

Agenda
Farmington High School Building Committee
Special Meeting
Wednesday, May 22, 2019
Farmington High School Library
5:00 PM

- A. Call to Order.
- B. Pledge of Allegiance.
- C. Public Comment.
- D. Correspondence.
 - 1) Correspondence from Online Comment Form- Meghan Naujoks
- E. Minutes.
 - 1) To approve the attached May 8, 2019 minutes.
- F. Presentations- None.
- G. Reports.
 - 1) Professional Partnership Subcommittee.
 - 2) Site Evaluation Subcommittee.
 - 3) Communications Subcommittee.
 - 4) Financial Subcommittee.
 - 5) Town Council Liaisons.
- H. To approve the attached updated meeting schedule.
- I. To approve the attached interview process and questions.
- J. Executive Session: Review and Discussion of RFP Responses for Owner's Representative Services in accordance with Conn. Gen. Stat. §§1-200(6) and 1-210(b) (24).
- K. To select the final candidates for interviews.
- L. Adjournment.

cc: Committee Members
Paula Ray, Town Clerk
Interested Parties

From: webmaster@farmington-ct.org
To: [Kathryn Krajewski](mailto:Kathryn.Krajewski@farmington-ct.org); megguerrera@gmail.com; [Kathy Blonski](mailto:Kathy.Blonski@farmington-ct.org); [Kathleen Greider](mailto:Kathleen.Greider@farmington-ct.org)
Subject: Town of Farmington, CT: FHS Building Committee Online Comment Submission
Date: Tuesday, May 14, 2019 8:55:13 AM

A new entry to a form/survey has been submitted.

Form Name: FHS Building Committee- Online Comment Form
Date & Time: 05/14/2019 8:55 AM
Response #: 1
Submitter ID: 3014
IP address: 172.24.96.110
Time to complete: 5 min. , 26 sec.

Survey Details

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1. Have a question, comment, or suggestion for the Farmington High School Building Committee? Please complete the field below.

I respectfully request that you please consider changing your meeting times (or some of them) to after 7 pm. 5 pm is literally the worst possible meeting time for parents due to after-school activities. The last time our community went through this process meetings were held at 4:30 pm. One of the biggest issues the town had with the last round of building committee meetings was transparency and access to information. I am quite surprised to see this committee holding meetings basically at the same time. The public cannot be informed if they cannot attend meetings.

Thank you for your attention to this matter and for your time and efforts on this committee.

2. Please provide the following information so we can contact you with a response:

Full Name Meghan Naujoks
Email Address meg86@hotmail.com
Mailing Address
 5 Trumbull Lane, Farmington CT 06032
Phone Number (860) 255-7882

Thank you for contacting the Farmington High School Community Survey Ad Hoc Committee!

Thank you,
Town of Farmington, CT

This is an automated message generated by the Vision Content Management System™. Please do not reply directly to this email.

MOTION:

Agenda Item E-1

To approve the attached May 8, 2019 minutes.

/Attachment

Minutes are considered "DRAFT" until approved at next meeting

Minutes
Farmington High School Building Committee
Wednesday, May 8, 2019
Farmington High School Library
5:00 PM

Present:

Meg Guerrera, Chair	Kathy Blonski, Town Manager
Johnny Carrier	Kathy Greider, Superintendent
Sharon Mazzochi	Scott Hurwicz, FHS Principal
Ellen Siuta	Vince La Fontan, School Business Administrator
Chris Fagan	Tim Harris, Director of School Facilities
Garth Meehan	Paul Cianci, Town Council Liaison
Michael Smith	Beth Kintner, Town Council Liaison
	Kathryn Krajewski, Clerk of the Committee

Absent (Excused):

None

A. Call to Order.

The chair called the meeting to order at 5:03 P.M.

B. Pledge of Allegiance.

The committee members and audience recited the Pledge of Allegiance.

C. Public Comment.

Jay Tulin, 39 Timberline Drive, informed the committee that the Human Relations Committee had a meeting with the friends program yesterday. It was decided that they would move forward with the plan to brainstorm ideas and receive feedback from participants in this program and include them in the process.

Matt Hutvagner, 4 Deepwood Road, urged the committee to consider 7:00 PM meeting times. He said that 5:00 PM is a difficult time for many residents and parents to attend and believes 7:00 is a better time for public participation and outreach.

Madeline Trimble submitted correspondence to the FHS Building Committee. This corresponded was submitted as a public comment and is recorded with these minutes as Attachment A.

D. Minutes.

1) To approve the attached April 24, 2019 minutes.

Upon a motion made and seconded (Carrier/Mazzochi) it was unanimously VOTED: to approve the April 24, 2019 minutes.

E. Presentations.

Minutes are considered "DRAFT" until approved at next meeting

1) Elections Enforcement- Presented by the Town of Farmington Attorney.

Rich Roberts, Town Attorney, gave a presentation to the committee outlining the elections enforcement regulations and clarified that once the question is set and sent to referendum there are restrictions regarding advocacy and the use of public funds. At that time, the only document that can be produced by the Town is the explanatory text. Mr. Roberts also discussed political action committees, and the individual capacity of committee members and their first amendment rights. Mr. Roberts provided documentation regarding the regulations and examples of State Elections Enforcement violations, which is recorded with these minutes as Attachment B.

F. Reports.

1) Professional Partners Subcommittee.

Johnny Carrier reported that the subcommittee met on April 26th and created an estimated timeline and cost for future free proposals so that respondents can submit comparable proposals. The subcommittee also met on April 29th to approve the Owner's Representative score sheet and begin discussions on the RFP for Architectural Services. The subcommittee's next meeting date is Friday, May 17 at 8:30 am.

2) Site Evaluation Subcommittee.

Meg Guerrera reported that the Site Evaluation Subcommittee is scheduled to hold their first meeting on May 9, 2019 at 2:00 PM.

3) Communications Subcommittee.

Kathy Greider reported that the Communications Subcommittee is scheduled to hold their first meeting on May 15, 2019 at 9:00 AM. This subcommittee also has a second meeting scheduled for June 12, 2019 at 8:30 AM.

4) Financial Subcommittee.

Kat Krajewski reported that the Financial Subcommittee is finalizing their first meeting date and it will be either the week of 5/20 or 5/27.

She also informed that committee that a subcommittee information page has been added to the Town website with links to schedules, minutes and agendas for all subcommittees.

5) Town Council Liaisons

Beth Kintner and Paul Cianci reported that the Town Council has yet had their May meeting. Mr. Cianci explained that the professional partnership committee is looking for Town Council consensus regarding the existing buildings on the municipal campus site, including the 1928 building. This information will assist the committee in providing guidelines to the architects for their conceptual designs.

Minutes are considered "DRAFT" until approved at next meeting

Mr. Cianci also discussed the possibility of requesting unit pricing to get more information from the architects. It was determined that this will be discussed at the professional partnership subcommittee's next meeting.

G. New Business.

1) To approve the attached score sheet for the Owner's Representative RFP.

Meg Guerrera informed the committee that the score sheet for evaluating the Owner's Representative proposals was approved by the Professional Partnership subcommittee.

Kat Krajewski informed the committee that this score sheet was based off the Owner's Representative RFP and the score sheet that was used for the previous building committee's evaluation of Owner's Representatives. The following criteria are different from the last committee's score sheet, as they are important aspects of the Owner's Representative RFP:

- Demonstrated the firm's approach to value engineering service and provided a timeline for the completion of the total project budget.
- Clearly articulates their approach to the proposal and demonstrates their understanding of the process.
- Provides a detailed fee proposal and scope of services to assist the Town in the planning process for Phase 1 of the Building Committee Charge, Pre-referendum services, and the construction phase of a Farmington High School Building Project.

Upon a motion made and seconded (Carrier/Fagan) it was unanimously VOTED: to approve the score sheet for the Owner's Representative RFP.

2) To review the May- August 2019 Proposed Schedule.

Motion was made and seconded (Meehan/Carrier) to review the May-August 2019 proposed schedule.

The committee reviewed the proposed schedule for May – August 2019. It was pointed out that the schedule is tentative, especially for the architect RFP, so the dates may change as the architect RFP is finalized and deadlines are established. Kat Krajewski reviewed the events for next week, as the committee will be reviewing the Owner's Representative Proposals. All voting members should send their completed score sheets to Kat by 4:30 PM on Tuesday, May 21st.

Minutes are considered "DRAFT" until approved at next meeting

Meg Guerrera presented the FHSBC Planning Timeline to the committee and explained that this document is a planning tool that will be updated as tasks are completed on google docs. A copy of the document is recorded with these minutes as Attachment C.

3) To approve the 2019 Meeting Schedule.

The committee reviewed the 2019 Meeting Schedule through December 2019. These meetings are every other week, excluding some holiday weeks, and some meetings may be cancelled, or additional meetings added as the committee moves forward.

Upon a motion made and seconded (Fagan/Carrier) it was unanimously VOTED: to approve the 2019 meeting schedule.

H. Adjournment.

The meeting was adjourned at 5:55 P.M.

Respectfully Submitted,

Kathryn Krajewski,
Clerk of the Committee

Dear Building Committee,

Most people think that the Farmington high school is a good place to send kids to learn. But even more think that it can be so much better. I am one of them. Kids enjoy going to the Farmington High school but its conditions are very poor. I'm fighting for the parents, the high schoolers, the future high schoolers and most of every body in Farmington and all generations to come. My reasons are that the building is in poor condition, the classes are too far away and that it is very old.

My first reason is it is in poor condition. An example is that the bathrooms have plumbing issues that require going in the building to make repairs. Also kids, or visitors in wheelchairs, have to travel to the opposite side of the building and get help. It takes a long time. Another example is that the auditorium seats are falling apart. The bottoms are falling off. You might be thinking that it is too expensive but we can have fundraisers to get the money.

