

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Christopher Healy,
Wethersfield

File No. 2009-079

FINDINGS AND CONCLUSIONS

Complainant Christopher Healy brought this complaint pursuant to § 9-7b, General Statutes of Connecticut, alleging that John J. Boccuzzi of the City of Stamford disseminated unsolicited absentee ballot applications without including a written explanation of eligibility and a written warning regarding voting by absentee ballot in violation of General Statutes § 9-140.

1. John J. Boccuzzi was treasurer of "David Martin's Supporters," a mayoral candidate committee formed by David Martin for the November 9, 2009 election in the City of Stamford.
2. Complainant alleged that John J. Boccuzzi distributed unsolicited absentee ballot applications via mail without the written information required by General Statutes § 9-140.
3. General Statutes § 9-140 (l) provides as follows in relevant part:

(l) No candidate, party or political committee, or agent of such candidate or committee shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector or applicant to potential civil and criminal penalties. As used in this subsection, "agent" means any person authorized to act on behalf of another person.
[Emphasis added.]

4. Upon investigation, the Commission finds that, in the course of this investigation, Mr. Boccuzzi amended his unsolicited mailing of absentee ballots on behalf of David Martin's Supporters, after this complaint and prior to sending additional unsolicited absentee ballot applications, by inserting a written explanation of eligibility and warning regarding the use of absentee ballots and absentee ballot voting.

5. Mr. Boccuzzi, through his attorney, asserts that the amended mailing discussed in paragraph 4 above did not need to be made because the original mailing did in fact contain the requisite information required when mailing unsolicited absentee ballot applications. More specifically, he maintains that the subject mailing did recite the legal requirements for absentee ballot voting and include a warning regarding the same, inasmuch as the mailing included a blank absentee ballot application that contains the aforementioned requisite information.
6. Essentially, Mr. Boccuzzi argues that the written explanation and warning requirements of General Statutes § 9-140 (1) are met when any candidate, committee, or agent of such candidate includes an Application for an Absentee Ballot in a mailing to an individual that did not solicit such application. In determining if the Mr. Boccuzzi is correct, the Commission applies the familiar principles of statutory construction.
7. The Commission in its prior decisions applying General Statutes § 9-140 (1) to a similar argument posited by Mr. Boccuzzi in paragraph 6 above determined that “the plain language of General Statutes § 9-140 (1) provides that “[n]o candidate . . . shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes . . . a written explanation of the eligibility requirements and a written warning regarding absentee balloting. Furthermore, it noted “given that language, it is clear that the legislature intended that an unsolicited absentee ballot application mailing include something more than just the application itself to warn individuals about the absentee ballot eligibility requirements and applicable civil and criminal penalties for voting without meeting those requirements.” *Complaint of Complaint of Jonathan Best*, Stratford, File No. 2009-081.
8. Additionally, the Commission in *Best* noted that “...the Secretary of the State appears to support [the above] reading of the statute,” and that “...the Secretary of the State advises that individuals *should not mail* absentee ballot application unsolicited *unless they include* a written explanation about the eligibility requirements and warning about the penalties associated with improperly voting by absentee ballot.” *Complaint of Complaint of Jonathan Best*, Stratford, File No. 2009-081 (internal citations omitted).

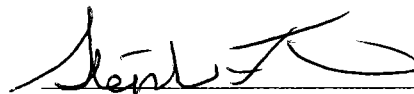
9. Finally, if the Commission were to interpret General Statutes § 9-140 (l) in the way suggested by the Respondent, the provision would be rendered superfluous. The Commission will not countenance such a reading. *See Brown and Brown, Inc. v. Blumenthal*, 297 Conn. 710, 726 (2010) (stating that a statute should not be interpreted in a way that would render it superfluous). In addition, it would contradict prior Commission decisions interpreting General Statutes § 9-140 (l). *See, e.g., In the Matter of a Complaint by Louis DeCilio*, Stratford, File No. 2005-300; *Complaint of Complaint of Jonathan Best*, Stratford, File No. 2009-081.
10. The Commission therefore finds that pursuant to General Statutes § 9-140 (l) Mr. Boccuzzi failed to include the written explanation and warning required by General Statutes § 9-140 (l) in the mailing of the unsolicited absentee ballot applications that are the subject of this complaint and investigation.
11. Nevertheless, the Commission notes that the Respondent does not have a history of similar violations of General Statutes § 9-140 (l), and, as detailed in paragraph 4 above, has subsequent to this complaint *included* written warnings and explanations of eligibility when disseminating unsolicited absentee ballot applications. Furthermore, upon receipt of this disposition, the Respondent will be well aware of his future obligations under the aforementioned section should he again disseminate unsolicited absentee ballot applications.
12. The Commission, under the limited facts and circumstances detailed herein, and for the reasons so stated, therefore declines to commit additional resources to pursue this matter, in that its interpretation and applications of General Statutes § 9-140 (l) has been set out in a clear standard such that Mr. Boccuzzi, and the public generally, can conform their future conduct to the such standards as articulated.

ORDER

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

That no further action be taken.

Adopted this 19th day of October, 2011 at Hartford, Connecticut.



Stephen F. Cashman

By Order of the Commission