

STATE OF CONNECTICUT MAY 17 2010

STATE ELECTIONS ENFORCEMENT COMMISSION
ENFORCEMENT COMMISSION

Complaint of John Pernal, Jr., Hamden

File No. 2009-137

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between John Simpson of Hamden, Connecticut (hereinafter, "the Respondent") and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Connecticut General Statutes § 4-177(c) and section 9-7b-54 of the Regulations of Connecticut State Agencies. In accordance herewith, the parties agree that:

1. The Complainant alleges that the District 6 polling place located at the Ridge Hill School in the Town of Hamden was not open for voting at 6:00 a.m. at the November 3, 2009 election. The Respondent was the moderator of that polling place.

2. General Statutes § 9-174, provides in pertinent part as follows:

Notwithstanding the provisions of any general statute, special act or municipal charter to the contrary, any regular election, or at any special election held to fill a vacancy in a state, district or municipal office, **the polls shall remain open for voting from six o'clock a.m. until eight o'clock p.m. . . .** [Emphasis added.]

3. The Commission has previously held that the moderator of each polling place is responsible for compliance with General Statutes § 9-174. See, e.g., *Commission Initiated Complaint, Windham*, File No. 2006-294.
4. The Respondent admits that the District 6 polling place did not open until after 6:00 a.m. The evidence confirms the Respondent's admission and further establishes that the polling place did not open until approximately 6:20 a.m.
5. The Commission therefore concludes that Respondent violated § 9-174 by failing to open the polling place for voting at 6:00 a.m.
6. In addition, the Complainant alleges that the moderator of that polling place was not at the polling place at the time required by statute.
7. Connecticut General Statutes § 9-259 (b) provides in relevant part as follows:

On the morning of the election, the election officials shall meet at the room where the election is to be held **at least forty-five minutes before the time for opening the polls. The moderator shall then cause** the three sample ballots and instruction cards to be posted and **everything put in readiness for the commencement of voting at the hour of opening the polls. . . .** [Emphasis added.]

8. While there is conflicting evidence as to whether the Respondent was at the polling place at the time required by § 9-259, the evidence does establish that the Respondent had not put "everything in readiness for the commencement of voting" on the tabulators at 6:00 a.m. The Respondent therefore violated General Statutes § 9-259.


9. The Commission notes that the delay in opening the polling place and putting everything in readiness for voting was attributable to the Respondent's inability to get the optical scan voting tabulator to turn on prior to 6:15 a.m. The tabulator had inadvertently been turned off when the election officials locked it onto the ballot box. That error was realized and corrected by the Republican Registrar of Voters, Anthony V. Esposito. In addition, the Respondent failed to realize that he could have allowed voters to cast and submit their ballots into the ballot box by hand rather than through the tabulator.
10. The Commission notes that the Respondent worked as an election official on prior occasions but never as a moderator of a polling place that utilized the optical scan voting system. As such, the Commission concludes that the Respondent's violations were unintentional. Finally, the Respondent admits his errors, has apologized in writing to the Commission, and has promised to adhere to the proper procedures in opening the polls in the future.
11. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered after a full hearing, and shall become final when adopted by the Commission. The Respondent shall receive a copy thereof as provided in section 9-7b-56 of the Regulations of Connecticut State Agencies.
12. It is understood and agreed that this Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.
13. The Respondent waives:
 - (a) Any further procedural steps;
 - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
14. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth, the Respondent shall strictly comply with the applicable requirements of Connecticut General Statutes §§ 9-174 and 9-259.


For the State of Connecticut

Dated: 5/17/10


By: 
Joan M. Andrews, Esq.
Director of Legal Affairs and Enforcement
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity Street
Hartford, Connecticut

The Respondent

Dated: 5/13/2010

By: 
John Simpson
12 Dadio Road
Hamden, CT 06517

Adopted this 26th day of May, 2010 at Hartford, Connecticut by vote of the Commission.


Stephen F. Cashman, Chair
By Order of the Commission