My second reason is that the kids have to go so far to get from one class to another. They are sometimes late. One intersection is even called the meat grinder. We could put the hallways in a more modern and efficient layout that puts kids and classrooms in spaces that make sense. You might be thinking that it will take too long but it will be hard work paid off. And, it will be there for a long time.

And last, but not least, the building is so old it has cracks in the walls, the ceiling tiles are old and are probably going to fall down sometime soon. I have even heard that there is mold on the walls!

Now do you believe me? I hope you have changed your minds and will get a new high school. The classes are too far away, the building is in poor condition and its old . Did you have to worry about this when you were my age? I doubt it!

From: *Madeline Trimble* age: 8



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
 20 Trinity Street Hartford, Connecticut 06106—1628

Prohibition on Expenditure of Public Funds Relating to Referenda

1. *Spending Public Funds To Inform Citizens Regarding Referenda*

Historically, an “explanatory text” has been the exclusive method by which a municipality or regional school district could expend public funds for printing and distribution of an explanation of the subject matter of a referendum.

Connecticut General Statutes § 9-369b(a) sets forth the following conditions for such explanatory texts:

- (a) a vote of the municipality’s legislative body is needed to authorize it;
- (b) the municipal clerk must prepare the text and the municipal attorney must approve it;
- (c) it must specify the intent and purpose of each referendum; and
- (d) cannot advocate either the approval or the disapproval of the referendum.

Materials in addition to the explanatory text may now be prepared and printed with public funds if they (1) do not advocate either the approval or disapproval of the referendum; (2) are authorized by vote of the local legislative body; and (3) are approved by the municipal attorney.

In a municipality that has a town meeting as its legislative body, the board of selectmen by majority vote can authorize the issuance of an explanatory text or other neutral printed matter. Pursuant to Connecticut General Statutes § 9-369b(b), for a referendum called for by a regional school district, the regional board of education shall authorize and approve the explanatory text, which shall be prepared by the regional school board’s secretary, and approved by the regional board of education counsel.

2. *Expenditure of Public Funds For Advocacy Prohibited*

With two exceptions discussed below, no expenditure of state, municipal or regional school district funds can be made to influence any person to vote for approval or disapproval of any referendum question. The ban applies when a referendum is pending.

3. *When is a Referendum Question Pending?*

A referendum question is pending when the necessary legal conditions have been satisfied to require the publication of the warning (notice) of the referendum. For example, a referendum is pending when a sufficient number of signatures have been certified by the Town Clerk under § 7-7, Connecticut General Statutes, or when the selectmen (or other authorized government official) have determined that a referendum will be conducted.

4. Pro-Con Summaries

By ordinance, a municipality may provide for the preparation and printing of concise summaries of arguments in favor of and opposed to a referendum for which an explanatory text is prepared under § 9-369b(a) or (b). The ordinance must provide for a committee to prepare these summaries. See § 9-369b(d), Connecticut General Statutes for other conditions which must be satisfied.

5. Press Releases and Constituent Responses Permitted

The other exception is that an official can express his/her views on a pending referendum at a bona fide news conference, and may use public funds, facilities, and supplies to prepare a press release to be disseminated at the conference. Also, an official may use public funds, facilities and supplies to respond to a constituent request for information concerning the referendum, including the official's views. The exception is lost however, if the official responds to the citizen's request with the knowledge that the response will be disseminated to others in the community.

6. Children in School as Couriers

Children in school may not be used as couriers of information that advocates a position on a referendum. A notice limited to the time, place and question to be voted upon may be sent home to parents via children in school.

7. Use of School Teachers, Administrators, Facilities, Supplies, and Equipment Prohibited

The prohibition on state or municipal funds also applies to the use of school facilities, supplies, and equipment and postal permits to advocate a position on a referendum. For example, parent teacher organizations and school administrators may not use school equipment to prepare or copy advocacy material even if the town, regional district or school system is reimbursed for such use. This prohibition also extends to the use of a school's public address system to advocate a result of a referendum.

8. Use of School Facilities by Outside Political Committees and Organizations For Meetings or Rallies

School facilities may not be used by political committees or other groups for the purpose of advocating a position on a referendum unless such facilities are accessible to all such committees or groups on a non discriminatory basis. A charge can be made for the use of school facilities for this purpose and all groups or committees must be charged the same.

9. *What Constitutes Advocacy?*

A communication advocates a position on a referendum when in part, or taken as a whole, it urges the listener or reader to vote in a particular manner. The style, tenor and timing of a communication are factors which are considered by the Commission when reviewing alleged improprieties of § 9-369b.

10. *Civil Penalties For Violations*

The State Elections Enforcement Commission may impose a civil penalty against any person who violates § 9-369b, in an amount not exceeding twice the amount of the improper expenditure or \$1,000, whichever is greater. The official is personally liable for the penalty and cannot be reimbursed or indemnified by the state, regional school district or municipality for payment of a civil penalty.

11. *Political Committees to Promote Referenda*

Under Chapter 155 of the General Statutes, public officials and citizens alike may join together to advocate their views on a referendum by registering a political committee with the clerk of the municipality in which the referendum is to be held. Upon its registration, the political committee is permitted to solicit, receive and expend private funds to promote the success or defeat to a referendum question. If less than \$1,000 is expected to be collected or spent, a group may file a certification of exemption in lieu of a political committee registration form.

12. *Independent Personal Expenditures*

Any citizen or public official may independently (acting alone) make expenditures of his/her own funds to promote the success or defeat of a referendum question without forming a political committee in conformance with Chapter 155, Connecticut General Statutes. However, once such individual spends more than \$1,000 to promote the success or defeat of a referendum question, he or she must file statements according to the same schedule and in the same manner as is required of a campaign treasurer of a political committee under § 9-608.

The information contained herein is not exhaustive. If you have any questions concerning the enforcement of § 9-369b, please contact the State Elections Enforcement Commission, 20 Trinity Street, Suite 101, Hartford, CT 06106-1628. (860-256-2940). You may also wish to consult the Commission's publication [A Guide to Financing Referendum Questions](#) or our website www.ct.gov/seec.

Understanding Connecticut Campaign Finance Laws

A Guide to Financing a Referendum Question

STATE ELECTIONS ENFORCEMENT COMMISSION
Revised May 2013





IV. Use of Public Funds

Public funds may **not** be used to influence anyone to vote for or against a pending referendum question. Anyone found in violation of this prohibition may be required to pay a civil penalty of either \$1,000 or twice the improper expenditure, whichever is greater. If a violation is found, the Commission will typically order that restitution be made to the municipality or government entity in the amount of the improper expenditure. An individual paying a civil penalty imposed under this section may **not** be reimbursed or indemnified with public funds.

[General Statutes § [9-369b](#)]

A. When Does the Ban Apply?

The prohibition on the use of public funds to advocate for or against a referendum applies once a referendum is **pending**. A referendum is pending when the necessary actions are taken requiring submission of the referendum question to voters. This occurs in many different forms on the local level and may follow an adjourned town meeting or vote of the local legislative body or depend on interpretations of a local charter. You should direct questions of whether a referendum is pending and, therefore, when the ban applies in your jurisdiction, to **your local town attorney**. If a complaint is filed, the Commission will determine whether the referendum was pending under the particular facts of that case.

B. What Types of Activities are Prohibited?

Any expenditure of public funds to advocate a result or influence any person to vote for or against the referendum is prohibited once the referendum is pending. This includes the dissemination of printed materials, preparation of video or website presentations, supplies, equipment, postal permits, anything in any form used to advocate a position on a referendum.

Parent teacher organizations, school administrators, municipal officials and employees, or any other person may not use school or town equipment to prepare or copy advocacy material. The use of schoolchildren as couriers to deliver advocacy material to parents and guardians is a prohibited expenditure in violation of General Statutes § [9-369b](#). The only exception to this prohibition is that a notice limited to the time, date, place, question to be voted upon, and encouragement to vote (though not a particular way) may be sent home to parents and guardians via schoolchildren without violating the ban.

School or town facilities may not be used by political committees or other groups for the purpose of advocating a position on a referendum unless such facilities are made available to all such groups regardless of their viewpoint. If a charge is levied for use of a facility, all groups must be charged the same rate.

C. What is Considered Advocacy?

The Commission utilizes an objective standard and evaluates whether a "reasonable person" would believe that a communication urged them to vote in a particular manner. The Commission has found that stated threats of program cuts and the dire consequences of failing to approve referenda, as well as statements of need and



justification, constitute advocacy. If a violation is alleged, the Commission will review the communication and determine whether the communication and the circumstances surrounding that communication taken as a whole would make a reasonable person believe that a particular result is being urged. The Commission has been more likely to find that materials issued in the time period immediately preceding the referendum are intended to influence a reader to vote in a particular manner.

D. How Can a Public Official Inform the Public?

An individual, including an individual who is a public official or public employee, may use her private funds or resources to communicate a position on a referendum. An individual may either act independently to make expenditures to promote or oppose a referendum question, or may act together with other individuals.

1. An Individual Acting Alone

Any individual acting alone, including a public official or employee, may spend his or her own personal funds without limit on his or her own time, but must file a SEEC Form 22 (disclosure statement) if he spends more than \$1,000.

Example: First Selectman Fred is asked to come speak at an afternoon PTO meeting in support of the upcoming budget referendum. Because the meeting occurs during a time for which Fred is paid by the town, he may not attend because that would be considered use of public funds to advocate a position on a referendum. However, if the meeting takes place after working hours or on his lunch break, for example, Fred is allowed to attend the meeting and advocate his position as long as he is not otherwise using public funds (i.e., he cannot bring materials that his secretary prepared on paid time and/or using office equipment, he cannot post his personal views on the town's website, he cannot use town email to promote his views, etc.).

