

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Cynthia J. McCorkindale,
Bethel

File No. 2019-092

FINDINGS AND CONCLUSIONS

Complainant Cynthia J. McCorkindale brought this complaint pursuant to General Statutes § 9-7b. Complainant alleged that Bethel Superintendent of School Christine Carver, made public expenditures to advocate for a pending May 7, 2019 Town of Bethel budget referendum. After an investigation of the complaint, the Commission makes the following findings and conclusions:

1. The Complainant here alleges that¹:

On Friday, April 26, the front page of the Bethel Schools E-News, a weekly [emailing] sent to a select group, contained what we interpret as a call to those on their mailing list to support passage of the budget slated for May 7th's referendum.

We believe that Superintendent Christine Carver, as well as the 9-member Board of Education, have committed two separate Violations, as follows: 1. CGS Sec. 09-369(b) by way of laudatory language prohibited by statute; and 2. A violation of Public Act 13-247, as thee-newsletter was sent out to a subset of the community i.e.: the schools own parent/guardian email list. The language in question is "Dear Parents, Guardians, and Staff, At the Town Meeting on April 24th, the revised Town budget was moved to a referendum vote on May 7th. The Town budget contains our maintenance account, school debt for renovations and capital non-reoccurring (band uniforms and resurfacing of track). It is important to remember that the town budget in many ways also supports the schools.

2. By way of background, on or about April 24, 2019, a referendum was scheduled to vote on the Bethel town operating budget. That referendum was scheduled for May 7, 2019.

¹ See *In the Matter of a Complaint by Cynthia J. McCorkindale, Bethel, File No. 2019-092 (Received May 1, 2019).*

3. General Statutes § 9-369b provides in pertinent part:

...

(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. The Commission applies a three-prong test to determine whether a communication violated C.G.S. § 9-369b: (1) whether the communication advocates; (2) whether the communication was made with public funds; and (3) whether the communication was made while a referendum was pending. *See In the Matter of a Complaint by Matthew Paulson*, Bethel, File No. 2015-030 and *In the Matter of a Complaint by Patrick S. Dwyer*, Bridgewater, File No. 2014-049.
5. The Commission must determine whether a violation of General Statutes § 9-369b occurred based on the dissemination of a communication on April 26, 2019 of the *Bethel Schools E-News* (hereinafter "Communication"). More specifically, whether that dissemination of the Communication constituted a public expenditure to advocate for the May 7, 2019 Bethel budget referendum in violation of § 9-369b.
6. In this instance the Commission finds that the Communication was made while the referendum was pending and was made with public funds. The threshold issue therefore remains whether the Communication contained "advocacy" for purposes of applying General Statutes § 9-369b.
7. In determining whether a communication constitutes "advocacy" in violation of C.G.S. § 9-369b, the Commission applies the following test: "[C]ommunications 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. . . . In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its style, tenor and timing.” *In the Matter of a Complaint by George Zipparo*, Redding, File No. 2013-093B; *In the Matter of a Complaint by Mary V. Gadbois*, East Lyme, File No. 2010-123; and *see also Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296, 330 (1999). Notably, “stated threats of program cuts and dire consequences of failing to approve the referendum, as well as statements of need and justification ... constitute implied advocacy.” *In the Matter of a Complaint by Christine Campbell, Thompson*, File No. 2017-020 and *Zipparo*.

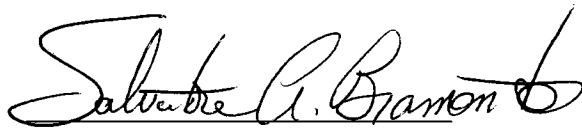
8. The Supreme Court has also indicated that “[a] reasonable person reading the text of § 9-369b would expect the Commission to consider the wording of the entire communication in context, from the perspective of an ordinary reader.” *Sweetman*, at 325. In other words, the surrounding contextual circumstances within the entire communication matter. See *id.*
9. Upon investigation, the Commission finds that there is not direct advocacy in the Communication that urges a “yes” or “no” vote or otherwise support or opposes the May 7, 2019 referendum.
10. Complainant alleged that the following language is violative of General Statutes § 9-369b, because it advocates for the May 7, 2019 Bethel town referendum:
"Dear Parents, Guardians, and Staff, At the Town Meeting on April 24th, the revised Town budget was moved to a referendum vote on May 7th. The Town budget contains our maintenance account, school debt for renovations and capital non-reoccurring (band uniforms and resurfacing of track). It is important to remember that the town budget in many ways also supports the schools"
11. The Commission finds that the Communication does not, given its style, tenor and timing, urge a particular result or otherwise contain language that is so laudatory as to promote a result for the May 7, 2019 Bethel budget referendum as prohibited by § 9-369b. More specifically, the Commission concludes that the Communication does not contain advocacy, either direct or implied.
12. The Commission concludes, for the reasons detailed herein, that General Statutes § 9-369b and its prohibitions against making public expenditures to advocate for a pending referendum, under these specific facts, were not violated as alleged. Complainant’s allegation is therefore dismissed.

ORDER

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

That this matter is dismissed.

Adopted this 4th day of December, 2019 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~

By Order of the Commission

Salvatore A. Bramante