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New State Law prohibits Use of “AlertNow” and Other Automated Notification Systems to Communicate the Date, Time and Location of Pending Referenda

As of July 1, 2013 Boards of Education will no longer be allowed to use their AlertNow, e-mail, texting or other automated notification systems to notify parents or guardians of the time, date and location of budget referenda.

The new law was part of the “implementer” statute signed by Governor Malloy on June 19, 2013. Specifically, as of July 1, 2013,

“[n]o person shall 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 or 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.”[1]

This new prohibition effectively resolves an open issue that has been raised in more than one town recently about whether sending notice of the time, date and place via AlertNow to a “target audience” of parents and guardians violates Connecticut General Statutes Section 9-369b.

Connecticut General Statutes Section 9-369b forbids the expenditure of public funds to influence any person to vote for or against any referendum question. This law is enforced by the State Election Enforcement Commission (“SEEC”). When a referendum is officially pending, school districts are prevented from using their resources (computers, paper, copiers, public address systems, etc.) to publish or distribute materials advocating a position on the referendum. In a number of decisions, the SEEC has previously determined that school districts could use automated, “Robo call” systems (AlertNow, e.g.) to give parents a

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notice of the date, time and place of referenda.[2] Now, as a result of this new law, an electronic or automated communication to a target audience of the time, date and place of a referendum – or even just a reminder to vote – is no longer permissible.

It may be helpful to note that within the new law, there are two exceptions to the rule that no public funds can be used to send communications related to a referendum to a group of residents:

- regularly published newsletters or similar publications and
- solicited communications (when parents or guardians request such information).

Within these exceptions, boards may send notice of the time, date and place of a referendum in publications such as monthly school newsletters or regularly updated website postings of the Superintendent or administrators. That being said, you should make certain that the rest of the content in the newsletter—or even the content in the links on the same website as the newsletter— does not advocate for a particular outcome to the referendum. Because individual employees of school districts can be found liable for violations of this law and be subject to personal fines, you should proceed cautiously during referenda and check with your legal counsel prior to sending out any notices of the time, date and place of referenda.

Please keep in mind that this prohibition only applies when a referendum is pending. According to the SEEC, a “referendum 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.” [3]

[1] Section 386 of Public Act 13-247, “AN ACT IMPLEMENTING PROVISIONS OF THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2015 CONCERNING GENERAL GOVERNMENT,” available here.

[2] See Complaint of William A. Michael, Bethel, File No. 2008-069; In the Matter of Complaint by Preston Shultz, Woodstock, File No. 2009-053; In the Matter of a Complaint by Tom Nicholas, Guilford, File No. 2001-091, accessible here.

[3] SEEC Guidance entitled “Prohibition on Expenditure of Public Funds Relating to Referenda,” May 2008, available here.

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