2. Two or More Individuals Acting Together

Public officials and employees, as well as other individuals, may join together to advocate their views on a referendum question. This includes contributing personal funds or time to influence a referendum question, as well as asking others to contribute, provided the time spent on these activities is on personal time rather than during the official's paid time. Public officials are treated the same as private citizens and are permitted to speak on their own, unpaid time and use their personal resources to advocate a position on the referendum.

Public Act 10-187 introduced a "safe harbor" into the law, providing that two or more individuals acting together and who receive funds or make or incur expenditures not exceeding \$1,000 are not required to register a political committee, so long as they stay under the \$1,000 threshold.

However, if such individuals acting together receive funds or make or incur expenditures exceeding \$1,000 in the aggregate, they must register a referendum committee (SEEC Form 3) and comply with the requisite disclosure requirements as described in **Chapter III. Referendum Committees**. Because a group that has reached the \$1,000 threshold must form a committee and disclose all of its previous financial activity, any group of two or more individuals engaging in referendum spending is urged to keep records of all of its financial activity, including all contributions and expenditures.



E. Acceptable Uses of Public Funds to Inform through Communications

There are also **limited** ways in which public funds may be used for communications about a referendum. Please note that these are the **only** ways public funds may be used. If the communication does not fall into one of these categories, it is likely a violation of election law.

1. An Explanatory Text: An explanatory text (i.e., text explaining the referendum question) may be issued with public funds, provided that it:

- a. is authorized by vote of the municipal legislative body;
- b. is prepared by the municipal clerk;
- c. is approved by the municipal attorney; **and**
- d. does not advocate either the approval or disapproval of the referendum (as previously discussed above).

In a municipality that has a town meeting as its legislative body, the board of selectmen may authorize an explanatory text by majority vote. For any referendum called by a regional school district, the regional board of education may authorize an explanatory text issued with public funds, which must be approved by the attorney for the regional school board. The regional school board's secretary is responsible, in lieu of the municipal clerk, for preparing the explanatory text and satisfying the other obligations imposed on the clerk pursuant to General Statutes § 9-369b(a). If an explanatory text is issued, it must be printed in sufficient supply for public distribution and distributed to each absentee ballot applicant. At least three posters of the explanatory text must be posted at each polling place.

[General Statutes § 9-369b(a)]

2. Neutral Printed Materials: Neutral materials in addition to explanatory text may be prepared and printed with public funds provided that they:

- a. are authorized by vote of the municipal legislative body, or board of selectmen in a town that has a town meeting as its legislative body, or the regional school board, as the case may be;
- b. are approved by the municipal attorney or regional school board attorney, as the case may be; **and**
- c. do not advocate either the approval or disapproval of the referendum, i.e. are neutral in content.

[General Statutes § 9-369b(a)]

3. Pro-Con Summaries: Such summaries of the issues surrounding a referendum are permitted **only** if provided for by local ordinance. If an ordinance allowing pro-con summaries is in effect, a municipality may use public funds to provide for concise summaries of *arguments both for and against* the referendum. In order to utilize a pro-con summary for a referendum, the municipality must also issue an explanatory text. The ordinance must provide for a committee composed of members of various viewpoints concerning the referendum, such as taxpayer and parent-teacher groups. The committee should provide an opportunity for public comment on the summaries. Summaries must also be approved by vote of the municipality's legislative body and must be posted and distributed in the same manner as explanatory texts. Each



summary shall state that it does not constitute an endorsement by, or represent the official position of, the municipality.

[General Statutes §9-369b(d)]

4. Press Releases or Letters to the Editor: A municipal official may use public funds, facilities and supplies to prepare a written, printed or typed summary of his/her viewpoint on a pending referendum prepared for any news medium. Such communications include press releases and letters to the editor. A municipal official may also on paid time participate in bona fide news programs not sponsored by the town or school system.

[General Statutes § 9-369b(a)]

5. Responses to Constituent Requests: A municipal official may respond to a constituent request for information both in writing (e.g. a letter) and verbally (e.g. responding to a question posed at a meeting). With respect to written communication, this exemption contemplates a single letter or response and does not apply if the official attempts to distribute the response to an audience larger than who requested the information. For example, leaving unsolicited photocopies of an official's summary prepared at public expense at the back of a meeting room has been found to violate General Statutes § 9-369b.

6. Use of Public Meeting Rooms: Use of public meeting rooms free-of-charge is permissible if access is made available to all groups or committees expressing an advocacy position in connection to the referendum on a non-discriminatory basis. Similarly, a charge may be made for the use of public facilities for this purpose as long as all sides are charged the same and access is provided on a non-discriminatory basis.

7. Time, Date, and Place Reminders: The Commission has determined that notice limited to the time, date, place, question to be voted upon, and encouragement to vote (though not a particular way) are permissible communications in regard to referenda. For example, a school may send flyers home to parents and guardians via schoolchildren if they are limited to the aforementioned subject matter.

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
George A. Ruhe, Wethersfield

File No. 2012-045

FINDINGS AND CONCLUSIONS

This Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that Martin Walsh, a member of the Wethersfield Board of Education, violated General Statutes § 9-369b (a) by urging support for a pending referendum during a televised Board of Education meeting.

After an investigation of the allegations and information contained within the complaint, the Commission makes the following findings and conclusions:

1. The Complainant alleges that a statement made by Martin Walsh (the "Respondent"), a member of the Wethersfield Board of Education ("BOE"), at a televised BOE meeting was an act violating General Statutes § 9-369b (a).
2. That the Respondent's comment urged support for a pending referendum and that it was made during the BOE comment period at the BOE's March meeting is not in dispute.
3. The agenda and minutes of such meeting reflect that the agenda provided both members of the general public and members of the BOE an opportunity to comment upon any issue during the Public Comment and Board Comment agenda items respectively. Based on such agenda, although appearing as separate agenda items, the opportunity afforded by the BOE to both BOE members and the general public appears substantially similar, if not identical. The minutes of the BOE's April 10, 2012 meeting reflect that the Complainant himself twice enjoyed such a privilege during the Public Comment section of the meeting.
4. Connecticut General Statutes § 9-369b (a) provides, in relevant part:

Except as provided in subsection (b) of this section, any municipality may, by vote of its legislative body, authorize the preparation and printing of concise explanatory texts of local proposals or questions approved for submission to the electors of a municipality at a referendum. ... *[N]o 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.* [Emphasis added.]

5. The General Statutes § 9-369b (c) provides, in relevant part:

The State Elections Enforcement Commission ... may impose a civil penalty on any person who violates subsection (a) or (b) of this section by authorizing an expenditure of state or municipal funds for a purpose which is prohibited by subsection (a) of this section....

6. The BOE may not pick and choose among the speakers on the basis of the content or viewpoint of their speech. See *City of Madison v. Wisconsin Employment Relations Commission*, 428 U.S. 167 (1976).
7. The Commission finds that the Respondent's opportunity to make comment was, in effect, no greater than any member of the public wishing to speak and, as such, the nature of the Respondent's municipal office was immaterial as to the broadcast at issue. Accordingly, the Commission declines to further investigate the matter or examine the other elements that would be necessary to establish a violation of General Statutes § 9-369b (a).
8. Based on the above findings, the Commission concludes that the evidence does not support a finding of a violation of § 9-369b (a).

ORDER

IT IS HEREBY ORDERED that the complaint be dismissed.

Adopted this 27 day of June, 2012 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chair
By Order of the Commission

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
George Ruhe, Wethersfield

File No. 2012-054

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Michael T. Emmett (hereinafter referred to as "Respondent"), Superintendent of the Wethersfield Public Schools, Wethersfield, County of Hartford, and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177(c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Respondent serves as Superintendent of the Wethersfield Public Schools and has served in that capacity since July 1, 2012.
2. The Town of Wethersfield held a referendum on a high school building project on April 24, 2012.
3. The complainant alleged that the school district spent municipal funds to promote approval of the referendum by sending email messages to electors that included links to documents promoting to all parents in the school district.
4. The email message stated:

News Alert: High School Referendum Vote Today: Tuesday April 24, 2012

All registered voters will be casting ballots TODAY on the Wethersfield High School Renovation Bond Referendum. All polling places will be open from 6 a.m. to 8 p.m.

Project Information:

<http://www.wethersfield.k12.ct.us/page.cfm?p=2416>

Questions & Answers:

http://www.wethersfield.k12.ct.us/uploaded/schools/Wethersfield_High_School/renovation/WHS_Question_-_0210112.pdf

Email "News Alert: High School Referendum Vote Today: Tuesday April 24, 2012" from Wethersfield Public Schools, April 24, 2012.

5. The email indicated that individuals who had previously signed up for news posts received the email. *Id.*
6. Two links in the email – under “Project Information” and “Questions & Answers” respectively – took the viewer to the Wethersfield Public Schools website. Once there, the “Project Information” link provided information prepared by the Town of Wethersfield Building Committee about the renovation, including links to plans, video presentations, evaluations of the project’s cost and the impact to taxpayers, as well as the educational specifications for the renovated high school. *See* <http://www.wethersfield.k12.ct.us/page.cfm?p=2416> (site last accessed on December 21, 2012); *see also* Exhibit 2 “Project Information” Link, attached to complaint. The second link, “Questions & Answers,” took viewers to a PDF document prepared by the Town of Wethersfield Building Committee that included responses to common questions about the school project. According to the document, it was updated on January 31, 2012. *See* “WETHERSFIELD HIGH SCHOOL RONOVATIONS [sic] AND ADDITIONS – “AS NEW” http://www.wethersfield.k12.ct.us/uploaded/schools/Wethersfield_High_School/renovation/W_HS_Question_-_0210112.pdf.
7. The “Questions & Answers” document covered numerous topics. Among the numbered questions and responses are:

...

