

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Mary Fiore, et. al., Naugatuck

File No. 94-181
September 7, 1994

FINDINGS AND CONCLUSIONS

The Complainants bring this complaint pursuant to Section 9-7b, General Statutes and allege a number of "possible violations" regarding the administration of a budget referendum held in Naugatuck on June 14, 1994. The referendum was held after a sufficient amount of petition signatures were collected pursuant to the town charter.

In summary, the Complainants allege; (1) that various town officials attempted to prevent the Complainants from obtaining and therefore circulating petitions in a "timely" manner, (2) that Naugatuck Town Clerk Sophie Morton "actively worked and campaigned against having a referendum vote and tried to prevent voter turnout at the budget referendum," (3) that Ms. Morton "effectively disallowed absentee ballots," (4) that Ms. Morton previously filed an "improper" complaint with the Commission, (5) that the Borough Clerk Kara Keating sent out incorrect sample ballots, (6) that proper notice of polling places and hours were not posted, (7) that the polls were not open an adequate number of hours, (8) that Complainants were improperly informed that they could not wear organization t-shirts into the polling place, (9) that a provision of the Naugatuck Town Charter requiring a 40% voter turnout is not "consistent," and (10) that Borough Attorney Leonard Caine failed to render an "adequate opinion" regarding the town charter. No specific election laws were cited by the Complainants in their complaint. Some of the allegations, even if true, do not involve violations of state election laws, and are therefore outside this Commission's jurisdiction. These are identified in the findings. An investigation of those allegations which raised possible violations of election laws was undertaken and the following findings and conclusions are made:

1. The Complainants are members of Naugatuck Taxpayers in Revolt, a local taxpayers group. On April 21, 1994 they requested petitions from Town Clerk Sophie Morton in order to bring a referendum on the town budget pursuant to the town charter. However, the budget was not scheduled to be adopted by until May 26, 1994. Because she was unsure whether the petitions could be circulated before a budget was adopted, Ms. Morton did not provide the petitions to the Complainants until she consulted with the Elections Division of the Office of the Secretary of the State and the borough attorney.
2. Although she did not receive a definitive answer from the borough attorney until May 20, 1994. Ms. Morton released a copy of a petition to the Complainants on April 28, 1994. The Complainants collected the required amount of signatures and the petitions were certified on June 3, 1994.

3. It is therefore found that there is no evidence to support the Complainants' allegation that Ms. Morton or other town officials prevented the release of petitions. On the contrary, it is further found that Ms. Morton acted reasonably in attempting to secure legal opinions from the Secretary of the State and the borough attorney concerning the proper time for the petitions to be available.
4. It is further found that there is no evidence to support the Complainants' allegation that Ms. Morton "actively worked and campaigned against having a referendum vote and tried to prevent voter turnout." Even had such evidence existed, the Commission acknowledges that Ms. Morton's first amendment right to free speech would protect her activities undertaken on her own time.
5. The Naugatuck Charter states that a referendum on a budget must take place no later than eleven days after the petitions have been certified. Section 9-369c, General Statutes, provides that "if any...charter provision...specifically authorizes a referendum to be held with less than three weeks' notice, absentee ballots shall be made available for each such referendum within four business days after the question or questions which are to be voted on at the referendum are finalized...a municipal clerk may only provide an absentee ballot for such referendum held with less than three weeks' notice to a person who applies in person..."
6. The administration of absentee ballots at this borough referendum was the responsibility of Ms. Keating, the borough clerk, and not Ms. Morton, the town clerk.
7. It is further found that Ms. Keating complied with the provisions of Section 9-369c, General Statutes, by requiring that absentee ballots must be applied for in person and not mailed.
8. It is concluded that the complaint filed with the Commission by Ms. Morton regarding alleged violations of Sections 9-333d and 9-333g, General Statutes, by the Naugatuck Taxpayers in Revolt was a proper subject of a complaint and Complainants' allegation is without legal basis.
9. The Complainants further allege that Ms. Keating sent out incorrect sample ballots. It is found that voluntary compliance with the election laws was effected prior to the filing of this complaint.
10. The Naugatuck Charter makes no mention of a requirement of notice of polling places and hours. In the absence of any charter provision, there is no requirement made by state statute as to notice.

11. Section 7-9b, General Statutes, specifies that polls shall be open for a referendum from 12pm until 8pm, but that a municipality may extend those hours if it wishes to do so. The polls were open in Naugatuck from 12pm until 8pm in compliance with Section 7-9b, General Statutes.
12. Complainants allege that the Registrars of Voters wrongly informed them that they were prohibited from wearing tee-shirts bearing the slogan "Naugatuck Taxpayers in Revolt...Vote, Vote, Vote" into the polling place.
13. The Registrars of Voters informed the Complainants before the referendum vote that Section 9-236, General Statutes, provides that on the day of a referendum, "no person shall solicit in behalf of...any question being submitted at the election or referendum" within a 75 feet of a polling place.
14. It is found that the slogan contained on the tee-shirt in question did not directly "solicit in behalf of a referendum question." However, it is further found that since there is no evidence that any otherwise eligible voter was turned away from voting because they were wearing the tee-shirt, no violation of election law occurred.
15. The Complainants also allege that a provision of the Naugatuck Charter regarding a 40% voter turnout requirement is not "consistent."
16. The Commission has no jurisdiction to consider the legality or "consistency" of town charter provisions.
17. The Complainants allege that the borough attorney never "finalized" the question which was voted on at the June 14 referendum.
18. Section 9-369c, General Statutes, provides that absentee ballots for a referendum may be made available after the question to be voted on has been "finalized."
19. According to the Election Division of the Office of the Secretary of the State, the town attorney needs to clarify finalization of the question only if the town clerk has a question regarding finalization, otherwise the town attorney does not need to be consulted. In this case, both town clerk and the borough clerk understood when the question was finalized and did not need to consult with the borough attorney.
20. It is therefore concluded that there is no violation of state election law regarding the finalization of the referendum question.

21. Finally, the Complainants allege that the borough attorney failed to "render adequate opinions arising" from changes made in the town charter.
22. The Commission has no jurisdiction to make such a determination since it does not involve a provision of the state election laws.

ORDER

The following order is recommended on the basis of the aforementioned findings and conclusions:

That the complaint be dismissed.

Adopted this 14th day of September, 1994 at Hartford, Connecticut.



Andrew D. Coleman
Chairperson
By Order of the Commission

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