

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of James Cropsey,
Tilton, New Hampshire

File No. 2008-047

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that Stanley A. Cohen and Barbara A. Cohen are not bona fide residents of Litchfield, Connecticut and, therefore, voted unlawfully there.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. The Complainant lives in Tilton, New Hampshire, however, his mother has an ownership interest in property in Litchfield, Connecticut ("Cropsey property"). In August of 1981, Stanley and Barbara Cohen purchased a two bedroom Colonial home located on 10 plus acres of land at 72 Blue Swamp Road, Litchfield, Connecticut. That property is adjacent to the Cropsey property. To this date, the Cohens still own that property.
2. The Complainant specifically alleges that while visiting his mother he has never seen the Cohens present at their Litchfield property; however, he admits that he "has been informed that Mr. & Mrs. Cohen arrive north from New York City on Friday and leave Sunday afternoon, sometimes spending an extra day on long weekends or two weeks in the summer on vacation."
3. On October 13, 1984, the Cohens registered to vote in Litchfield, Connecticut. In doing so, they both swore that they were bona fide residents of Litchfield and indicated that their bona fide residence was their Blue Swamp Road residence. Notably, they also indicated that their previous voting residence was a New York apartment. The Cohens have continued to maintain that New York residence for over 20 years as Mr. Cohen practices law in New York City.
4. The Cohens each voted via absentee ballot in the 2004, 2005, 2006, and 2007 general election, as well as in the 2008 presidential preference primary.
5. General Statutes § 9-12(a) concerns elector qualifications. Between 1973 and October, 2007, it provided in relevant part as follows:

Each citizen of the United States who has attained the age of eighteen years, **and who is a bona fide resident of the town to which the citizen applies for admission as an elector** shall, . . . as prescribed by law, be an elector, . . . [Emphasis added.]

6. Section 9-12 was amended in 2007 by section 41 of Public Act 07-194. It now provides that:

Each citizen of the United States who has attained the age of eighteen years, **and who is a bona fide resident of the town to which the citizen applies for admission as an elector** shall, on approval by the registrars of voters or the town clerk of the town of residence of such citizen, as prescribed by law, be an elector. . . . For the purposes of this section . . . a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town. . . . [Emphasis added.]

7. General Statutes § 9-7b provides in relevant part as follows: (a) The State Elections Enforcement Commission shall have the following duties and powers:

(2) To levy a civil penalty not to exceed . . . (C) two thousand dollars per offense against any person the commission finds to have (i) improperly voted in any election, primary or referendum, and (ii) not been legally qualified to vote in such election, primary or referendum, . . .

8. General Statutes § 9-359a further provides the following:

A person is guilty of false statement in absentee balloting when he intentionally makes a false written statement in or on or signs the name of another person to the application for an absentee ballot or the inner envelope accompanying any such ballot, which he does not believe to be true and which statement or signature is intended to mislead a public servant in the performance of his official function.

9. In addition, § 9-360 provides in relevant part as follows:

Any person not legally qualified who fraudulently votes in any . . . primary, election or referendum in which the person is not qualified to vote . . . shall be fined not less than three hundred dollars or more than five hundred dollars and shall be imprisoned not less than one year or more than two years and shall be disfranchised. . . .

10. Finally, § 9-361 provides the following in pertinent part:

The following persons shall be guilty of primary or enrollment violations: (1) Any person unlawfully voting or participating or attempting to vote or participate in any primary in which he is not eligible to vote or participate; . . . The penalty for any such violation shall be a fine of not more than one hundred dollars or imprisonment of not more than sixty days, or both, except that any

person found to have violated subdivision (1) or (2) of this section shall be guilty of a class D felony and shall be disfranchised.