16. WITH REGARDS TO THE BUILDING PLAN THAT WAS CHOSEN WHY THIS PLAN? WERE THERE OTHER LESS PRICED ONES CONSIDERED?

...

The proposed project provided the best value using the existing building assets, maximizing state reimbursement for the high school, and providing the Town of Wethersfield with an “As New” facility. That will reduce future utility/energy costs. [Emphasis in original]

...

18. WHAT HAPPENS IF THIS PROJECT DOES NOT HAPPEN?

If the project does not happen there might be a number of ramifications. One specific issue will be with the school's accreditation from the New England Association of Schools and Colleges (NEASC). Our accreditation report will be very critical of curricular and instructional constraints placed upon the school by its physical limitations. It is well within reason to think that the school will go on warning and eventually probation for its accreditation if the project does not happen. Our property values would be at risk of plummeting. The Office of Civil Rights (OCR) has cited Wethersfield High School for multiple code violations surrounding handicapped accessibility and Title IX issues. While we have made some changes and improvements for smaller issues, the larger issues

remain. These corrections can only happen with major and costly renovation. If we do not comply I do not know what the sanctions might be. I would think that the school district might be subject to some type of liability. An improved facility would put us on an even playing field (academically) as some of our neighboring districts. If we do not address some instructional areas our students would have less of an opportunity than students at neighboring schools which is inequitable. If the project does not happen we will be spending non-reimbursable dollars on items that fail (boilers, windows, plumbing etc.) displacing dollars that can be allocated to education.

“WETHERSFIELD HIGH SCHOOL RONOATIONS [sic] AND ADDITIONS – “AS NEW”
http://www.wethersfield.k12.ct.us/uploaded/schools/Wethersfield_High_School/renovation/WHS_Question_-_0210112.pdf

8. Connecticut General Statutes §9-369b provides in pertinent part:
 - (a) . . . [N]o 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 . . .
9. The Commission has consistently concluded that communications that recommend or urge support of, or opposition to, a referendum question, are subject to the restrictions found in §9-369b, General Statutes. In its determination of whether a publicly funded communication advocates the approval or disapproval of a referendum, the Commission has considered the communication as a whole, its content, style, tenor and timing.
10. The Commission has determined previously that communications that advocate a particular result, either expressly or, when considered as a whole, make an ordinary reasonable person understand that the communication advocates for a particular result, would constitute advocacy. The Supreme Court analyzed this standard of review in *Sweetman v. State Elections Enforcement Commission* and concluded that the Commission could rely on that process to determine when communications advocated for or against the outcome of a referendum. *See* 249 Conn. 296, 316 (1999).
11. In prior decisions the Commission has found that the costs associated with a website or server maintained by the public schools would be an expenditure of public funds under § 9-369b. *See In the Matter of a Complaint by Matthew Grimes, Brookfield*, File No. 2008-070, ¶ 8 (concluding that message posted on town website while referendum was pending that urged support for budget violated General Statutes § 9-369b).
12. The Commission has recognized that the prohibition against using public funds to influence the outcome of a referendum does not apply to messages limited to statements of the time, place and date of an upcoming referendum.

13. Likewise, the hosting and maintenance of a website, where the material advocating on behalf of the referendum was made available to the public, also cost the school system. However small, the school system made expenditures of public funds.
14. Respondent asserts that it was not the intention of the Wethersfield Public Schools to advocate for a position on the referendum question by including materials prepared by the Town of Wethersfield Building Committee on the website and/or by sending e-mails containing links to such materials to citizens residing in the Town of Wethersfield who had previously signed up to receive updates regarding the high school building project. Rather, it was the intention of the Wethersfield Public Schools to provide access to information prepared by the Town of Wethersfield Building Committee regarding the high school building project.
15. Notwithstanding the intentions of the Wethersfield Public Schools, the Commission concludes that the website, which was also paid for by public funds from the Wethersfield Public Schools, contained information that a reasonable person would view as advocating for a positive vote on the referendum.
16. The Commission concludes that the electronic mail message of April 24, 2012, which notified certain Wethersfield residents of the referendum vote and, more importantly, referred them to the school system's website that included material advocating for the high-school-building project that was the subject of the referendum, violated General Statutes § 9-369b's ban on the use of public funds to influence the outcome of a referendum question. The Commission concludes that although the message itself did not advocate for or against the referendum, the website created and maintained by the Wethersfield Public Schools included advocacy materials that promoted the referendum.
17. The Commission has taken into consideration the limited impact, nature and expense of the email message at issue in its resolution of this matter.
18. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
19. The Respondent neither admits nor denies the Commission's conclusions that the information on the website advocated a position on the referendum question, but is willing to accept the terms of this consent order in an effort to allow the Commission to resolve this matter.
20. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.

21. The Respondent waives:

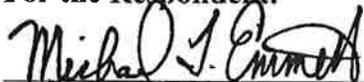
- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.

22. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

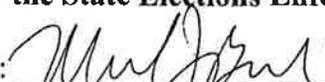
IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with the requirements of Connecticut General Statutes §9-369b, and shall further ensure that no expenditure of municipal funds shall be made to influence any person to vote for approval or disapproval of a referendum question.

For the Respondent:



Michael T. Emmett
Superintendent
Wethersfield Public Schools
Wethersfield, CT

For the State Elections Enforcement Commission:

BY: 

Michael J. Brandi, Esq.
Executive Director and General Counsel
of the State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: February 6, 2013

Date: 2/20/13

Adopted this 20th day of February of 2013, at Hartford, Connecticut.



Anthony J. Castagno, Chairman
By Order of the Commission

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Mary Ann Orzell,
Morris

File No. 2018-019

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between Erica Dorsett-Matthews and Thomas Weik, Town of Morris, County of Litchfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Complainant alleged that Morris First Selectman Thomas Weik and Selectman Erica Forsett-Matthews (hereinafter "Respondents") violated the provisions of Section 9-369b by using the Town of Morris website to link to a Facebook page that advocated for the town budget referendum to be held on March 15, 2018.
2. The link on the Town of Morris website was one of three tabs on the homepage that were labeled "Calendar," "Social Media" and "News." Scrolling over the *Social Media* tab raised the following caption: "*The 'Town of Morris Connecticut' Facebook page is managed by First Selectman TP Weik and Selectman Eric Dorsett-Matthews. Opinions expressed on this page are not necessarily representative of the Town's Board of Selectman.*"
3. Further, the Facebook page did not have any direct functions to reach governmental departments, contacts, officials, services or pay bills as was available through the Town of Morris official webpage. The communication that is the subject of this complaint was posted on the Facebook page on March 15, 2018 at 10:15 AM and read on part:

Come out and Vote Today on the Town Budget from 12-8PM at the Community Hall. Failure to pass this budget is not only endangering the fiscal health of the Town of Morris, but also the financial stability of the Elderly and those on fixed incomes. The Town needs to meet its financial obligations to the Regional School District and to its employees...
4. 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.]

5. Upon investigation, there was no dispute that the website was maintained by the town and that the Facebook page that is subject of this complaint was not funded by Morris, but rather, privately established and maintained.
6. After investigation, it was determined that the Social Media tab described above had been removed from the Morris homepage. Further, Respondents admitted that they maintained the Facebook page and, in response to this complaint and investigation, sought guidance from the Commission staff about how they could best comply with the law and best address the situation alleged in the complaint.
7. Respondents, in response to this complaint and investigation, denied that the Morris homepage advocated for a referendum, but conceded that the Facebook page, which was accessible through the Social Media tab, could be construed by some individuals as advocating for passage of the budget referendum. Furthermore, Respondents indicated that the link was “...removed from the website to eliminate any concern or confusion that [Complainant] might have had.” The investigation confirmed that the link to the Facebook page was removed after the filing of this complaint.

General Statutes and “Pending” Referenda

8. The Commission has consistently held that General Statutes § 9-369b only applies when a referendum is “legally pending,” or when “the last legal condition” has been satisfied to ensure that the referendum will take place. *See Complaint by Thomas A. Karhrl*, Old Lyme, File No. 2007-185 and *Complaint by Matthew Paulson*, Bethel, File No. 2015- 030. In this instance, there is no dispute that the dissemination of the flyers through public school teachers and their mailboxes occurred while the Board of Education budget referendum was pending in North

Stonington. Therefore in applying § 9-369b, the Commission must determine whether the social media tab that served as a link to the Facebook page in question was at public cost and whether that page contained advocacy and therefore was prohibited by § 9-369b.

