

JUL 12 2010

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
ENFORCEMENT
COMMISSIONIn the Matter of a Complaint by
David Helming, Sharon

File No. 2009-154

AGREEMENT CONTAINING HENCEFORTH ORDER
FOR VIOLATIONS OF
CONNECTICUT GENERAL STATUTES § 9-140(m)

This agreement, by and between Liz Piel, (hereinafter referred to as "Respondent") of the Town of Sharon, County of Litchfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with § 9-7b-54 of the Regulations of Connecticut State Agencies and § 4-177(c) of the General Statutes of Connecticut.

In accordance herewith, the parties agree that:

1. Complainant, the Chairman of the Sharon Republican Town Committee, alleged that Respondent, the Sharon Democratic Registrar of Voters, prior to the November 3, 2009 election mailed out "several dozen" unsolicited absentee ballot applications that were "improper." Specifically, that the absentee ballot applications (Form ED-3) Respondent disseminated were improper because they were not obtained from the Town Clerk's office but rather were photocopied or downloaded from the Office of the Secretary of the State's absentee ballot application, which is available on the Office of the Secretary of the State's (hereinafter "SOTS") website, which expressly states that it is for individual use only.
2. Further, Complainant alleged that the Democratic Registrar on the night of the November 3, 2009 election "*placed the Voter Check-Off List in the Registrar of Voters' cabinet in the Sharon Town Hall on the night of the election ... instead of the Town Clerk's office.*"
3. Respondent submitted a list of 67 individuals to whom she sent unsolicited absentee ballot applications to the Town Clerk after the solicitations. Out of the 67 individuals a search of CVRS indicated that 56 were registered Democratic, 6 were unaffiliated, and 5 were registered Republican. Sixty-six (66) of these individuals voted by absentee ballot and one voted in-person at the November 3, 2009 election.

4. General Statutes § 9-140 provides in pertinent part:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. Any person who assists another person in the completion of an application - shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. The municipal clerk shall not distribute with an absentee ballot application any material which promotes the success or defeat of any candidate or referendum question. **The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application.** The application shall be signed by the applicant under the penalties of false statement in absentee balloting on (1) the form prescribed by the Secretary of the State pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word "by" and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.

...

(k) (1) A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to a person who is the designee of an applicant.

(2) Any person who distributes absentee ballot applications shall maintain a list of the names and addresses of prospective absentee ballot applicants who receive such applications, and shall file such list with the town clerk prior to the date of the primary, election or referendum for which the applications were so distributed. Any person who distributes absentee ballot applications and receives an executed application shall forthwith file the application with the town clerk.

...

(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.

(m) The Secretary of the State shall conspicuously post on the Secretary of the State's web site, adjacent to the absentee ballot application form available for downloading, a notice that the application may be downloaded by a person **only for (1) the person's own use, (2) the use of a member of the person's immediate family, or (3) the use of a designee of the applicant.** The notice shall also contain an advisory statement concerning the requirements of subsection (k) of this section.

[Emphasis added.]

5. Respondent admits that she did not register with the Town Clerk prior to mailing sixty-seven (67) absentee ballot applications to individuals for to the November 3, 2009 election.

6. The Commission concludes that Respondent violated § 9-140(k) (1) by failing to register with the Town Clerk prior to disseminating more than five absentee ballot applications for the November 3, 2009 election.
7. The Commission finds that Respondent duplicated absentee ballot applications after downloading an absentee ballot application (Form ED-3) from the Secretary of the States' website. The website expressly states the application is for individual use only.
8. General Statutes § 9-3 provides:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, *unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title*, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54.

[Emphasis supplied.]

9. A July 22, 2005 Letter To All Town Clerks and Registrars of Voters from Secretary of the State provides in pertinent part:

Absentee Ballot Application Process

...

II) Absentee Ballot Application Limitations and Application Process by Town Clerks

Sections 2 and 3 of Public Act 05-235 require an individual who will be distributing five (5) or more absentee ballot applications to persons other than their "immediate family," to register with the town clerk. In addition, such individual must file with the town clerk a list of the people to whom he has distributed the applications.

No individual is allowed to distribute more than five (5) absentee ballot applications without first registering with *and receiving from the town clerk of the municipality in which the absentee ballot applications will be distributed*.

[Emphasis supplied.]

10. This is a case of first impression for the Commission. The Commission must address the allegation that the Respondent improperly duplicated an application downloaded from the Secretary of the State's website. Moreover, the Commission is compelled to consider the fact that the Secretary has advised, in writing, pursuant to General Statutes § 9-3, that Public Act 05-235 required that the applications be received from the Town Clerk, and the website advises the application posted is for individual use only.
11. The Commission notes that General Statutes § 9-140(m) requires that the Secretary of the State post a notice, adjacent to the *Application for Absentee Ballot* (Form ED-3) available for downloading on the SOTS website, that the application may only be downloaded for a person's own use. Specifically, the SOTS website that has a link to the Form ED- 3 provides:

This application for absentee ballot may be downloaded by an individual for: (1) the individual's own use; (2) the use of a member of the individual's immediate family; or (3) the use of a designee of the applicant. Any person who will distribute five (5) or more absentee ballot applications to persons other than the individual's immediate family must register with and obtain forms from the Town Clerk of the municipality where such forms will be distributed before distributing such forms. For more detailed information please review the Absentee Ballot Fact Sheet and Absentee Ballot Application Process document.

