

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Hope Kasper,
Middletown

File No. 2021-167

FINDINGS AND CONCLUSIONS

Complainant filed this Complaint pursuant to General Statutes § 9-7b. The Complainant alleged violations of General Statutes § 9-369b by the Middletown Town Clerk. After its investigation, the Commission makes the following findings and conclusions:

1. Complainant alleged that the City of Middletown Town Clerk has violated General Statutes § 9-369b, by refusing to release and explanatory text pertaining to a ballot question on the November 8, 2021 election in Middletown.¹
2. By way of background, Complainant brought this complaint pertaining to the Middletown Charter Revision Commission (“CRC”) which “created a question to be placed on the November 2021 ballot.” This matter was approved by motion of the Commission for further investigation at its October 6, 2021 monthly Commission meeting.
3. Complainant asserted that the Common Council approved the ballot question “to divide Local 466 AFSCME Union, thus violating CT General Statute 4-710.” Further, she asserts that because “only city employees are allowed in the pension,” the division caused by the approval of the ballot question will “cause a major impact to the fully funded pension Middletown, CT has now.”
4. Complainant asserts that the ballot question should be “eliminated;” and alleges that the Middletown Town Clerk has refused to release an explanatory text that “has been written” in violation of election laws.
5. 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

¹ This disposition limits itself to analysis of available facts to the application of relevant sections of Title 9, General Statutes and does not address the legal requirement of either the Title 7 (Municipalities) or Chapter 14, Title 1 (Freedom of Information Act) of the General Statutes, which remain outside the purview of this Commission.

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.***

...

[Emphasis added.]

6. General Statutes § 9-140, provides in pertinent part:

...

(d) ***An absentee voting set shall consist of an absentee ballot, inner and outer envelopes for its return, instructions for its use, and if applicable, explanatory texts concerning ballot questions,*** as provided for in sections 2-30a and 9-369b. No other material shall be included with an absentee voting set issued to an applicant except as provided in sections 9-153e and 9-153f or where necessary to correct an error or omission as provided in section 9-153c.

[Emphasis added.]

7. The threshold issue of this complaint is whether General Statutes § 9-369b addresses or provides a requirement for the release of “explanatory texts” and the timing or parameters for such release; and if so, do the facts support the conclusion that the statute was violated based on an alleged failure by the Middletown Town Clerk to release such “explanatory text” at the request of Complainant.

8. The November 2, 2021 Municipal Election Calendar, provides in part:

OCTOBER 1, 2021

(Friday)

MUNICIPAL CLERK

REGISTRARS

*ABSENTEE BALLOTS. Printed absentee ballots for the election become available to electors on this day. (Secs. 9-135 and 9-140(f)). **Explanatory text and/or arguments re. local questions (option). (Secs. 9-140(d) and 9-369b.)***

Registrars may direct the clerk to mail an absentee ballot set to an elector or an applicant for admission as an elector who (1) is living outside the U.S. or (2) is a member of the armed forces, or the spouse or dependent living where such member is stationed. Municipal clerk also may so act on his own motion. (Secs.

9-140(f) and 9-153d)

[Emphasis added.]

9. The Commission concludes that based on the requirement that explanatory texts be “furnished to each absentee ballot applicant” pursuant to General Statutes § 9-369b (B), at a minimum the Town Clerk would be required to provide individuals with a copy of the explanatory on October 1, 2021, which is the date that absentee ballots become available, as well as “explanatory texts” pursuant to § 9-140 (d) and § 9-369b.

10. This requirement is also published in the SOTS election calendar for the November 2, 2021 election; and flows from the fact that “explanatory texts” are statutorily incorporated into the materials necessary to make up absentee ballot sets. Finally, the Town Clerk has an affirmative duty to “...cause such question or proposal and such explanatory text to be printed in sufficient supply for public dissemination,” pursuant to § 9-369b.

11. It follows that the “explanatory text” mandated for printing and dissemination would be the final version and not a draft. We can assume that until that final version is completed, there

is no parallel duty to provide at public cost the printing of various versions of draft explanatory texts for election laws pursuant to Title 9, General Statutes.²

12. Turning to the facts, after investigation, the Commission considers whether a violation based on the requirements for providing an explanatory text pursuant to General Statutes to § 9-140 (d) and § 9-369b were violated as alleged.
13. In response to this complaint and investigation City of Middletown General Counsel Brig Smith, asserted in part:

While Ms. Kasper has asked the Commission to declare this language a violation of election law, her own words show that she is really claiming a violation of employment law.

...

Ms. Kasper also tangentially alleges that “[a]n explanatory text has been written and [the] Town Clerk has refused to release it.” Ms. Kasper swore out her complaint on September 13, 2021. In fact, the text was considered at, and adopted during, the September 7, 2021 Common Council meeting. I am attaching as Exhibit A the Agenda for that meeting, which lists the explanatory text for the charter ballot questions as item 12(J). I am attaching as Exhibit B agenda item 12(J) itself—the explanatory text. Not only was the explanatory text publicly distributed, it was publicly discussed during the September 7 meeting—fully six days before Ms. Kasper swore under penalty of perjury that the Town Clerk “has refused to release it.”

Simply put, Ms. Kasper’s complaint is legally insufficient and factually inaccurate and, as such, the State Elections Enforcement Commission should dismiss it outright. To the extent that any additional response is required, please direct all communications to my office.

² Taken in conjunction with the necessary approval of the municipal attorney (§ 9-369b (C)), it is reasonable for the Commission to frame the parameters for the release of an explanatory text and its required production and dissemination by the town clerk (§ 9-369b (B)), to be: not prior to approval by the municipal attorney; but not later than the first day absentee ballots applications are available for the relevant referendum or ballot question (§ 9-140).

14. The Commission finds that General Counsel Smith's explanation pertaining to the public discussion and dissemination of the explanatory text at the City of Middletown credible. Moreover, the Commission finds that the September 7, 2021 meeting agenda provided by General Counsel Smith provided a link to the explanatory text to be considered as indicated at "Item 12J – explanatory text." Upon investigation, the Commission finds that the explanatory text could be accessed through <https://middletown.granicus.com/>.
15. Furthermore, the Commission finds, after investigation, that the explanatory text was included with the absentee ballot sets that were available through the town clerk on October 1, 2021 consistent with the requirements of General Statutes § 9-140 (d) and § 9-369b.
16. The Commission finds that Complainant's allegation, that the explanatory text was not publicly available was not supported by the facts after investigation.
17. The Commission concludes therefore that General Statutes § 9-369b and its prohibitions governing the production and dissemination of explanatory texts, as well as the applicable provisions of § 9-140 (d), under these narrow and specific facts, were not violated.
18. After investigation, Complainant's allegation was not supported by the facts or the law and therefore this complaint should be dismissed.

ORDER

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

That the Complaint be dismissed.

Adopted this 3rd day of November 2021 at Hartford, Connecticut



Stephen T. Penny, Chairman
By Order of the Commission