Precedent for Websites and General Statutes § 9-369b

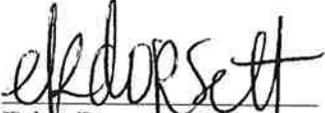
9. The Commission has concluded that the use of municipal funds to disseminate material that advocates a position on a referendum on a website constitutes a violation of General Statutes § 9-369b (a). *See Complaint by AvalonBay Communities, Inc.*, File No. 2001-186; *Complaint by Edward J. Hardy*, Oxford, and File No. 2003- 172; *Complaint by Matthew J. Grimes*, Brookfield, File No. 2008-070 (posting of a letter advocating a “Yes” vote for the passage of a referendum found to be a § 9-369b violation). More specifically, the Commission has found a violation of § 9-369b where, as in this instance, a link on a publicly funded website connects to advocacy materials that are otherwise privately funded and maintained on a personal website. *See Hardy*.
10. Similarly, the Commission has concluded that advocacy materials that were privately created, but posted a publicly funded library website, was illustrative of a § 9-369b violation. *See AvalonBay*. Finally, the Commission has concluded that the use of publicly funded email accounts on the morning of a referendum to disseminate links to town websites that contained advocacy materials for the passage of a referendum was a violation of § 9-369. *See Complaint by George Ruhe*, Wethersfield, File No. 2012-054 (where the Superintendent of a public school system used his public email account to disseminate links to town websites that contained materials from the town building committee pertaining to renovations that were the subject of the referendum).
11. The Commission notes that Respondents, as members of the Morris Board of Selectmen, were *not* third parties and therefore their comments on social media did *not* satisfy the exception for such comments as provided for in General Statutes § 9-369 (a) (1) (4).
12. The Commission has consistently concluded that communications that advocate a particular result, either expressly or when considered as a whole, and make an ordinary reasonable person understand that the communication advocates for a particular result, will be deemed to constitute advocacy.

13. The Commission finds that taken as a whole, the timing, tenor and tone of the March 15, 2018 Facebook posting at 10:15 AM on the morning of the Morris budget referendum vote that was held between the hours of 12:00-8:00, which warned of dire consequences and risks of meeting town obligations to the public, satisfies the standard for determining that it constituted advocacy for the passage of that budget. Furthermore, based on the specific facts and circumstances in this instance, the Commission finds that a reasonable person could conclude, as alleged, that the Facebook page that was accessible through the Social Media tab on the Town of Morris website contained advocacy for purposes of General Statutes § 9-369b.
14. The Commission concludes, therefore, that Respondents, by linking the town website to a Facebook page, which contained a post advocating for the March 15, 2018 referendum, violated General Statutes § 9-369b
15. Respondents admit all jurisdictional facts and agree that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondents shall receive a copy hereof as provided in Section 9-7b -56 of the Regulations of Connecticut State Agencies.
16. It is understood and agreed that this agreement will be submitted to the Commission at its next available meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondents and may not be used as an admission by any party in any subsequent hearing, if the same becomes necessary.
17. The Respondents waive:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
18. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondents pertaining to this matter.

Dear Mr. Chairman,
We disagree with the Commission's findings
and do not feel the Town is responsible
for the content of any of the links the
Town adds to its Website.
ORDER

IT IS HEREBY ORDERED that henceforth Respondents shall strictly comply with the requirements of General Statutes § 9-369b.

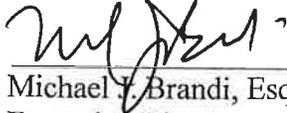
The Respondents:

BY: 
Erica Dorsett-Mathews
111 South Street
Morris, Connecticut

Dated: 9/21/18

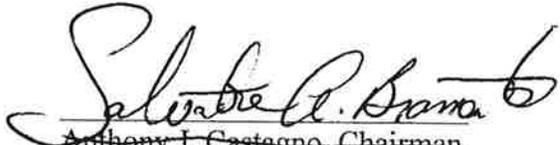
BY: 
Thomas Weik
205 West Street
Morris, Connecticut

For the State of Connecticut:

BY: 
Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Agent of the
State Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 9/18/18

Adopted this 19th day of September, 2018 at Hartford, Connecticut by vote of the Commission.


Anthony J. Castagno, Chairman
By Order of the Commission
Salvatore A. Bizzamonte - Co Chair

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Alex Ruskewich, Wilton

File No. 2014-118A

FINDINGS AND CONCLUSIONS

The Complainant made multiple allegations concerning the activities of town officials in association with a referendum held September 23 and 27, 2014 to vote on issuing bonds to fund a renovation of the Miller-Driscoll school facility in town. The majority of the allegations are addressed here, with one count separately addressed in SEEC File No. 2014-118B.¹

BACKGROUND

1. By way of background in this matter, on or about February 19, 2013, the Wilton Board of Selectmen created an ad hoc committee entitled the Miller Driscoll Building Committee (the "MDBC"). According to the website for the Town of Wilton, the members of the current committee are Dick Dubow (Board of Selectmen), Karen Birck, John Kalamarides (Board of Finance), Cheryl Jensen-Gerner (MD Principal), Ann Paul (Dir., Sp. Services), Dr. Fred Rapczynski (Dir. Pre-School), John Murphy (Supv., Dist. Cust. Serv.), John Guth, Bruce Hampson, Ray Tobiassen, Rick Tomasetti, and Jim Newton.
2. The Board of Selectmen charged the MDBC with developing a plan "to renovate and upgrade Miller-Driscoll School in order to extend the useful life of the building and site as Wilton's only Pre-K and K-2 school for the next 25 to 30 years." The Committee held eleven (11) public meetings during which multiple conceptual plans to renovate the building were discussed. Members of the public attended these meetings. The conceptual plans were presented to the Board of Selectmen on February 18, 2014 at which time the Board of Selectmen authorized the Committee to proceed with detailed schematic design of one of the conceptual plans. The Committee then held another four (4) public meetings to discuss the schematic design and its cost. At a July 21, 2014 joint meeting of the Boards of Selectmen and Finance, the Board of Selectmen unanimously approved the schematic plan

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

and budget for the project presented to the voters at the September 23, 2014 Special Town Meeting.

3. On September 2, 2014 the Board of Selectmen approved a resolution to issue municipal bonds in order to pay for project. This was the act that triggered the Town meeting and referendum clause of the Charter, which was then scheduled and held on September 23 and 27.

ALLEGATIONS

4. The Complainant, a member of a coalition of individuals who formed the referendum committee "Sensible Wilton" opposing the bond issuance for the renovation, separated his complaint into two main allegations and then filed a supplement to his original complaint, which added a third allegation. The allegations will be addressed herein as Count One, Count Two, and Count Three.
5. In Count One, the Complainant alleges that the Town of Wilton utilized public funds to pay for an electioneering communication advocating a "Yes" vote in the referendum.
6. In Count Two, the Complainant also alleges that the Town of Wilton utilized public funds in the form of informational sessions about the project held on "parent nights" on September 10th and 17th in which the Complainant alleges representatives of the Town of Wilton advocated for a "Yes" vote in the upcoming referendum.
7. In Count Three, the Complainant alleges that the Town of Wilton placed a notice up on the town-hosted PTA calendar reading "Vote for Miller-District Renovation!"

LAW

8. General Statutes § 9-369b speaks to expenditures of public funds in association with a pending referendum and reads, in pertinent part:

(a)(1) Except as provided in subdivision (2) of this subsection, any municipality may, by vote of its legislative body, authorize the preparation and printing of concise explanatory texts of local proposals or questions approved for submission to the electors of a municipality at a referendum. In a municipality that has a town meeting as its legislative body, the board of selectmen shall, by majority vote, determine whether to authorize an explanatory text or the dissemination of other neutral printed material. Thereafter, each such explanatory text

shall be prepared by the municipal clerk, subject to the approval of the municipal attorney, and shall specify the intent and purpose of each such proposal or question. Such 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 distribution 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. Any municipality may, by vote of its legislative body and subject to the approval of its municipal attorney, authorize the preparation and printing of materials concerning any such proposal or question in addition to the explanatory text if such materials do not advocate the approval or disapproval of the proposal or question.

...

(3) For purposes of this subdivision, "community notification system" means a communication system that is available to all residents of a municipality and permits any resident to opt to be notified by the municipality via electronic mail, text, telephone or other electronic or automated means of community events or news. At the direction of the chief elected official of a municipality, a municipality that maintains a community notification system may use such system to send a notice informing residents of an upcoming referendum to all residents enrolled in such system. Such notice shall be limited to (A) the time and location of such referendum, (B) a statement of the question as it is to appear on the ballot at the referendum, and (C) if applicable, the explanatory text approved in accordance with subdivision (1) or (2) of this subsection. Any such notice shall not advocate the approval or disapproval of the proposal or question or attempt to influence or aid the success or defeat of the referendum. Other than a notice authorized by this subdivision, no person may use or authorize the use of municipal funds to send an unsolicited communication to a group of residents regarding a referendum via electronic mail, text, telephone or other electronic or automated means for the purpose of reminding or encouraging such

residents to vote in a referendum, provided such prohibition shall not apply to a regularly published newsletter or similar publication.

(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 the 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.

(b) The State Elections Enforcement Commission, after providing an opportunity for a hearing in accordance with chapter 54, may impose a civil penalty on any person who violates this section by authorizing an expenditure of state or municipal funds for a purpose which is prohibited by this section. The amount of any such civil penalty shall not exceed twice the amount of the improper expenditure or one thousand dollars, whichever is greater. In the case of failure to pay any such penalty imposed under this subsection within thirty days of written notice sent by certified or registered mail to such person, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to pay the penalty imposed. Notwithstanding the provisions of sections 5-141d, 7-101a and 7-465, any other provision of the general statutes, and any provision of any special act or charter, no state or municipal officer or employee shall be indemnified or reimbursed by the state or a municipality for a civil penalty imposed under this subsection.

(c) Any municipality may provide, by ordinance, for the preparation and printing of concise summaries of arguments in favor of, and arguments opposed to, local proposals or questions approved for submission to the electors of a municipality at a referendum for which explanatory texts are prepared under subsection (a) of this section. Any such ordinance shall provide for the establishment or designation of a committee to prepare such summaries, in accordance with procedures set forth in said ordinance. The members of said committee shall be representatives of various viewpoints concerning such local proposals or questions. The committee shall provide an opportunity for public comment on such summaries to the extent practicable. Such summaries shall be approved

by vote of the legislative body of the municipality, or any other municipal body designated by the ordinance, and shall be posted and distributed in the same manner as explanatory texts under subsection (a) of this section. Each summary shall contain language clearly stating that the printing of the summary does not constitute an endorsement by or represent the official position of the municipality. (Emphasis added.)

