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November 11, 2014

Mr. Anthony J. Castagno, Chairman
State of Connecticut
State Elections Enforcement Commission
20 Trinity Street, 1st Floor
Hartford, CT 06106-1628

Re: Petition for Declaratory Ruling on Status of an Electronic Sign

Dear Chairman Castagno:

Pullman & Comley LLC represents the Regional School District No. 10 in a pending request for a declaratory ruling on whether an electronic sign on school property and permanently installed adjacent to Route 4 in Burlington can be used (1) to publicize the time, date and location of a referendum and (2) to remind registered voters to "vote today" on the day of the referendum.

By this letter, Region 10 seeks to clarify and supplement the facts already provided to the Commission. The electronic sign in question serves is fixed in place and has a rotating message system that displays three or four messages in succession such as the date, weather, and events, etc. In the context of a referendum, there would be no use of graphics, just a simple message such as "Referendum today. Town Hall, 6-8 p.m." Although the sign itself is electronic, it is not connected to any other messaging system and only displays its message at the site it is located.

Thank you for your consideration of this information.

Very truly yours,



Susan L. Scott

SLS/dr

cc: Ryan Burns, Attorney, State Elections Enforcement Commission
Alan Beitman, Region 10 Superintendent of Schools

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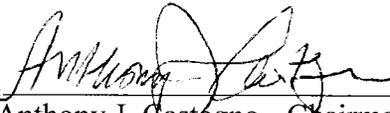
STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

***Resolution and Order Concerning the Matter of
Pullman & Comley LLC Petition for Declaratory Ruling***

Pursuant to General Statutes § 4-176 (e) and Connecticut Agency Regulations § 9-7b-65 (c), regarding the petition for a declaratory ruling from Pullman & Comley LLC, which was received by the Commission on October 2, 2014:

- (1) The Commission votes to approve the Proposed Declaratory Ruling draft entitled Electronic Signs May Be Used to Provide Time, Date and Location Information Pursuant to General Statutes § 9-369b (a) (3) as They are Beyond the Scope of that Subsection at this January 13, 2015 meeting, the Commission hereby directs staff to post the Proposed Declaratory Ruling on the SEEC website and to send notice to all persons who were sent notice of the receipt of the petition, with a comment period to close on February 4, 2015 at 11:59 p.m.

January 13, 2015
Date



Anthony J. Castagno - Chairman

PROPOSED DECLARATORY RULING 2015-01

Electronic Signs May Be Used to Provide Time, Date and Location Information Pursuant to General Statutes § 9-369b (a) (3) as They are Beyond the Scope of that Subsection

At its regular meeting on October 22, 2014, the Commission voted to issue notice of receipt of a September 30, 2014 petition for a declaratory ruling (the “Petition”) from the law firm of Pullman & Comley LLC (the “Petitioner”) on behalf of its clients and to initiate a declaratory ruling proceeding concerning whether an electronic sign on school property could be used to publicize the time, date and location of a referendum and to remind registered voters to vote.

Question Presented:

The Petition requests that the Commission issue a declaratory ruling concerning “whether an electronic sign on school property and permanently installed adjacent to Route 4 in Burlington can be used (1) to publicize the time, date and location of a referendum and (2) to remind registered voters to ‘vote today’ on the day of the referendum. Although the message would be posted while a referendum is pending, it would not influence any person to vote for approval or disapproval.”

In a supplemental letter dated November 11, 2014 and received by the Commission on November 11, 2014, Petitioner further stated, by way of clarification, that “[t]he electronic sign in question . . . is fixed in place and has a rotating message system that displays three or four messages in succession such as the date, weather, and events, etc. In the context of a referendum, there would be no use of graphics, just a simple message such as ‘Referendum today. Town Hall, 6-8 p.m.’ Although the sign itself is electronic, it is not connected to any other messaging system and only displays its message at the site it is located.”

