

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Thomas P. Mazzarella,
Hampton

File No. 2018-090

FINDINGS AND CONCLUSIONS

Complainant Thomas P. Mazzarella filed this Complaint pursuant to General Statutes § 9-7b. The Complainant alleged violations of General Statutes § 9-369b by Wethersfield Town Council member Mary Breton. After its investigation, the Commission makes the following findings and conclusions:

1. Complainant alleged that the Mary Breton violated the provisions of Section 9-369b by advocating for passage of Question #3 at the November 6, 2018 election in Wethersfield.
2. More specifically, complainant alleged that "acting as a town official," Ms. Breton violated General Statutes § 9-369b when she advocated for a pending ballot question at a October 15, 2018 public meeting at Wethersfield Council Chambers; which included a room full of residents, was broadcast on the community access channel and was available to anyone who had access to the internet.
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 as its legislative body, the board of selectmen shall be deemed to be the legislative body of such municipality....
 - ...
 - (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.]

4. By way of background, there is no dispute that a ballot question for the November 6, 2018 election in Wethersfield was pending at the time of the October 15, 2018 public meeting. Further, Ms. Breton does not deny that she advocated for Question #3 at such meeting.
5. Therefore, the Commission finds that its analysis and application of General Statutes § 9-369b turns on whether Ms. Breton's comments at the public meeting in support of a ballot question constituted a public expenditure for purposes of applying General Statutes § 9-369b.
6. After investigation, the Commission finds that the statements by Council Member Breton in support of a November ballot question were made during a "public and council comment" portion of the meeting that appeared on the October 15, 2018 agenda. Further, the Commission finds that there is ample recorded evidence that multiple individuals spoke on the issue that was subject of the ballot question; including the Complainant and Ms. Breton.
7. Finally, there was no indication after investigation that the public was restricted from participating in such part of the public meeting or that any supplemental advocacy materials were provided by Ms. Breton when she shared her opinions were regarding the upcoming November 6, 2018 ballot questions in Wethersfield.
8. The Commission has consistently concluded that where a public official makes comments at a regularly scheduled town meeting in support or opposition to a proposed referendum or ballot question, such public comments do not constitute a public expenditure simply because they are made by a public official. *See Complaint of George A. Ruhe*, Wethersfield, File No. 2012-045.
9. Moreover, the Commission does not construe General Statutes § 9-369b to preclude elected officials from freely discussing public issues and business that appear on meeting agendas. *See Complaint by Jesse Haskill*, Coventry, File No. 2005-264 (no violation found where a statement of advocacy on a pending referendum question was made by election official where item was on regularly published meeting agenda) and *Complaint by Arthur Screen*, Plainville, File No. 2005-267 (No violation found where a statement of advocacy on a pending budget referendum was made by Board of Education member at a regularly scheduled public meeting in which the sole agenda item was for public discussion of upcoming budget items).


10. Consistent with the above analysis, the Commission finds that because a public official shares their views about a ballot question at a public meeting is not in and of itself enough to cause a public expenditure for purposes of General Statutes § 9-369b. That the public forum is available on-line or via community access television does not change this result.
11. The Commission consequently concludes that the fact that a public official comments or speaks during the public comment portion of a public town meeting to advocate for a pending ballot question, as detailed herein, do not amount to a public expenditure for purposes of applying General Statutes § 9-369b.
12. The Commission concludes therefore that General Statutes § 9-369b and its prohibitions governing public expenditures, under these narrow and specific facts, were not violated. Complainant's 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 February 2019 at Hartford, Connecticut


~~Anthony J. Castagno, Chairman~~
By Order of the Commission
Salvatore Bramante - Vice Chair