"Pending" Analysis

9. The allegations here implicate the provisions of General Statutes § 9-369b, which concerns the activities of public officials in association with a referendum. Such provisions are not effective unless the referendum is "pending." The Commission has held that a referendum is legally pending when all of the necessary legal conditions have been satisfied to require that a referendum be held. *In the Matter of a Complaint by Roger Wise, et al, New Fairfield*, File No. 2009-003.
10. Here, the Wilton Charter requires a town meeting and a referendum to be held after the Board of Selectmen propose an issuance of bonds.
11. The records of the Town of Wilton reflect that the Board of Selectmen voted on the proposed issuance of bonds on September 2, 2014, which is the relevant "pending" date in this matter. The referendum at issue here was held on September 23 & 27, 2014.

COUNT ONE: Use of Municipal Funds to Advocate in a Referendum

12. In Count One, the Complainant alleges that while the referendum on the bond issuance was "pending," flyers advocating a "yes" vote were distributed at two town-sponsored meetings held on September 10th and September 17th as well as at sporting events held on school grounds on the days leading up to the voting days of the referendum. He alleges that he believes that the town paid for the flyers based on the fact that the flyers were distributed at town events and bore the website URL for the town.
13. The Complainant included a copy of a flyer that explicitly advocates for voting "Yes" on the upcoming referendum. The front of the flyer specifically exhorts the voters to "Vote YES for the Miller-Driscoll Renovation Project" and the remainder of the flyer details the date and times of the referendum, as well as the various proposed renovations that would be funded by the bond issue. The bottom of the flyer reads: "See www.wiltonct.org for more information on the project."

14. The Wilton Town Clerk confirmed that no committees other than "Sensible Wilton" registered to make expenditures related to the referendum in this case.
15. The Town of Wilton generally denied the allegation here and provided evidence that the flyer was created and paid for by one or more private citizens and not by the Town of Wilton, including but not limited to an individual by the name of Susan Price.
16. When the instant Complaint was filed alleging that the Town of Wilton had paid for the flyers, Ms. Price contacted town attorney Kenneth Berhard as follows:

Upon seeing the distribution of the "No" flyers and the placement of them on cars in the school parking lot, I became very angry and decided, along with some of my friends, to produce a 'Yes' flyer. We went to Paul's Prosperous Printing and had 2,000 flyers printed at a total cost of \$100.00. I'm attaching a copy of the receipt. We distributed the flyers at three school events. The flyers were never approved or even shown to any public school official or town official and I did it entirely on my own initiative and the distribution was my effort alone. I also distributed the flyers at soccer fields, football fields and at a Stop & Shop. I have reviewed the complaint filed to the SEEC and to the extent that it connects my activities with the Building Committee or with town officials, it is pure nonsense, . .

17. As an initial matter, the Commission found no evidence supporting the allegation that the Town of Wilton used municipal funds for the flyer at issue. As such, Count One is dismissed as to them.
18. However, the Commission continued the investigation and named Ms. Price as a respondent, as the flyers contained no attribution, as required in certain circumstances by General Statutes § 9-621 (c), which reads in pertinent part:

(c) 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.

19. The main question here is whether a "group of two or more individuals who have joined solely to promote the success or defeat of a referendum question" incurred the expenditure for the flyers here, such that an attribution was required.
20. It is well established that Pursuant to § 9-621, individuals who are not a "group of two or more individuals who have joined solely to promote the success or defeat of a referendum question" are not required to include attributions on advocacy communications concerning referenda, as mandated by the Supreme Court's ruling in *McIntyre v. Ohio Elections Commission*, 541 U.S. 334 (1995). See also *In the Matter of a Complaint by Lynn Brewer*, Winsted, File No. 2012-133; *In the Matter of a Complaint of M. Kirk Carr, Jr., Clinton*, File No. 2012-083; *In the Matter of a Complaint of Amy Primorac, Monroe*, File No. 2009-064; *In the Matter of a Complaint of Arthur R. Thompson, Deep River*, File No. 2007-380; *In the Matter of a Complaint of Pamela Lang, Middlefield*, File No. 2006-168; *In the Matter of a Complaint of Tony Palermo, Westbrook*, File No. 2003-186; and *In the Matter of a Complaint by Old Saybrook Town Clerk Sarah Becker*, File No. 2001-191.
21. In response to staff inquiries during the investigation of this matter, Susan Price generally took responsibility for the flyer at issue. She asserts that she produced 2000 flyers at the above print shop at a cost of \$100 (and provided evidence in support), but enlisted others to help her distribute the flyers at town events, including but not limited to sporting events and town meetings.
22. Ms. Price asserts that these flyers were her project, but that she did not work entirely alone. Indeed, in the interest of full disclosure, she also provided copies of detailed e-mails between her and MDBC member Bruce Hampson. MDBC member Karen Birck and Miller-Driscoll principal Cheryl Jensen-Gerner are recipients of the e-mails, but the main

communication is between Mr. Hampson and Ms. Price, with the other individuals included as recipients.

23. Importantly, while the communications show that MDBC members were at least knowledgeable about the flyer, there was no evidence in the e-mails or otherwise found in the investigation supporting a finding that a “group of two or more individuals” incurred the expenditure for the flyer.²
24. This case is not unlike, *In the Matter of a Complaint of Arthur R. Thompson, Deep River*, File No. 2007-380. In *Thompson*, two individuals independently developed and solely incurred expenditures for two different flyers, but agreed to coordinate in the distribution of each other’s flyer. The Commission found that that:

In the present case, Ms. Epright and Ms. Huybensz did not jointly make an expenditure to promote the defeat of the pending referendum question. Ms. Epright merely volunteered to help distribute the anonymous political statement that Ms. Huybensz independently paid for and composed . . . Since Ms. Huybensz acted alone and independently made the expenditure for the flyer, she was not required to include an attribution on the flyer, pursuant to General Statutes § 9-621.

Thompson, File No. 2007-390 at ¶¶ 7-10.

25. Considering the aforesaid, while Ms. Price did not work entirely alone—she admits that she enlisted others to help her distribute the flyers—the Commission has held that this does not automatically trigger the attribution requirement in § 9-621. The evidence here does not support a conclusion that a “group of two or more individuals” incurred the expenditure for the flyer. As such, Ms. Price was not required to put an attribution on it. Count One should also be dismissed as to Ms. Price.

COUNT TWO: Use of Public Funds by Using Public Facilities for Advocacy

26. In Count Two, the Complainant alleges that at so-called “parent nights” held on September 10 and 17th at the Miller-Driscoll School, members of the MDBC attended the parent

² Also importantly, a municipal expenditure is not triggered simply because members of a municipal committee are aware of electioneering communications and/or may have even distributed such electioneering communications in cooperation with another individual. Individuals do not automatically give up their personal free speech rights by virtue of membership on a public committee.

nights and advocated for a “Yes” vote at these nights. The Complainant asserts that this was an impermissible use of public funds to advocate for an outcome in the referendum, in violation of General Statutes § 9-369b.

27. The Complainant specifically alleges that on September 10th and 17th, the Miller-Driscoll School held two of its regularly scheduled “parent nights” at the school and at these events, representatives of the MDBC and the school gave presentations to the parents regarding the renovation project. The Complainant alleges that the presentations given by the MDBC were “advocacy sessions.” He bases his allegations mainly off of the testimony of two parents, one of which was O. Curtis Noel³, who provided a statement indicating that it was his opinion that the presentation, led by Karen Birck of the MDBC, “gave what can only be described as a strong sales pitch calling for support of the \$50 million M-D renovation proposal. She urged these parents to vote for the proposal.” Parent John Macken also spoke at the September 23, 2014 Town Meeting and described the session at his parent night similarly as a “sales pitch.” The Complainant was unable to provide any video or audio recordings of the parent night presentations or additional witnesses who would testify similarly to Mr. Macken and Mr. Noel.

28. In its initial response, the Town of Wilton asserts:

In the weeks prior to the scheduled Special Town Meeting vote to approve/disapprove the issuance of the bonds, the Committee conducted a public informational session on September 4, 2014 at the library. The Committee also did presentations to the Rotary Club, the realtors, the PTA Council, the Wilton Education Foundation, the Republican Town Committee, the Democratic Town Committee and the Kiwanis Club. There were presentations at the various “meet the teacher” days and open houses. The purpose of the presentations was to advise the Wilton electorate of the physical and educational needs of the school and to outline The Board of Selectmen’s charge to renovate and upgrade the school to extend its useful life for another 25-30 years. At those sessions, the Committee did provide an informational brochure that was paid for with public funds, a copy of which is attached hereto. A quick review of the brochure will affirm that the text is informational only and does not advocate for either an affirmative or negative vote. During the informational meetings, the Committee was very careful not to indicate or direct how people should vote, but only wanted the Wilton taxpayers

³ The Commission notes that Mr. Noel is also the Complainant in SEEC File No. 2015-001, which concerns additional allegations under § 9-369b in relation to the bonding referendum.

and citizens to understand what the project consisted of and what improvements were proposed for the Miller Driscoll School.

29. According to the Town, near the beginning of each school year, Miller-Driscoll School holds “parent nights” on a separate night for each of the grades. Parents with children attending those grades are invited on the night scheduled for the specific grade, and teachers assigned to teach such grades are also invited to attend the meetings. For a number of years, the format for the Parent Night at Miller-Driscoll School has been to gather as a group of the whole at the beginning of the evening for a brief general presentation of approximately fifteen minutes. Topics of general interest are chosen for the large gathering at the beginning of the evening, such as a review of the math curriculum. After the large gathering at the beginning of the evening, teachers and the parents of their students go to the various classrooms for more specific discussion of the school and its programs and resources.

