

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Francesco M. G. Carolozzi, *et al.*,
Farmington

File No. 2021-132

FINDINGS AND CONCLUSIONS

Complainants allege¹ that the Town of Farmington, by its agents, violated General Statutes § 9-369b by using public funds to promote the passage of a referendum pertaining to the construction of a new high school. After an investigation of the complaint, the Commission makes the following findings and conclusions:

1. Complainants allege that:

(1) *The aforementioned document is an "explanatory text" under Section 9-369b. The Farmington Town Counsel did not authorize the Committee to send the explanatory text as required by C.G.S. Sec. 9-369b(a)(1)(A).*

(2) *Section 9-369b(a)(1)(B) requires that the "explanatory text" be prepared by the municipal clerk. Here the mailer was prepared not by the municipal clerk but rather by the FHS Building Committee.*

(3) *Upon information and belief the town of Farmington and/or the FHS Building Committee distributed the mailer without the approval of the municipal attorney as required by C.G.S. Sec. 9-369b(a)(1)(B).*

(4) *The mailer advocates to the approval of the referendum question by presenting false information in violation of Section 9-369b(a)(1)(C) of the statute.*

2. By way of background, on May 11, 2021 at a regular meeting of the Farmington town council a resolution was approved to warn of a referendum to vote on the construction and renovation costs for Farmington High School. That referendum was held on June 3, 2021.²

¹ See *In the Matter of a Complaint by Francesco M. G. Carolozzi, et al., Farmington*, File No. 2021-132 (Received by the Commission on June 7, 2021). Additional complainants include Robert L. Faibusch, Lucille Munterich and Ronald Munterich. This disposition does not treat any additional allegations by Complainants that were either duplicative or did not otherwise allege a specific violation of election or campaign finance laws.

² See "Minutes of the Town of Farmington Regular Town Council Meeting May 11, 2021," available at: www.farmington-ct.org/home (November 9, 2021).

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.

(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. Attorneys Duncan J. Forsyth and Richard P. Roberts provided a detailed response to this complaint and investigation. Their response, on behalf of the Town of Farmington³, is detailed herein for each allegation.
5. Along with the time, date, place and referendum question, the mailer that is subject of this complaint contained the following:

www.fhsbuildingproject.org

Farmington High School Building Project

PROJECT SUMMARY

- *Design, construction, furnishing and equipping of a new, three story, high school building of approximately 239,000 square feet*
- *Constructed on the grounds of the existing Farmington High School campus*
- *Demolition of substantially all of the existing Farmington High School, other than the "900 wing" and the 1928 building*
- *Renovation and improvements to the "900 wing" to house locker rooms and Farmington Public Schools Central Office*
- *Site work, including improvements to traffic patterns and vehicular circulation, additional parking, relocation of athletic fields, accessibility improvements to the upper fields, football field stands and press box*
- *Widening of Monteith Drive*

PROJECT BUDGET

- *The estimated total project cost is \$135.6M.*
- *This will be offset by reimbursement from the State of Connecticut, estimated at approximately \$26.3M*

PROJECTED TAX IMPACT

- *The projected tax impact for the FHS Building Project to the average taxpayer (assessment of \$226,777) is \$466 in total over five years (Fiscal Years 2023-2027), averaging \$93 per year, or under \$8/month. In the remaining years of the bond, there is no incremental increases to taxes due to the high school debt issues, as the required debt service levels off and is absorbed by the retirement of old debt.*
- *Please visit the "Project Cost" page of the FHS Building Committee website, www.fhsbuildingproject.org to view the Town's Financial Forecast, and resources related to this project*

³ Attorneys Forsyth and Roberts provided a response on behalf of Respondents and various Town of Farmington boards and committees relevant to this complaint and investigation. Their response was on behalf of the firm Halloran and Sage as Town Attorney for Farmington. See "In the Matter of Complaint of Francesco [Carolozzi], Farmington, CT, File No. 2021-132." (The response and supporting documents was received by the Commission on July 22, 2021.)

Allegation One

The Town of Farmington Failed to Authorize the Explanatory Text as Required by General Statutes § 9-369b (a) (1) (A).

6. Respondents, in response to this complaint and investigation, asserted the following:

The Complainant has clearly misunderstood the Mailer which he received. Exhibit A is not the Explanatory Text. Rather, the actual Explanatory Text, prepared in accordance with section 9-369b(a)(1)(B), is attached ...

7. After investigation, the Commission finds that on May 11, 2021, at its Regular Town Council Meeting, Farmington approved the preparation of an Explanatory Text pertaining to the June 3, 2021 referendum pursuant to the requirements of General Statutes § 9-369b; including its preparation by the town clerk subject to approval by the municipal attorney. The Commission further finds that Complainants misidentified the Mailer pertaining to their complaint and Allegation One as an “Explanatory Text.”
8. The Commission concludes that the approval of the preparation and dissemination of an Explanatory Text pertaining to the June 3, 2021 referendum by Farmington on May 11, 2021 met the requirements of General Statutes § 9-369b; and therefore, Allegation One is dismissed.

