

JUL 0 2:2018

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Shawn P. Murphy,
North Stonington

File No. 2017-088

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Peter L. Nero, Town of North Stonington Superintendent of Schools (hereinafter "Respondent") 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. In accordance herewith, the parties agree that:

1. Complainant alleged that Respondent violated the provisions of § 9-369b by authorizing the dissemination of a flyer printed by the North Stonington Parent Teacher Organization ("NSPTO") to parents of school children by using children as couriers.
2. Complainant alleged that this flyer advocated for the approval of the 2017-2018 school budget vote on December 18, 2017. The Complainant asserted that the approval of the dissemination of the flyer to parents of school children by school teachers occurred "...after the Town Meeting and Referendum on the school budget had been properly noticed."
3. The flyer that is subject of this complaint and investigation is excerpted as follows:

There will be a very important vote on the 2017- 2018 school budget to be held on Monday, December 18th -

Your vote to approve the budget is very important! Your vote counts to keep our schools amongst the best in Connecticut!

This vote of approval is important as it will also affect next year's budget which could result in significant cuts or elimination of education programs, textbooks, technology, music, art, drama and sports!

[Original emphasis.]

4. 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.

(B) Each such explanatory text shall be prepared by the municipal clerk and shall specify the intent and purpose of each such proposal or question. Such explanatory text shall not advocate either the approval or disapproval of the proposal or question. The municipal clerk shall cause such question or proposal and such explanatory text to be printed in sufficient supply for public dissemination and shall also provide for the printing of such explanations of proposals or questions on posters of a size to be determined by said clerk. At least three such posters shall be posted at each polling place at which electors will be voting on such proposals or questions. Any posters printed in excess of the number required by this section to be posted may be displayed by said clerk at the clerk's discretion at locations which are frequented by the public. The explanatory text shall also be furnished to each absentee ballot applicant pursuant to subsection (d) of section 9-140. Each such explanatory text shall be subject to the approval of the municipal attorney.

(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.

...

(3) (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.

...

(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.]

5. After investigation, the Commission finds that on December 1, 2017 the North Stonington Board of Selectman, at a special town meeting, approved sending the Board of Education budget to referendum. That referendum included a question regarding approval of the Board of Education budget for fiscal year July 1, 2017 through June 30, 2018, in the amount of \$12,875,068. Subsequently that budget referendum passed with 546 “Yes” votes to 367 “No” votes.
6. Further, the flyer was provided by the NSPTO to the Respondent who had it delivered to the teachers’ mailboxes. There were approximately 750 flyers delivered for dissemination one week prior to the December 18, 2017 referendum and after the December 1, 2017 meeting that set the referendum to follow an adjourned town meeting.
7. In response to this complaint and investigation, Respondent admits that he authorized the use of school mailboxes and the dissemination of flyers by the teachers via students as couriers. Respondent claimed that, while he was aware of the prohibition of the use of public funds to advocate for a referendum in General Statutes § 9-369b, he was not aware of when the moratorium for notices was triggered by a pending referendum.
8. Further, Respondent showed contrition and indicated that he has 42 years as a public educator in Rhode Island and Connecticut, six of which as Superintendent of Schools in North Stonington, in which he has never received such a complaint. In response to Lead Legal Investigator he wanted to “begin with an apology.” Respondent asserted that if he “*violated any election regulation [he] did it without any intent or malice.*”
9. According to Respondent, his intent was to assist the NSPTO in “*...expressing its concerns regarding adopting a successful education budget which [he realized] would benefit the district and substantially reduce the necessity of fundraising by the PTO.*” Respondent reiterated his apology at the end of his written response and assured the Commission that he was “taking complete responsibility” for his actions. Finally, Respondent assured the Commission “that it will never happen again.”

General Statutes and “Pending” Referenda

10. The Commission has consistently held 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 and *Complaint by Matthew Paulson*, Bethel, File No. 2015- 030. In this instance, there is no dispute that the dissemination of the flyers through public school teachers and their mailboxes occurred while the Board of Education budget referendum was pending in North Stonington. Therefore in applying § 9-369b, the Commission must determine whether the flyer was at public cost and whether they contained advocacy and therefore prohibited by that section.

