

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Thomas Holroyd,
Roxbury

File No. 2009-122

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that Respondents Michael Weinberg and Helene Barbara Weinberg are not bona fide residents of Roxbury, Connecticut and, therefore, voted unlawfully there. The Complainant further alleges that the Respondents circulated misleading instructions with intent to defraud an elector of his vote or cause an elector to lose his vote, in violation of General Statutes § 9-363.

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

1. The Respondents, a married couple, have owned residential property in the town of Roxbury since approximately 1986. From 1986 until approximately February 2007, the Respondents owned a home on Crofut Road in Roxbury, after which time they moved into another property in Roxbury at which they presently remain.
2. The Complainant is an abutting landowner at the Respondents' present property in Roxbury.
3. The Complainant submitted with his complaint evidence that he alleges shows that the Respondents' "primary" residence is in New York City and as such, the Respondents falsely stated on their registration statements, and in some cases their absentee ballot applications, that they were eligible to vote in Roxbury.
4. The Respondents maintain that they first registered to vote in Roxbury in 1986 at the home on Crofut Road and then again in February 2007, at the home at which they presently remain. The Respondents further maintain that they have been registered to vote in the town of Roxbury continuously from 1986 through the present. During the instant investigation, the records of the Roxbury Registrars of Voters were found to be incomplete and did not reach back any further than 2002; however, what evidence was found supports the Respondents' assertion of continuous registration since at least that year.
5. Each time the Respondents registered to vote, they both swore that they were bona fide residents of Roxbury and indicated that their bona fide residence was a residence in that town.
6. The Respondents admit, as alleged by the Complainant, that during their time as residential homeowners in the town of Roxbury, they have also owned and lived in a residence in New York City, where Mr. Weinberg maintains a law practice.

7. According to the available records of the Roxbury Registrars' Office, the Weinbergs each voted in Roxbury in every general election since at least 2002 to 2009. In the 2002, 2004, 2006, 2007, 2008, and 2009 general elections the Weinbergs voted by absentee ballot; in 2003 & 2005, the Roxbury Registrars' Office maintains that the Weinbergs voted in person for the general elections held in those years.
8. No evidence was found that the Respondents have registered to vote, or voted, in New York State, or any other state but Connecticut, since at least 1986.
9. 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.]

10. 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.]

11. 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, . . .

12. 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.

13. Finally, General Statutes § 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. . . .

14. In order to establish liability in the present case, the Weinbergs must not have been qualified to vote in Roxbury from 2002 to 2009. As noted above, General Statutes § 9-12(a) sets forth elector qualifications. In the present case, no one contests that the Weinbergs 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 Weinbergs were “bona fide residents” of Roxbury at the time they voted there. If not, they may be found to be liable pursuant to General Statutes §§ 9-7b, 9-359a, and 9-360.

15. 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 he or she, whenever transiently relocated, has a genuine intent to return. *See, e.g., Complaint of Gary Amato, North Haven*, File No. 2009-158 (2010); *Complaint of Cicero Booker, Waterbury*, File No. 2007-157. In other words, “bona fide residence” is generally synonymous with domicile. *Id.*; *cf. Hackett v. The City of New Haven*, 103 Conn. 157 (1925). The Commission has concluded, however, that “[t]he traditional rigid notion of ‘domicile’ has . . . 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).” *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (Emphasis added.). *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 give rise to administrative difficulties which has led to a pragmatic application of that rule in New York); *Sims v. Vernon*, Superior Court, Fairfield County, No. 168024 (Dec. 22, 1977) (concluding in a case with similar facts to those presented here that an absentee ballot of an individual should be counted as that individual was a bona fide resident of the town in which the ballot was cast.); *Farley v. Louzitis*, Superior Court, New London County, No. 41032 (Oct. 4, 1972) (considering issue of voter residency with respect to college students and stating that “a student, and a nonstudent as well, who satisfies the . . . residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting interests at the residence he selects exceed his voting interests elsewhere.”).

16. The Commission has previously concluded that “[a]n 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. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047. Rather, the individual only has to possess a present intention to remain at that residence. *Id.*

17. As such, where an individual truly 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. *Id.*, see also *Wit*, 306 F.3d at 1262 (quoting *People v. O'Hara*, 96 N.Y.2d 378, 385 (2001) for this principle.)
18. Thus, in the present case, where the Weinbergs maintained two residences simultaneously, the Commission must only ascertain whether their Roxbury, 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 Weinberg's conduct to see if it verifies their expressed intent concerning that residence. See, e.g., *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (bona fide residence found under facts substantially similar to those presently at issue).
19. The Weinbergs assert that during the times in question they considered their Roxbury dwelling their bona fide residence and intended to remain there. They attended to the upkeep of the property, received mail, entertained friends, and kept clothes, books, and other personal items there.
20. Objective evidence substantiates their claim. Property records indicate that the Weinbergs have been residential property owners in Roxbury for a significant amount of time and have treated it as though it were a bona fide residence that they were going to remain in. They pay real and personal property taxes in Roxbury and their vehicles are registered there.
21. In light of the Weinbergs' legitimate, significant, and continuing connections to the property at which they currently reside, and Roxbury in general, at the times in question, the Commission concludes that the Weinbergs were bona fide residents of Roxbury when they voted there. As bona fide residents of Roxbury, the Weinbergs were qualified to vote in the elections that took place there during the time periods in question. General Statutes § 9-12. As a result, the Weinbergs did not falsely state on either their registration statements or their absentee ballot applications that they were eligible to vote in Roxbury.
22. Turning to the Complainant's second allegation, he maintains that the Weinbergs circulated misleading instructions in violation of General Statutes § 9-363, by circulating an email to property owners in Roxbury stating "[i]f you are a taxpayer in Roxbury, you may choose to vote here—even if your principal residence is elsewhere."
23. General Statutes § 9-363 provides the following in pertinent part:

Any person who, with intent to defraud any elector of his vote or cause any elector to lose his vote or any part thereof, gives in any

way, or prints, writes or circulates, or causes to be written, printed or circulated, any improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any machine, the following of which or any part of which would cause any elector to lose his vote or any part thereof, or would cause any elector to fail in whole or in part to register or record the same on the machine for the candidates of his choice, shall be fined not more than five hundred dollars or be imprisoned not more than five years or be both fined and imprisoned.

24. As an initial matter, and for the reasons set forth above, an individual *does not* qualify as a bona fide resident, as that term is discussed herein, in the State of Connecticut *solely* by virtue of being a taxpayer.
25. However, after investigation, there is insufficient evidence to show in this matter that the Respondents, by circulating an email encouraging Roxbury taxpayers to register to vote in Roxbury, and despite their incorrect statement of law, had the requisite intent to defraud an elector of his or her vote or cause any elector to lose his or her vote or any part thereof.
26. It is therefore concluded that the Weinbergs 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 14th day of October, 2010 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen F. Cashman, Chairperson
By Order of the Commission