Allegation Two

The mailer was prepared by the FHS Building Committee instead of the Town Clerk as required by General Statutes § 9-369b (a) (1) (B).

9. Respondents, in response to this complaint and investigation, asserted the following:

The Mailer was prepared by the Farmington High School Building Committee. However, as noted above, it is not the actual Explanatory Text. Rather, the Mailer constitutes “other printed material” prepared in accordance with section 9-369b (a) (1) (C) and was approved by our firm on May 18, 2021. ...

10. After investigation, the Commission finds that the mailer was submitted for approval by Farmington to its municipal attorney on May 18, 2021. Further, the Commission finds that municipal attorney approved the document on that same day.

11. General Statutes § 9-369b (a) (1) (C) provides for the production of “other printed material” pertaining a referendum, subject to the “approval of the municipal attorney.”
12. The Commission finds that the mailer pertaining to the June 3, 2021 referendum was submitted to the Farmington municipal attorney for approval as required by General Statutes §9-369b. The Commission concludes there was no violation of that section as alleged; and therefore, Allegation Two is dismissed.

Allegation Three

The town of Farmington and/or the FHS Building Committee distributed the [Explanatory Text] without the approval of the municipal attorney as required by C.G.S. Sec. 9-369b(a)(1)(B).

13. Respondents, in response to this complaint and investigation, asserted:

This allegation is patently false. Attached as Appendix No. 3 is our firm's approval of the true Explanatory Text in accordance with Section 9-369b (a) (1) (B).

14. General Statutes § 9-369b (a) (1) (B) provides an explanatory text must be prepared by the municipal clerk and is “subject to the approval of the municipal attorney.”
15. After investigation, the Commission finds that Farmington at its May 11, 2021 Regular Town Council Meeting approved the following resolution:

FURTHER RESOLVED, that the Town Clerk is authorized, in such official's discretion, to prepare a concise explanatory text regarding said resolution and the Town Manager is authorized, in such official's discretion, to prepare additional explanatory materials regarding said resolution, such texts and explanatory materials to be subject to the approval of the Town Attorney and to be prepared and distributed in accordance with Section 9-369b of the General Statutes of Connecticut, Revision of 1958, as amended, including, as applicable, publication in the Town Letter. [Emphasis added.]

16. The Commission finds that Farmington submitted the explanatory text to its municipal attorney. More specifically, records indicate that such explanatory text was “reviewed and approved” by the municipal attorney on or about May 13, 2021.

17. The Commission concludes that Farmington authorized the Town Clerk to prepare an explanatory text subject to the approval of the town attorney by adoption of its May 11, 2021 resolution, as required by General Statutes § 9-369b. The Commission concludes that no violation of that section regarding the explanatory text occurred as alleged; and therefore, Allegation Three is dismissed.

Allegation Four

The Mailer advocates the approval of the referendum question by incorrectly stating the tax impact to the average taxpayer as \$466 over each of five years.

18. Respondents, in response to this complaint and investigation, asserted the following:

The Complainant clearly confuses “tax impact” with “project cost”. In correspondence between [an individual] and Assistant Town Manager, Kathryn Krajewski, (which was appended to the complaint) there is a clear distinction made between the cost of the proposed high school project over the term of issued bonds and the resultant tax impact on the average household. In fact, Ms. Krajewski highlighted those terms in her correspondence with [an individual] clearly distinguishing the two. Furthermore, the “PROJECTED TAX IMPACT” section of the Mailer makes the same distinction. ...

19. General Statutes § 9-369b allows for the production of other printed materials pertaining to a referendum so long as they do “not advocate either the approval or disapproval” of the proposed referendum. In this instance, Complainants allege that the mailer that is subject of this complaint advocated approval for the June 3, 2021 referendum.
20. 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.

21. 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*.
22. 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.*
23. The Commission finds that the mailer 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 June 3, 2021 budget referendum, as prohibited by § 9-369b. More specifically, the Commission concludes that the mailer does not contain advocacy, either direct or implied.
24. 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. Allegation Four is therefore dismissed.
25. The Commission, after investigation, finds that Farmington and the Respondents did not authorize public expenditures to advocate for a pending referendum in violation of General Statutes § 9-369b, under these narrow and specific circumstances.
26. The Commission further finds that the facts do not support the finding that Farmington and the Respondents failed to follow the procedural requirements of General Statutes § 9-369b for the production and dissemination of either an explanatory text or other printed materials pertaining to the June 3, 2021 referendum.
27. The Commission therefore determines that the allegations were not supported by the facts or the law, after investigation, and that this complaint should be dismissed.

ORDER

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

That this matter is dismissed.

Adopted this 17th day of November, 2021 at Hartford, Connecticut.



Stephen T. Penny, Chairman
By Order of the Commission