School Children as Couriers and General Statutes § 9-369b

11. The Commission has consistently warned that the use of school children as couriers amounts to a public expenditure for purposes of General Statutes § 9-369b. This warning appears in the Commission publications regarding referenda spending as well as its FAQs for the use of public funds while a referendum is pending. *See Prohibition on Expenditure of Public Funds Relating to Referenda* (attached).
12. Moreover, the Commission has a long history in applying this standard in enforcement matters, making clear in 1989 that “...the use of schoolchildren as couriers for the dissemination for any communication which advocates a position on a referendum is not permitted by Section 9-369b or Chapter 150 [now 155], General Statutes.” *See Complaint by Ethel Standish*, Windham, File No. 89-201; *Complaint by Mathew Paulsen*, Bethel, 2002-157 (citing this standard and specifying that notices sent home to parents via school children should be limited to the time, date, place and subject matter of the referendum); and, *Complaint by Harry Krazia, Jr.*, Farmington, 2007-187 (citing and affirming the standard set-out in *Standish*).

Elements of Complainant’s Allegations

13. *Distribution Without the Authorization of the Board of Selectman*

The investigation revealed that the Respondent did not receive the authorization of the Board of Education to publish information regarding the referendum, which would have been required pursuant to General Statutes § 9-369b. Authorization by the Board of Selectman is required when a Town (as opposed to a Superintendent of Schools) generally approves public expenditures while a referendum is pending.

14. *The Flyer Advocated for Approval of the School Budget*

It is plain, as excerpted above, that the flyer in question contained express advocacy for the passage of the Board of Education 2017-2018 budget by approval of the December 18, 2018 budget referendum.

15. *The Flyers Were Not Prepared by the Municipal clerk and in Insufficient Numbers*

In this instance, the Municipal Clerk did not approve the text of the printed materials authorized at public cost and disseminated while a referendum was pending. General Statutes § 9-369b would require that under certain circumstances but the determination of this issue, or whether there was a sufficient supply for the public is not necessary to conclude a violation under these circumstances.

16. *Municipal Staff/Funds were Used to Pay for the Distribution of the Flyers*

Commission publications and precedent plainly establish that for purposes of the application of General Statutes § 9-369b the use of school children as couriers to advocate for a referendum is prohibited and reaches the threshold of an expenditure of public funds for statutory purposes.

17. The Commission has previously concluded that communications that advocate a particular result, either expressly or when considered as a whole, and make an ordinary reasonable person understand that the communication advocates for a particular result, will be deemed to constitute advocacy.

18. In this instance the subject mailer contained express advocacy pertaining to the approval of a pending referendum that is specifically prohibited by General Statutes § 9-369b. That the flyer was distributed while a referendum was pending is not disputed. That the flyer was disseminated by school teachers and students as couriers, and thereby at public cost, was confirmed by investigation.


19. Therefore, the Commission concludes that Respondent violated General Statutes § 9-369b, by authorizing the dissemination of flyers advocating support for municipal school budget referendum. The use of teachers mailboxes and the use of schoolchildren as couriers, to disseminate the flyer that expressly advocated for the approval of the December 18, 2017 budget referendum in North Stonington was a violation of § 9-369b.
20. 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.
21. 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.
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 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 Respondent pertaining to this matter.


ORDER

IT IS HEREBY ORDERED that henceforth Respondent and the North Stonington Public Schools shall strictly comply with the requirements of General Statutes § 9-369b.

The Respondents:

For the State of Connecticut:


BY: 
Peter L. Nero
Superintendent of Schools
North Stonington Public Schools
297 Norwich Westerly Road
North Stonington, Connecticut

BY: 
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: 61 26 118

Dated: 7/2/18

Adopted this 18th day of July, 2018 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission