

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Jonathan E. Tarrant, et al., Litchfield

File No. 2018-119

FINDINGS AND CONCLUSIONS

The Complainants, Jonathan Tarrant and Paul Rosenberg, originally brought this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Respondent John Langer sent a flier to residents in Litchfield concerning an upcoming referendum without including proper attribution and without properly reporting the related expenditures. The following are the Commission's findings of fact and conclusions of law:

1. On November 6, 2018, the Litchfield Board of Selectman voted to send two questions to a public meeting and referendum for consideration. The questions concerned expenditures related to the former county court house and the potential sale of a school building and related property.
2. On December 5, 2018, the Litchfield Town Clerk issued a Notice of Special Town Meeting Town of Litchfield to Be Held on December 11, 2018 (the "Special Town Meeting") and a Referendum Vote on December 19, 2018 (the "Referendum").
3. The notice of the Special Town Meeting and the Referendum (the "Notice") stated that the following items, among other things, would be considered for adjournment to referendum.

To consider and act upon the resolution entitled "RESOLUTION ACCEPTING THE DONATION OF THE PROPERTY KNOWN AS THE LITCHFIELD COUNTY COURT HOUSE AT 15 WEST STREET, APPROPRIATING \$7,600,000 TO RENOVATE THE COURT HOUSE FOR USE AS A NEW TOWN OF LITCHFIELD TOWN HALL, AND AUTHORIZING THE ISSUANCE OF \$7,600,000 BONDS OF THE TOWN TO MEET SAID APPROPRIATION AND PENDING THE ISSUANCE THEREOF THE MAKING OF TEMPORARY BORROWINGS FOR SUCH PURPOSE". ("Question 1")

To consider and act upon the resolution entitled "RESOLUTION AUTHORIZING THE SALE OF THE BANTAM SCHOOL PROPERTY AT 80 DOYLE ROAD, BANTAM (ASSESSOR'S M/B/L 167/72/124) TO THE LITCHFIELD HOUSING TRUST, INC. FOR THE PURPOSE OF CREATING AFFORDABLE HOUSING, SUBJECT TO THE BANTAM POST OFFICE LEASE AND THE LEASE BACK OF THE COMMUNITY GYM, AND CONTINGENT ON VARIOUS LAND USE APPROVALS AND UNDERGROUND FUEL STORAGE TANK SITE REMEDIATION". ("Question 2")

4. At the December 11, 2018 Litchfield Special Town Meeting, those participating voted to adjourn Questions 1 and 2 to a referendum.
5. Between December 11, 2018 and December 19, 2018, Respondent Langer made expenditures of \$945.34 to produce and send a mailer to residents of the Town of Litchfield advocating that they "Vote No on December 19!" (the "Flier"). The Flier also specifically encouraged readers to vote against Question 1 and Question 2. A copy of the Flier is attached hereto as Exhibit A.
6. The Flier did not contain any attribution identifying who had produced and/or paid for the advertising. Moreover, such information was not discernible from the context of the advertisement.
7. Respondent Langer has admitted that he produced the Flier, that he paid for its production and that he distributed the Flier to approximately 4,320 households and businesses.
8. On or about December 17, 2019, Respondent Langer personally traveled to the Litchfield Town Clerk's Office after he was advised that a complaint had been made concerning the Flier.
9. On or about December 17, 2019, Litchfield Town Clerk Lisa Losee advised Respondent Langer that he should contact the Compliance Unit of the Commission.
10. On or about December 17, 2019, Respondent Langer contacted the Compliance Unit of the Commission and described his conduct as it related to the Flier and asked for advice. As the conduct had already occurred the attorney in the Compliance Unit advised that there was nothing Respondent Langer could do at this point, but advised that the call would be noted.
11. General Statutes § 9-621 (c) provides:

No business entity, organization, association, committee, or group of two or more individuals who have joined solely to promote the success or defeat of a referendum question shall make or incur any expenditure for any written, typed or other printed communication which promotes the success or defeat of any referendum question unless such communication bears upon its face, as a disclaimer, the words "paid for by" and the following: (1) In the case of a business entity, organization or association, the name of the business entity, organization or association and the name of its chief executive officer or equivalent, and in the case such communication is made during the ninety-day period immediately prior to the referendum, such communication shall also bear on its face the names of the five persons who made the five largest aggregate covered transfers to such business entity, organization or association during the twelve-month period immediately prior to such referendum. The communication shall also state that additional information about the business entity, organization or association

making such communication may be found on the State Elections Enforcement Commission's Internet web site; (2) in the case of a political committee, the name of the committee and the name of its treasurer; (3) in the case of a party committee, the name of the committee; or (4) in the case of such a group of two or more individuals, the name of the group and the name and address of its agent.

12. Thus, individuals, acting alone, are not required to include attributions on advocacy communications concerning referenda. See *In the Matter of a Complaint by Lynn Brewer, Winsted*, File No. 2012-133 citing *McIntyre v. Ohio Elections Commission*, 541 U.S. 334 (1995); *In the Matter of a Complaint of Pamela Lang, Middlefield*, File No. 2006-168, *In the Matter of a Complaint of Arthur R. Thompson, Deep River*, File No. 2007-380, *In the Matter of a Complaint of Amy Primorac, Monroe*, File No. 2009-064, *In the Matter of a Complaint by Old Saybrook Town Clerk Sarah Becker*, File No. 2001-191, *In the Matter of a Complaint of Tony Palermo, Westbrook*, File No. 2003-186, and *In the Matter of a Complaint of M Kirk Carr, Jr., Clinton*, File No. 2012-083.

13. General Statutes § 9-612 (d) further requires that:

Any individual may make unlimited contributions or expenditures to aid or promote the success or defeat of any referendum question, provided any individual who makes an expenditure or expenditures in excess of one thousand dollars to promote the success or defeat of any referendum question shall file statements according to the same schedule and in the same manner as is required of a treasurer of a political committee under section 9-608.

14. In this case, Respondent has represented that he acted alone in producing, paying for, and distributing the mailer. The investigation into this matter did not reveal facts sufficient to prove otherwise.

15. Thus, as Respondent Langer acted alone in producing, paying for, and distributing the Flier, he was not required to include an attribution pursuant to General Statutes § 9-621.

16. Furthermore, as Respondent spent less than \$1000 on the Flier he was not required to file a financial disclosure statement concerning the expenditures made for the Flier.

17. Accordingly, it is the determination of the Commission that this matter should be dismissed.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That this matter be dismissed.

Adopted this 6th day of March, 2019 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~

By Order of the Commission

Salvatore Bramante - Vice Chairperson