

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

In the Matter of a Complaint by Diane Gagnon,  
Hampton

File No. 2017-074

**FINDINGS AND CONCLUSIONS**

Complainant Diane Gagnon filed this Complaint pursuant to General Statutes § 9-7b. The Complainant alleged violations of General Statutes § 9-369b by Superintendent of Regional School District No. 11 (hereinafter "Region 11"), Mr. Kenneth Henrici. After its investigation, the Commission makes the following findings and conclusions:

1. Complainant alleged that the Region 11 Superintendent violated the provisions of Section 9-369b by expending public funds to prepare and distribute posters prior to October 18 and October 24, 2017 public hearings pertaining to the "Addition/Withdrawal of Grades Report."
2. Complainant alleged that the aforementioned posters were issued by Region 11 at public cost, used the Region 11 school colors and mascot logo and advocated a position on "local questions and proposals" in violation of General Statutes § 9-369b.
3. Respondent has no prior history with the Commission. Region 11 does not dispute the content of the posters but denies that they advocate for a referendum in violation of General Statutes § 9-369b. The fact that the posters were made at a public cost of approximately \$250.00 is not at issue.
4. By way of background, the posters in question contained pirate logos with the inscription "Go Pirates!" at the four corners and read as follows:  

*Public Hearings – Addition/Withdrawal of Grades Report –  
10/18 and 10/24 at 7:00 p.m. – Parish Hill Auditorium*
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 October 18 and 24, 2017 public hearings in Hampton pertained to the August 21, 2017 submission of a *Final Report of the Study Committee for Addition/Withdrawal of Grades* by Region 11. That report recommended that Region 11 add certain grades of students from the towns of Chaplin, Hampton and Scotland. Further, the Commission finds that a November 16, 2017 Hampton “member town” referendum was held pursuant to the Region 11 report and as provided by municipal statutes.
7. 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.
8. 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. Karhrl*, 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.

9. The Commission finds, after investigation, that the fact the referendum was pending was not in dispute by the parties and was being held based on the Region 11 process for considering its committee reports regarding addition of students as detailed herein. Therefore, the Commission finds that its analysis and application of General Statutes § 9-369b in this specific instance would be to determine whether the posters made at public costs contained “advocacy” for the November 17, 2017 referendum in Hampton and therefore were prohibited by that section.
10. 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 and *Complaint by Linda C. Fasake*, Hampton, File No. 2016-049.
11. Further, the Commission has 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.” See *Complaint by Marie Egbert*, Hebron, File No. 2010-056; and *Fasake*. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing. See *Egbert and Fasake*; and also *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296 (1999).
12. Under these specific facts and circumstances, the Commission agrees with Respondent’s reliance on Commission precedent and the claim that “the mere inclusion of a logo featuring the [Region 11] pirate mascot and green and white colors is insufficient to infer referendum advocacy on the part of Region 11.” See *Complaint by Patrick S. Dwyer*, Bridgewater, File No. 2014-049 (where the Commission found that the inclusion of a regional school districts architectural pictures and floor plans in a newsletter and pamphlet prior to a referendum was not sufficient to constitute advocacy for purposes of General Statutes § 9-369b).
13. The Commission consequently concludes that the production and dissemination of the posters that serves as the basis of this complaint did not violate General Statutes § 9-369b because the content of those printed materials would not, when taken as a whole and based on their timing and tenor, lead the ordinary reasonable person to conclude that they urged a particular result at the November 16, 2017 Hampton town referendum.
14. The Commission concludes that General Statutes § 9-369b and its prohibitions, under these specific facts and circumstances, were not violated. 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 20<sup>th</sup> day of December 2017 at Hartford, Connecticut

*Salvatore A. Bramante*  
Salvatore Bramante  
~~Anthony J. Castagno, Chairman~~  
By Order of the Commission