

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

In the Matter of a Referral by the Hampton Registrar of Voters

File No. 2020-003

**FINDINGS AND CONCLUSIONS**

The Referring Official filed the instant complaint with the Commission pursuant to Connecticut General Statutes § 9-7b. The Referring Officials allege that Respondent Leslie Wertam, the former Town Clerk for the Town of Hampton, improperly included a “heading that did not seem to us appropriate or ethical.”<sup>1</sup> The following are the Commission’s findings of fact and conclusions of law:

**ALLEGATION**

1. The Referring Officials allege that Respondent Leslie Wertam, the former Town Clerk for the Town of Hampton, improperly included a “heading that did not seem to us appropriate or ethical.”

**STATEMENT OF THE LAW**

2. General Statutes § 9-369c (c) and (d) places the responsibility for preparing absentee ballots for referendum voting on the municipal clerk and provides:

(c) Upon receipt of the written form of the question or proposal to be voted on at any such referendum, the municipal clerk shall immediately prepare and print absentee ballots for the referendum. The phrasing of the question or proposal on the absentee ballots shall be identical to the phrasing on the ballot to be used for voting in person at the referendum. Prior to printing the ballots, the registrars of voters of the municipality may provide comments concerning the content and form of such ballots to the clerk.

(d) Upon notification by the municipal clerk that such a referendum will be held, the Secretary of the State shall furnish to such clerk the forms and materials described in section 9-139a in the amount requested by the clerk.

3. General Statutes § 9-369b (a) (1) details when and how an explanatory text may be prepared and disseminated with regard to local questions or proposals and provides:

(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

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<sup>1</sup> Any allegation in the Referral not addressed herein has been omitted because it did not allege a violation within the jurisdiction of the Commission.

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.

4. General Statutes § 9-369b (a) (4) provides that, other than those expenditures specifically authorized by that section, it is impermissible to expend public funds to advocate for or against a referendum and specifically provides:

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.

#### **STATEMENT OF THE FACTS**

5. At all times relevant hereto, Referring Official Dayna McDermott Arriola was the Republican Registrar of Voters in the Town of Hampton.

6. At all times relevant hereto, Referring Official Mary Oliver was the Democratic Registrar of Voters in the Town of Hampton.
7. At all times relevant hereto, Respondent Leslie Wertam was the Town Clerk for the Town of Hampton.
8. On or about December 5, 2019, the Board of Selectmen for the Town of Hampton voted to adjourn the question “Shall the ordinance titled ‘Establishment of a Board of Finance’ be rescinded” to referendum which was to be held on January 6, 2020.
9. Sometime after December 5, 2019, but prior to the January 6, 2020 referendum in the Town of Hampton (hereinafter the “Referendum”), the Referring Officials prepared the ballot that was to be used to vote at polling places on the question (hereinafter the “Polling Place Ballot”).
10. Sometime after December 5, 2019, but prior to the January 6, 2020 Referendum, Respondent Wertam prepared an absentee ballot that was to be used to vote on the question (hereinafter the “Absentee Ballot”).
11. The phrasing of the question on both the Polling Place ballot and the Absentee Ballot were identical.
12. The instructions on the Polling Place ballot differed from the Absentee Ballot only in that the Absentee Ballot instructed voters to circle their choice instead of filling in a bubble and that the Absentee Ballot included mailing instructions.
13. The final difference between the two ballots was that the headings. The top of the Polling Place Ballot read:

**OFFICIAL BALLOT  
TOWN OF HAMPTON  
REFERENDUM  
January 6, 2020**

Whereas, the top of the Absentee ballot read:

**TOWN OF HAMPTON  
OFFICIAL ABSENTEE BALLOT  
JANUARY 6, 2020  
REFERENDUM – RESCIND ORDINANCE ESTABLISHING A BOARD OF  
FINANCE**

14. Neither Referring Official exercised their authority under General Statutes § 9-369c (c) to review the Absentee Ballot prior to its distribution.
15. Shortly after the January 6, 2020 referendum, Respondent retired from the position of Hampton Town Clerk as her term had expired and she had not run for reelection.
16. After retiring as the Hampton Town Clerk, Respondent moved out of state.
17. In response to the investigation, Respondent stated that the title at the top of the absentee ballot was not intended to influence the outcome but rather “to make the subject matter of the referendum clear to the voter.”

#### DISCUSSION

18. Absentee balloting in municipal referenda is not an issue upon which the Commission frequently opines. In 2009 a series of failed budgeted referenda gave the Commission the opportunity to speak for the first time to some of these issues. *In the Matter of a Complaint by Patricia Ulatowski, Monroe*, File No. 2009. In *Ulatowski*, the Commission held that General Statutes § 9-369c was the exclusive authority concerning voter eligibility for absentee ballots in municipal referenda, and that “no statute or regulation within the Commission’s jurisdiction specifically prescribe the form and content of a ballot prepared for a municipal referendum.” *Id.* at 6-7. In a related case concerning the same series of failed referenda, the Commission further held that the procedures and limitations placed upon distribution of absentee ballot applications detailed in General Statutes § 9-140 is inapplicable to referenda noticed within three weeks of the time of voting. *In the Matter of a Complaint by Marsha Motter Beno, Monroe*, File No. 2009-038.
19. Explanatory text, and other violations of the public expenditure provisions of General Statutes § 9-369b constitute more common issues before the Commission. See *In the Matter of a Complaint by Donn Rusgrove, Burlington*, File No. 2018-032 (concerning the use of a community notification system to distribute information about a referendum); *In the Matter of a Complaint by Kimberly A. Martin, Scotland*, File No. 2016-052 (concerning whether an explanatory text was misleading); *In the Matter of a Complaint by George Zipparo, Redding*, File No. 2013-093B (concerning whether an explanatory text contained advocacy).
20. However, whether a title of an absentee ballot is an explanatory text is a novel issue for the Commission. In this case, while the content of the title is not in the form typically considered an explanatory text, by the Respondent’s own admission, the purpose of the title was “to make the subject matter of the referendum clear to the voter.”

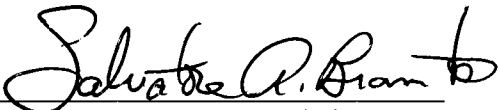
21. In this case, given that the Respondent is no longer serving a Town Clerk and has relocated to a residence outside of the state, the Commission declines to issue a sanction in this case. However, the Commission cautions Respondent and all elections officials that failure to comply with the law concerning contents of ballot documents will draw the close scrutiny of the Commission and any evidence that public funds are being used to inappropriately advocate with public funds or in official voting documents will result in significant penalties.
22. The Commission further encourages registrars of voters and town clerks to work together in the absentee balloting process in order to resolve potential issues prior to the issuance of such ballots.

ORDER

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

That no further action shall be taken with regard to this matter.

Adopted this 19<sup>th</sup> day of August, 2020 at Hartford, Connecticut.

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