11. In order to establish liability in the present case, the Cohens must not have been qualified to vote in Litchfield in 2004, 2005, 2006, 2007, and 2008. As noted above, General Statutes § 9-12(a) sets forth elector qualifications. In the present case, no one contests that the Cohens were citizens of the United States and had attained the age of eighteen years at the time they voted. As such, the determinative question is whether the Cohens were “bona fide residents” of Litchfield at the time they voted there. If not, they may be found to be liable pursuant to General Statutes §§ 9-7b, 9-359a, 9-360, and 9-361.
12. According to the Commission, an individual’s bona fide residence is the place where that individual maintains a true, fixed, and principal home to which they, whenever transiently relocated, have a genuine intent to return. See, e.g., Complaint of Cicero Booker, Waterbury, File No. 2007-157 (2007). In other words, the term “bona fide residence” is generally synonymous with domicile. Id.; cf. Hackett v. The City of New Haven, 103 Conn. 157 (1925).
13. The traditional rigid notion of “domicile” has, however, given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, and individuals with multiple dwellings). See Farley v. Louzitis, Superior Court, New London County, No. 41032, October 4, 1972 (considering issue of voter residency with respect to college students and rejecting former rigid notion of “domicile” for voting purposes in favor a test which focuses on individual’s present intention and conduct.); see also Wit v. Berman, 306 F.3d 1256, 1262 (2d Cir. 2002)(stating that under certain circumstances the domicile rule for voting residency can gives rise to administrative difficulties which has led to a pragmatic application of that rule in New York).
14. An individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual’s bona fide residence. See Farley (relying on Ramey v. Rockefeller, 348 F.Supp. 780, 786 (E.D.N.Y. 1972)). Rather, the individual only has to possess a present intention to remain at that residence. Id.
15. As such, where an individual maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent. See Wit, 306 F.3d 1262 (quoting People v. O’Hara, 96 N.Y.2d 378, 385 (2001) for the principle that an individual who maintains multiple residences to which the individual has legitimate, significant, and continuing attachments can choose either one for voting purposes).
16. Thus, in the present case, where the Cohens maintained two residences simultaneously, the Commission must only ascertain whether their Litchfield, Connecticut residence was a genuine home at which they had an intention to remain at the time they voted. In making that determination the Commission

will look to the Cohens conduct to see if it verifies their expressed intent concerning that residence. See, e.g., Complaint of Cicero Booker, Waterbury, File No. 2007-157 (2007).

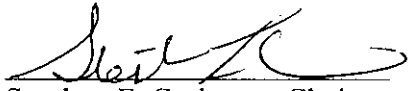
17. The Cohens assert that during the times in question they considered their Litchfield dwelling their primary home and intended to remain there. They kept that property well maintained, received mail, entertained friends, and kept clothes, books, and artwork there.
18. Objective evidence substantiates their claim. Bank records, pool and snow removal invoices, fuel invoices, lawn invoices, electric invoices, security alarm invoices, homeowners' insurance invoices, and phone invoices all establish that the Cohens actually lived at their Litchfield dwelling for a significant amount of time and treated it as though it were a principal home that they were going to remain in.
19. Objective evidence also establishes that the Cohens have had significant ties to the Litchfield community and its surrounding areas. For example, the Cohens have library cards there, are or were members of the Litchfield Historical society, Litchfield Country Club, Milton Hall Association (Milton is a village of Litchfield), the Litchfield Audubon, the Milton's Women' Club, and a synagogue in Torrington. Moreover, the Cohens pay real and personal property taxes in Litchfield and their only vehicle is registered there.
20. In light of the Cohens' legitimate, significant, and continuing connections to 72 Blue Swamp Road, and Litchfield in general, at the times in question, the Commission concludes that the Cohens were bona fide residents of Litchfield when they voted there. As bona fide residents of Litchfield, the Cohens were qualified to vote in the elections that took place there during the time periods in question. C.G.S. § 9-12. As a result, the Cohens did not falsely state on their absentee ballot applications that they were eligibility to vote in Litchfield.
21. Finally, the Commission notes that the Cohens' original voter registration applications were completed twenty four years ago. The Commission will not therefore consider whether the Cohens committed any violations of election law concerning those applications because the statute of limitations that apply to those election laws have long since expired.
22. It is therefore concluded that the Cohens have not committed any violations of election law in connection with the allegations set forth in the complaint.

ORDER

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

That the case be dismissed.

Adopted this th 9th day of May, 2008 at Hartford, Connecticut.


Stephen F. Cashman, Chairperson
By Order of the Commission