Analysis:

The question before the Commission is whether Connecticut law precludes a municipality from providing time, date, and location information concerning a referendum on an electronic sign and whether a sign can include a general encouragement to vote. The use of municipal funds in relation to referenda is governed by General Statutes § 9-369b, as amended by Public Act 13-247. That statute generally prohibits the use of municipal funds to advocate for the approval or defeat of a referendum.¹ The statute does provide that reminders of the time and location, the ballot

¹ “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

question and the explanatory text may be sent via a community notification system, if properly authorized. The statute defines such systems as those that “permit 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.” (Emphasis added.) Because electronic signs do not provide the means for a resident to opt to be notified of its message or not, such signs are safely beyond the scope of this definition, and thus are inapplicable to the issue presented.

The statute continues:

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.

General Statutes § 9-369b (a) (3). The statute lists as prohibited mediums for communication “electronic mail,” “text,” “telephone[,]” and “other electronic or automated means.” An electronic sign, as described in the Petition, is not electronic mail, a text, or a telephone call. Accordingly, the question posed turns on whether the electronic sign constitutes “other electronic or automated means,” and, if so, whether the message displayed on the sign is “sent” in the same sense that the other types of messages are sent.

The Commission notes that an electronic sign is different in significant ways from the other methods of communication this statute explicitly enumerates. Electronic mail, text, telephone, and community notification systems are all necessarily electronic forms of communication, providing an electronic message to an electronic device controlled by the recipient, often in the home. A sign, on the other hand, is a physical object that may communicate its message electronically, as described in the Petition, but just as easily could communicate its message like a traditional sign, non-electronically, with plastic letters, for example. Would a sign that has plastic letters but was lit up with electric lights also be considered to be “other electronic or automated means”? To consider it so would be to greatly expand the apparent scope of the statute.

Unlike all the other communications listed in the statute, the message on an electronic sign is not transmitted beyond the physical space it occupies. It does not “send” its

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.” General Statutes § 9-369b (4). It should be noted that General Statutes § 9-369b (c) provides that a municipality may, by ordinance, permit summaries of arguments in favor and against ballot questions.

message in the same way that a telephone signal or text message is transmitted over transmission lines, or via cellular tower, or an email message is carried over a network. In fact, it is hard to understand how the message on a sign—electronic or otherwise—could be said to be “sent” at all. Again, to read the statute in this way would seem to exceed its apparent scope.

In reaching its decision, the Commission takes note that the 2013 amendments to General Statutes § 9-369b were motivated by a desire to regulate the use of public notification systems to inform selected groups of voters who were predisposed to vote a particular way on a referendum. Eileen FitzGerals, *New Law Reflects Bethel Activists Efforts*, NEWS TIMES, July 11, 2013; Joe Wojatas, *Calls, Emails for Stonington School Budget Vote Banned*, THE DAY, September 16, 2013. There is nothing in the legislative history or news accounts which indicate that electronic signs were the type of communication the statute intended to regulate.

The Commission takes further note of the practical implications if it found that an electronic sign was considered “other electronic or automated means” under General Statutes § 9-369b. While the case in question concerns an electronic sign on school grounds, the Commission’s ruling on this issue will bind municipalities with regard to *all* electronic signs. Accordingly, a town would be unable to use any electronic sign to provide the public with any information concerning a municipal referendum, whether that electronic sign were on school grounds, in a public park, or in the town hall itself. As electronic signage is increasingly supplanting traditional signage for its ease of use, cost, and flexibility, such a prohibition may further suppress overall voter participation and undermine the participatory goals of municipal referenda. Moreover, this would place those schools that have electronic signage on unequal footing compared to those that have manually-operated signs, and thus discourage investment in equipment that might be otherwise in the best interest of the district.

In light of the foregoing, the Commission finds that that the use of an electronic sign, as described in the Petition, funded and operated by a municipality, to advise the community of the time, date, and location of a referendum and to remind the community to vote on the day of the referendum is not prohibited by General Statutes § 9-369b, as amended by Public Act 13-247.

This constitutes a declaratory ruling pursuant to General Statutes § 4-176, and provides guidance about the use of electronic signage to notify individuals about municipal referenda. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory ruling on this subject matter.

This declaratory ruling is only meant to provide general guidance and addresses only the issues raised. Questions about specific methods of referenda notification should be directed to the Commission staff.