30. For the 2014-15 school year, the Miller-Driscoll School followed the established practice for Parent Nights in 2014. Specifically, the following Parent Nights were held:

September 8: Second Grade
September 10: Kindergarten
September 17: First Grade

31. The Town of Wilton asserts that in accordance with the established practice, there was a general gathering for about fifteen minutes at the beginning of the evening for a presentation on a topic of general interest. In 2014, the topic of general interest was the school renovation project at Miller-Driscoll School that was under consideration. Ms. Jensen-Gerner served as a member of the Miller-Driscoll Building Committee, which was established with regard to the proposed school building project to renovate Miller-Driscoll School. As a member of that Committee, Ms. Jensen-Gerner was aware of the prohibition set forth in Conn. Gen. Stat. Section 9-369b against spending public funds to advocate a referendum result. With that prohibition in mind, Ms. Jensen-Gerner granted permission to other members of the Committee to provide factual information to the parents attending the Parent Night meetings in September 2014. The committee members who presented that information were as follows:

September 8: Bruce Hampson and Karen Birck
September 10: Bruce Hampson and Karen Birck
September 17: Karen Birck and Glenn Hemmerle

32. The Town asserts that the information about the proposed building project was presented through a PowerPoint presentation that was factual in nature. The same PowerPoint presentation was used at each of the three Parent Nights at Miller-Driscoll School. Members of the building committee also used this PowerPoint presentation at multiple information sessions throughout the community, including presentations at the Library, to community groups, and at the parent nights at other schools. The PowerPoint presentation consists of information on ten slides, and a final slide with the email addresses of the two members of the building committee who were making the presentation. The information presented is factual in nature, and it provides information both as to the changes that would be achieved through the renovations and as to the costs to the taxpayer of the renovation project.

33. MDBC member Bruce Hampson provided an affidavit in the matter which read:

1. I have served on the Miller Driscoll Building Committee with Karen Birck.
2. On September 9, 2014 Karen Birck and I provided an informational presentation to Miller Driscoll parents regarding the Town's interest in renovating the Miller Driscoll School. Just prior to the presentation I was handed a flyer published by a group called Sensible Wilton advocating a "No Vote" on a future bonding issue for the aforesaid renovations.
3. Having been advised by Town Council, I was well aware of the fact that the presentation given by Karen and myself was to be informational only and that we were not to advocate either a positive or negative vote on the future bonding referendum. The purpose of the presentation was to provide facts and information and to encourage parents and voters to attend the special town meeting scheduled for September 23rd. The Principal of the school made it clear that we only had a limited amount of time to make our presentation and there would be no opportunity for questions. At some point I did reference the Sensible Wilton "Vote No" flyer and stated that I did not believe the facts contained therein were accurate and I encouraged people to attend the special town meeting where they could ask questions and become more informed about their perspective vote.
4. At no time during the September 9, 2014 meeting and presentation to the parents of the Miller Driscoll School children did I advocate for

the project or encourage people about how they should vote. My only purpose was to provide as much information as I could and encourage the attendees to become informed about the underlying facts for the proposed Miller Driscoll project.

34. Ms. Price also made a statement as a witness to the “parent night” presentations, as follows:

[S]ince I attended three of the events referenced in the complaint, I can state that neither The Building Committee nor school officials gave any express opinion as to how people should vote. Everything that I heard was strictly background information on what was being proposed in the way of renovations and repairs to the Miller Driscoll School. . . .

35. Turning to the question here, the Complainant alleges that school facilities were utilized by representatives of the MDBC to advocate voting “yes” on the referendum to “captive” parents at these so-called “parent-night” presentations. Statements from two parents were included as proof of the allegations. The Town of Wilton denies this allegation and provided a fairly lengthy rebuttal, which included statements from participants, as well as the PowerPoint presentation and the informational brochure that was utilized at each information night. Neither of these documents advocated for a particular vote on the referendum, but were informational in nature. Additionally, Susan Price provided a statement refuting the stories of the parents highlighted by the Complainant.

36. On the other hand, the evidence does establish that both MDBC member Ms. Birck and Mr. Hampson, who participated in the presentations in question, both clearly appeared to personally favor a “yes” vote on the referendum (after all, as MDBC members, they voted to recommend the project). However, the evidence is insufficient to show that it is more likely than not that these individuals expressed such opinions and/or urged a “Yes” vote at any of the public meetings.

37. This specific allegation appears to be new to the Commission, although there are analogous cases that inform the Commission’s past treatment of similar matters. Importantly, the Commission has repeatedly established that:

The Commission does not, however, construe General Statutes § 9-369b (a) in a manner that precludes elected officials or the public from freely discussing issues and business on a meeting agenda, regardless of the municipal expense associated with holding and/or airing the meeting. *See In the Matter of a Complaint by Arthur Screen*, File No. 2005-167 (No violation found where a statement of advocacy on a pending budget

referendum was made by a Board of Education member at a regularly scheduled public meeting in which the sole agenda item was the review and discussion of budget items); *see also In the Matter of a Complaint by Craig Powers*, SEEC File No. 2009-050 (“Written, printed or typed summary” exception applies to uses of municipal facilities and/or funds to hold a special meeting in order to solely to discuss the preparation of a “written, printed or typed summary of an official’s views on a [pending] proposal or question, which is prepared for any news medium”). *But see, In the Matter of a Complaint by Joseph Valys*, SEEC File No. 2005-165 (Violation found where, during a Board of Education meeting broadcast on public access television at municipal expense, municipal official, unrelated to any item on a meeting agenda, announced to the viewing audience that there was an hour left to vote on a referendum and urged the viewing audience to “get out and vote no.” This case appears to be an outlier.)

38. Here, there is a legitimate question as to whether the “parent-night” is sufficiently analogous. The evidence establishes that the event was public (though not necessarily publicly noticed beyond the Miller-Driscoll parents) and there was notice (again, to the parents), that the project would be discussed. However, it not clear that the events were “meetings” as such, like the above cases, or even whether such distinction is material here.
39. Moreover, there is evidence that the Town understood its obligations to stay neutral in its communications. Even assuming that words of advocacy may have been utilized by individuals in the meeting, any acts taken by such individuals to deviate from that specific instruction from the town attorney may have been, at best, such individual’s expression of their personal beliefs rather than paid advocacy on behalf of a public entity.
40. However, leaving the above questions aside, ultimately this and any matter rests on the sufficiency of the evidence found. And here, there is insufficient evidence to establish as to whether advocacy even took place in any specific and/or material way. In each of the above cases, there were transcripts and, in some cases, videotapes available of the events. As the word choices made by the participants could very well turn words conveying information into words of advocacy, precision is key. Here, we have hearsay and competing narratives on what might have occurred, but no concrete record to review.
41. In the absence of any better evidence, the Commission cannot conclude that it could factually establish that it was more probable than not that advocacy occurred in the first place. As such, the Commission concludes that the evidence is insufficient to make a

finding that it was more probable than not that public funds were used to advocate in a referendum here. Count Two should be dismissed.

COUNT THREE: Use of a Public Website for Advocacy

42. Subsequent to the filing of his initial Complaint, the Complainant discovered an entry on the town-hosted PTA calendar for the Cider Mill School PTA reading "Vote for Miller-District Renovation!" He alleges that this is an impermissible expenditure of municipal funds to advocate for the referendum.
43. The Town of Wilton responded that no town official had anything to do with authorizing the posting of information on the linked pages. The Town asserts that the Board of Education were not even aware of the existence of the information contained in the linked pages until asked to respond to the instant investigation.
44. According to the Town, many years ago the Wilton Public Schools permitted the parent-teacher associations of its various schools to move their websites to the district server. The Wilton Public Schools provide direct access to the district website for their PTAs to edit only the PTA content. The Town asserts that the content posted is determined solely by the PTA and the Wilton Public Schools exercise no supervision or editorial control over the PTA website.
45. However, the Town also noted that as a result of this matter, the Board of Education will be considering procedures going forward in which the principals at each school will review and approve any proposed content before it is posted on the PTA website.
46. After investigation, the Commission found that four parents had editorial access to the Cider Mill School PTA website, Andrea Bates, Clarissa Cannavio, Lisa Smith and Madhavi-Sharma Vallabhajosula.
47. The investigation revealed that it was Ms. Vallabhajosula who made the posting at issue here.
48. Ms. Vallabhajosula asserted that it was her responsibility to update the website calendar, which she did based mainly based on the school's "hot cider" newsletter. She asserts that it was never her intent to post any words of advocacy, but merely to put the event on the calendar.
49. Turning to the question here, the facts are straightforward. Ms. Vallabhajosula, in her capacity as a volunteer parent PTA member, created an event on the Cider Mill School

website calendar entitled, "Vote for Miller-District Renovation!" She asserts that she never had any intent to post content advocating for or against the referendum, but was merely creating the event that she saw mentioned in Cider Hill's regularly published school newsletter (aka "Hot Cider"), as is her regular practice. She asserts that she was imprecise in her transcription and used an incorrect pronoun. English is not her first language.