[Emphasis added.]

12. The Commission concludes that the notice required by on the SOTS website by § 9-140(m) that the Form ED-3 absentee ballot application is for individual use is a substantive prohibition, which is supported by the Secretary of the State's written opinion of July 22, 2008 cited in paragraph 9 above, and pursuant to General Statutes § 9-3. To conclude otherwise would make the notice requirement meaningless.
13. The Commission concludes that by duplicating the absentee ballot application from the SOTS website, and disseminating *en masse* Respondent violated § 9-140(m).
14. The Commission next addresses the allegation that Respondent failed to submit to the Town Clerk a list of individuals to whom she distributed absentee ballot applications. Although prompted by the complaint, the Commission nevertheless finds that the Respondent complied with General Statutes § 9-140(k)(2) by filing a list of the individuals to whom she distributed absentee ballot applications prior to the election, as required by § 9-140(k)(2).

15. The Commission finds that by submitting a list of sixty-seven (67) names and address of individuals she mailed absentee applications to in connection with the November 3, 2009, to the Town Clerk in October, Respondent satisfied § 9-140(k)(2), and no violation of that statute occurred under the facts of this case.
16. Accordingly, the Commission concludes that no violation of law occurred pertaining General Statutes § 9-140(k)(2) and the submission of a absentee ballot distribution list to the Town Clerk, and that allegation is dismissed.
17. The Commission finds that Respondent as the Sharon Democratic Registrar of Voters is an agent of the Democratic Party. The Commission further finds, and Respondent admits, that she mailed sixty-seven (67) absentee ballot applications to in connection with the November 3, 2009 that were unsolicited.
18. The Commission concludes therefore that Respondent violated General Statutes § 9-140(l) by mailing unsolicited absentee ballot applications, as an agent of a party, without a written explanation of the eligibility requirements for voting by absentee ballot as prescribed General Statutes 9-135(a), and a warning that voting or attempting to vote without meeting one or more of the eligibility requirements subjects the elector to potential civil and criminal penalties.
19. General Statutes § 9-307 provides in pertinent part:

Immediately after the polls are closed, the official checkers, appointed under the provisions of section 9-234, shall make and deliver to the moderator a certificate, in duplicate, stating the whole number of names on the registry list or enrollment list including, if applicable, unaffiliated electors authorized under section 9-431 to vote in the primary, and the number checked as having voted in that election or primary. For the purpose of computing the whole number of names on the registry list, the lists of persons who have applied for presidential or overseas ballots prepared in accordance with section 9-158h shall be included.

Thereupon the registrars or assistant registrars, as the case may be, acting at the respective polls, shall write and sign with ink, on the list or lists so used and checked, a certificate of the whole number of names registered thereon eligible to vote in the election or primary and the number checked as having voted in that election or primary, and deposit it in the office of the municipal clerk of their town *on or before the following day*. The municipal clerk shall carefully preserve the same on file, with the marks on it without alteration, for public inspection, and shall

immediately enter a certified copy of such certificate on the town records. ...
[Emphasis added.]

20. The Commission finds that although the Town of Sharon apparently had a practice of returning the official voter check lists on election night to the Town Clerk's office for storage in the vault, General Statutes § 9-307 does not require the list to be delivered to the town clerk until the following day.
21. The Commission finds in this instance that Respondent returned the checkers lists to the Town Clerk's office at approximately noon on November 4, 2008, the next day following the 2008 Election.
22. The Commission finds therefore that because the checkers lists were returned to the Town Clerk's office "on or before the following day" by Respondent as required by General Statutes § 9-307 that no violation of that section occurred and therefore the allegation is dismissed.
23. 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 hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
24. It is understood and agreed that this henceforth order 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.
25. 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 agreement or Order entered into pursuant to this agreement.
26. Upon the Respondent's agreement with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent shall henceforth strictly comply with § 9-140, General Statutes.

For the State of Connecticut

Dated: July 12, 2010

BY:



Joan M. Andrews, Esq.
Director of Legal Affairs
and Enforcement and
Authorized Representative
of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

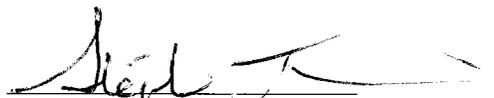
The Respondent

Dated: July 9 2010



Liz Piel
Sharon, Connecticut

Adopted this 21ST day of July, 2010 at Hartford, Connecticut



Stephen F. Cashman, Chair
By Order of the Commission