes § 9-369b by using community notification systems to improperly communicate to residents concerning a referendum.

LAW

2. General Statutes § 9-369b (a) (3) provides:

(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.

(C) Other than a notice authorized by this subdivision, no person may use or authorize the use of municipal funds to send an unsolicited communication to a group of residents regarding a referendum via electronic mail, text, telephone or other electronic or automated means for the purpose of reminding or

encouraging such residents to vote in a referendum, provided such prohibition shall not apply to a regularly published newsletter or similar publication.

(D) An Internet web site maintained by a municipality or a regional school district shall not be deemed a community notification system for the purposes of this subdivision, but may contain a notice with the information described in subparagraph (B) of this subdivision.

FACTUAL BACKGROUND

3. At all times relevant hereto, the Respondent was the Mayor of the Town of New Milford.
4. On May 5, 2017, the Town of New Milford (the "Town") noticed a referendum concerning the town's budget to be held on May 16, 2017.
5. On May 15, 2017, the New Milford Public Library sent an email to the library's email subscribers. The email stated:

Save the Date

It's time to vote for the Town and
School budgets, Come out and
Support New Milford!

Tuesday, May 16
Polls are Open from 6am until 8pm

6. Sometime prior to May 15, 2017, the Director of the New Milford Public Library was contacted by an employee of the Mayor's office and asked to send out a notification of the Town-wide budget referendum. Thereafter, the Library Director requested that the New Milford Public Library Technology Coordinator send out a communication via their Constant Contact email distribution list. At no point was the Technology Coordinator directed to use particular language or words in the communication.
7. On May 15, 2017, residents subscribed to the Town's CTAlert system received a text message that stated:

Fwd: S: New Milford Budget Vote
This is Mayor Gronbach
reminding you that Tuesday May
16 is New Milford's budget
referendum. I encourage
everybody to vote on this

budget. Thank you. Reply with
YES to confirm.

8. Sometime prior to May 15, 2017, the Respondent contacted the Town's police department and directed them to send this text message, as they are the department tasked with administering the Town's CTAlert system. The statement "Reply with YES to confirm" was not part of the message that the Respondent directed the police department to send, but rather was text automatically added to all text messages sent by that system, unless the internal settings of the system are changed.
9. On May 15, residents subscribed to the Town's CTAlert system received a prerecorded telephone call that stated, "Hello, this is Mayor Gronbach reminding you that Tuesday, May 16th is New Milford's Budget referendum. I encourage everybody to vote on this budget tomorrow. Thank you." At some time prior to May 15, 2017, the Respondent contacted the Town's police department and directed them to send this phone message, as they are the department tasked with administering the Town's CTAlert system.

DISCUSSION

10. The allegations in this matter implicate the provisions of General Statutes § 9-369b, which concerns the activities of public officials in association with a referendum. Such provisions are not implicated unless the referendum is "pending." The Commission has held that a referendum is 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 Roger Wise, et al, New Fairfield*, File No. 2009-003.
11. In this case, the final legal requirement to hold this referendum was the public notice. The Town noticed the instant referendum on May 5, 2017. Accordingly, the email, text message, and phone call were all made after the referendum was pending.
12. General Statutes § 9-369b (a) (3) (A) defines "community notification system" to be "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." The CTAlert system used to send the text message and recorded audio message are the text book example of such a system. Under the CTAlert system, as used in New Milford, residents can opt to receive telephone and text message concerning local emergencies and community notices. Similarly, the library email system which was used to send the email concerning the instant referendum also falls within the definition of community notification system. According to the affidavit of the New Milford Public Library Director Sally Tornow, "NMPL utilizes an email distribution system known

as “Constant Contact” to distribute regular public service announcements to Library patrons and interested members of the public and has done so for several years.” (Tornow Aff. at ¶3). Accordingly, all communications at issue in this case were made via a community notification system while a referendum was pending.

13. General Statutes § 9-369b (a) (3) (A) provides that a community notification system may not be used to disseminate information about a referendum unless: (1) it is at the direction of the elected official of a municipality; (2) the communication is 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” General Statutes § 9-369b; and (3) the communication does not advocate for or against the passage of the referendum.
14. It is undisputed that the Respondent directed each communication at issue in this matter to be transmitted, though the Respondent did not direct the specific content of the email sent to the library’s email subscribers.
15. Once the Commission determines that the communications were at the direction of the elected official of the municipality, the Commission must address is whether the communications were 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” General Statutes § 9-369b. It is the recommendation of counsel that the Commission find that the communications did not.
16. With regard to the email sent from the Town library, the communication included the statement “Come out and Support New Milford!” This statement is not included in any of the categories of information permitted to be included in a community notification system message concerning a referendum pursuant to General Statutes § 9-369b (a) (3).
17. Similarly, the text message included the statement “I encourage everybody to vote on this budget” and the telephone message included the statement, “I encourage everybody to vote on this budget tomorrow.” Neither of these statements are included in the categories of information permitted to be included in a community notification system message concerning a referendum pursuant to General Statutes § 9-369b (a) (3).
18. As each communication at issue contained statements outside of those permitted by General Statutes § 9-369b (a) (3) (B), each communication constituted a violation of that provision. The Commission need not address whether the communications contained advocacy for or against the referendum as the provision limiting community notification system messages

concerning referenda is a separate and distinct test from whether or not such communications advocate.¹

19. The Expenditure of public funds to promote a referendum is a matter the Commission takes seriously, and exposes the Respondent to a civil penalty of up to twice the inappropriate contribution or \$2,000, whichever is greater. *See In the Matter of a Complaint by Kirk Carr, Clinton*, File No. 2014-054; *In the Matter of a Complaint by Kirk Carr, Clinton*, File No. 2015-031; General Statutes § 9-7b. The Commission has further authorized a Consent Order with no civil penalty when similar violations did not contain advocacy. *See In the Matter of a Complaint by Alex Ruskewich, Wilton*, File No. 2014-118B; *In the Matter of a Complaint by O. Curt Noel, Wilton*, File No. 2015-001.
20. The Respondent has no prior history with the Commission, has been fully cooperative with the Commission's investigation, and has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

TERMS OF GENERAL APPLICATION

21. The Respondent admits 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.
22. 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 to contest the validity of the Order entered into pursuant to this Agreement.
23. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondent regarding this matter.


¹ While not necessary to the conclusion of this case, the inclusion of the statement "Come out and Support New Milford!" in communications which were not allowed to contain advocacy is concerning to the Commission. As such, the Commission cautions against the use of this or similar language in neutral communications in the future.

24. 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.


ORDER

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

For the Respondent:

By: 
David Gronbach
10 Main Street
New Milford, CT 06776

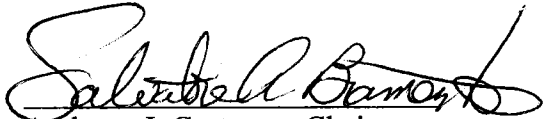
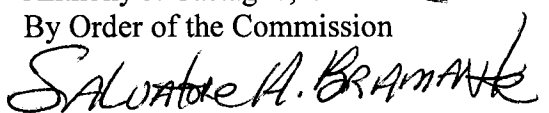
For the State of Connecticut:

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

Dated: 11/28/17

Dated: 12/1/17

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


Anthony J. Castagno, Chairman
By Order of the Commission


RECEIVED
STATE ELECTIONS

DEC 0 1 2017

ENFORCEMENT COMMISSION