50. As an initial matter, while the Commission did not find evidence to contradict the Town's affirmations that they did not direct any individual or group to post the content at issue here, the Commission also does not find this availing as a defense. The Board of Education's choice to issue its parent-teacher organizations a blank check to post its content without review, does not necessarily absolve it from liability under § 9-369b.
51. Turning to the substantive issue, to determine whether a violation of General Statutes § 9-369b has occurred, the Commission considers first whether there was an expenditure of public funds and then whether the communication advocated for or against a referendum question while the referendum was pending. The Commission has found in prior cases that the costs associated with a website maintained by public schools is an expenditure of public funds under § 9-369b. See *In the Matter of a Complaint by Matthew Grimes, Brookfield*, File No. 2008-070, (concluding that a message posted on a website maintained at public cost urging support of a budget while a budget referendum was pending violated § 9-369b). The Commission, consistent with its prior decisions, concludes that the Region 12 website used as detailed herein qualifies as an expenditure of public funds for the purposes of § 9-369b. See *In the Matter of a Complaint by Patrick S. Dwyer, Bridgewater*, File No. 2014-049.
52. The second prong of the Section 9-369b analysis focuses on whether the communication advocated for or against the outcome of a referendum. The Commission has previously concluded that communications that advocate a particular result, either expressly or when considered as a whole, and make an ordinary reasonable person understand that the communication advocates for a particular result, will be deemed to constitute advocacy. In determining whether a communication constitutes advocacy, the Commission reviews the entire communication and considers its tone, tenor and timing. The Supreme Court analyzed this standard of review in *Sweetman v. State Elections Enforcement Commission* and concluded that the Commission could rely on this process to determine when communications advocated for or against the outcome of a referendum. See *Sweetman v. State Elections Enforcement Comm'n*, 249 Conn. 296 (1999) and *Dwyer* at ¶ 8.
53. Considering the tone, tenor, and timing of the communication here, it does not rise to the level of advocacy. The message itself is very short. It is contained within an area of a website which by its nature is dedicated to the announcement of the dates and times of

events. While not fatal to this claim, the message does not expressly advocate for a result. Putting the message into another context, it could easily have stated, "Vote for Budget Referendum!" or "Vote for Board of Education Election!" which would perhaps have been a safer choice than what was used here.⁴ However, here the Commission concludes that a reasonable person would just as likely consider these words, especially in their context on a calendar, to be merely informative rather than anything more.

54. Accordingly, the Commission concludes that the evidence is insufficient to establish that it is more likely than not that an impermissible expenditure of public funds was made here. Count Three should be dismissed.

⁴ The Commission also notes the investigation's findings regarding Respondent's language learner status.

ORDER

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

That the matter is dismissed.

Adopted this 16th day of June, 2015 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Anthony J. Castagno". The signature is written in a cursive style with a horizontal line underneath it.

Anthony J. Castagno, Chairperson
By Order of the Commission

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Thomas P. Mazzarela,
Hampton

File No. 2018-090

FINDINGS AND CONCLUSIONS

Complainant Thomas P. Mazzarela filed this Complaint pursuant to General Statutes § 9-7b. The Complainant alleged violations of General Statutes § 9-369b by Wethersfield Town Council member Mary Breton. After its investigation, the Commission makes the following findings and conclusions:

1. Complainant alleged that the Mary Breton violated the provisions of Section 9-369b by advocating for passage of Question #3 at the November 6, 2018 election in Wethersfield.
2. More specifically, complainant alleged that "acting as a town official," Ms. Breton violated General Statutes § 9-369b when she advocated for a pending ballot question at a October 15, 2018 public meeting at Wethersfield Council Chambers; which included a room full of residents, was broadcast on the community access channel and was available to anyone who had access to the internet.
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....
 - ...
 - (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. By way of background, there is no dispute that a ballot question for the November 6, 2018 election in Wethersfield was pending at the time of the October 15, 2018 public meeting. Further, Ms. Breton does not deny that she advocated for Question #3 at such meeting.
5. Therefore, the Commission finds that its analysis and application of General Statutes § 9-369b turns on whether Ms. Breton's comments at the public meeting in support of a ballot question constituted a public expenditure for purposes of applying General Statutes § 9-369b.
6. After investigation, the Commission finds that the statements by Council Member Breton in support of a November ballot question were made during a "public and council comment" portion of the meeting that appeared on the October 15, 2018 agenda. Further, the Commission finds that there is ample recorded evidence that multiple individuals spoke on the issue that was subject of the ballot question; including the Complainant and Ms. Breton.
7. Finally, there was no indication after investigation that the public was restricted from participating in such part of the public meeting or that any supplemental advocacy materials were provided by Ms. Breton when she shared her opinions were regarding the upcoming November 6, 2018 ballot questions in Wethersfield.
8. The Commission has consistently concluded that where a public official makes comments at a regularly scheduled town meeting in support or opposition to a proposed referendum or ballot question, such public comments do not constitute a public expenditure simply because they are made by a public official. *See Complaint of George A. Ruhe, Wethersfield, File No. 2012-045.*
9. Moreover, the Commission does not construe General Statutes § 9-369b to preclude elected officials from freely discussing public issues and business that appear on meeting agendas. *See Complaint by Jesse Haskill, Coventry, File No. 2005-264* (no violation found where a statement of advocacy on a pending referendum question was made by election official where item was on regularly published meeting agenda) and *Complaint by Arthur Screen, Plainville, File No. 2005-267* (No violation found where a statement of advocacy on a pending budget referendum was made by Board of Education member at a regularly scheduled public meeting in which the sole agenda item was for public discussion of upcoming budget items).

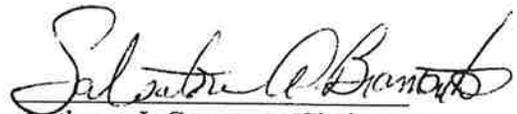
10. Consistent with the above analysis, the Commission finds that because a public official shares their views about a ballot question at a public meeting is not in and of itself enough to cause a public expenditure for purposes of General Statutes § 9-369b. That the public forum is available on-line or via community access television does not change this result.
11. The Commission consequently concludes that the fact that a public official comments or speaks during the public comment portion of a public town meeting to advocate for a pending ballot question, as detailed herein, do not amount to a public expenditure for purposes of applying General Statutes § 9-369b.
12. The Commission concludes therefore that General Statutes § 9-369b and its prohibitions governing public expenditures, under these narrow and specific facts, were not violated. Complainant's allegation is therefore dismissed.

ORDER

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

That the Complaint be dismissed.

Adopted this 20th day of February 2019 at Hartford, Connecticut


Anthony J. Castagno, Chairman
By Order of the Commission
Salvatore Bramante - Vice Chair

MOTION:

Agenda Item H

To approve the updated meeting schedule.

NOTE: The times of the meetings through August have been updated to reflect varying start times. The FHS Building Committee will strive to hold at least one meeting per month at 7:00 PM. However, the agenda content for each meeting may require a different start time.

/Attachment

Farmington High School Building Committee
Meeting Schedule
Farmington High School Library

May 8, 2019- 5:00 PM

May 22, 2019- 5:00 PM

June 5, 2019- 5:00 PM

June 19, 2019- 7:00 PM

July 10, 2019- 5:00 PM

July 24, 2019-7:00 PM

August 7, 2019- 5:00 PM

August 21, 2019- 7:00 PM

September 4, 2019

September 18, 2019

October 2, 2019

October 16, 2019

October 30, 2019

November 13, 2019

December 11, 2019

MOTION:

Agenda Item I

To approve the attached interview process and questions.

NOTE: The Professional Partnership Subcommittee recommends approval of the interview process and questions.

/Attachment

Owner's Representative Interview

Proposed Process

- 30-minute presentation
- 15- minute Q&A by Committee

****Interviews will be scheduled an hour apart***

Sample Interview Questions

1. Part I of the Charge requires the owner's representative to price 3 conceptual designs from each architect. Describe your relationship with the architects and your approach to completing this requirement.
2. What information do you need from each of the architects to accurately price each option?
3. What do you see is the biggest challenge for the committee as they engage multiple architects and review three design concepts from each architect?
4. As the Owner's Representative, how would you recommend the committee evaluate architectural firms during the RFP phase?
5. What is your experience with value engineering? Please provide examples.
6. What is your experience working with the Office of School Construction Grants and Review for State reimbursement? What is your experience with other reimbursement options, such as utility incentives?

Owner's Representative Interview

Interview Worksheet

Name of Firm: _____

Topic – The firm understands the FHS project and its methodology. Did the firm describe its technical approach to the project? Does the firm understand the architect competition aspect of phase 1?

Topic – The firm has experience as an owner's representative on projects similar in size and scope. Does the firm demonstrate their experience on projects of similar a size and scope?

Topic - the firm has the capacity to provide this project the attention it requires. What does the firm's current workload look like?

Topic – The firm demonstrates their approach to value Engineering Services, as required for this project. How will the firm work with the architects to value engineer each option?

Topic -fee proposal.

Topic - overall presentation. How well suited is the firm to the needs and objectives of the committee?

MOTION:

Agenda Item J

Executive Session: To review and discuss RFP Responses for Owner's Representative Services.

To adjourn the meeting to executive session as permitted by Connecticut General Statutes Section 1-200(6) and 1-210(b)(24).

Responses to any request for proposals or bid solicitation issued by a public agency or any record or file made by a public agency in connection with the contract award process, until such contract is executed or negotiations for the award of such contract have ended, whichever occurs earlier, provided the chief executive officer of such public agency certifies that the public interest in the disclosure of such responses, record or file is outweighed by the public interest in the confidentiality of such responses, record or file;

That attendance in the Executive Session shall be limited to:

Voting and Non-Voting Members of the Farmington High School Building Committee

NOTE: Approval of this motion shall be by 2/3 vote.

* Please bring a completed RFP Scoring Matrix for each firm to the meeting.

MOTION:

Agenda Item K

To select the following firms for an interview on June _____, 2019 at ___ p.m. with the Farmington High School Building Committee for the selection of an Owner's Representative.

NOTE: The committee will determine the number of firms and which firms are selected to proceed.

Please note that all interviews will be conducted in public.