

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by  
Thomas R. Dunn, Darien

File No. 2010-036

FINDINGS AND CONCLUSIONS

The Complainant, Registrar of Voters in the Town of Darien, brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that on Election Day November 3, 2009 the Respondent, Jack D. Rehm, who at the time was a registered voter in the town of Old Saybrook, voted in the town of Darien, in violation of General Statutes §§ 9-7b (a)(2)(C) & 9-172.

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

1. From approximately December 1996 until on or about October 3, 2008, Respondent had been an active voter in the town Darien and lived therein consecutively at two separate addresses at which he was registered to vote.
2. On or about October 3, 2008, Respondent submitted a voter registration application ("VRA") to the town of Old Saybrook, listing the address of a family vacation home as his registration address. On this VRA, and as required by General Statutes § 9-21, the Respondent listed the Darien address as the address at which he was last admitted as an elector and the street address from which he last voted therein at the time the VRA was submitted.
3. As required by General Statutes § 9-21, the registrar of voters of the town of Old Saybrook transmitted a notice of cancellation of the Respondent's Darien registration to the registrars of voters in Darien and upon receipt of such notice of cancellation of registration, the registrars in Darien forthwith erased the name of the Respondent from the registry list of the town.
4. On Election Day, November 3, 2009, the Respondent appeared at the polling place assigned to his prior registered address in Darien and attempted to vote. However, the polling place officials could not find the Respondent's name on the last completed list of voters eligible to vote in Darien at that election. Respondent informed the polling place officials that he lived in Darien, that he had always voted at that precinct and that he was sure that he was a registered voter in Darien on that day.
5. Upon the Respondent's affirmation, the polling place officials permitted him to fill out an Affidavit for Restoration of Elector to Official Check List under the penalties of false statement, as prescribed in General Statutes § 9-42, swearing that the Respondent was still a bona fide resident of the Town of Darien, after which point he was permitted to cast his ballot.
6. Subsequent to Election Day, the Complainant discovered that the Respondent should not have been restored to the active registry list, as his name did not appear on the

inactive list on Election Day, but rather had been removed per General Statutes § 9-21.

7. In order for a voter to be restored to the active registry list and vote on Election Day, such voter's name must appear on the inactive registry list and such voter must affirm that s/he is a bona fide resident of the address to which such voter seeks restoration. General Statutes § 9-42 reads, in pertinent part:

...

(c) The registrars of voters shall cause the inactive registry list compiled under section 9-35 to be completed and printed and deposited in the town clerk's office and shall provide a sufficient number of copies for use in the polling place on election day. If on election day the name of an elector appears on such inactive registry list, including the name of an elector who has not responded to a confirmation of voting residence notice under subsection (e) of section 9-35 and has not voted in two consecutive federal elections, such name shall be added to the active registry list upon written affirmation signed by the elector, under penalties of false statement, before an election official at the polling place, that *such elector is still a bona fide resident of such town*, and upon the consent of both registrars or assistant registrars, as the case may be, in the polls.

(d) The name of no elector shall be added to the active registry list under the provisions of this section, unless his name or some name intended for his name was on the active registry list for at least one of the four years previous or on one of the preliminary active registry lists for the year in which the registrars are in session. [Emphasis added.]

8. An elector's name will appear on the inactive list under limited circumstances. General Statutes § 9-35 reads, in pertinent part:

...

(e) . . . If during the canvass the registrars determine that an elector has moved out of town and such elector has not confirmed in writing that the elector has moved out of the town, the registrars shall, not later than May first, send to the elector, by forwardable mail, a notice required by the National Voter Registration Act of 1993, P.L. 103-31, as amended from time to time, together with a postage prepaid preaddressed return card on which the elector may state the elector's current address. In the year of a presidential preference primary, the registrars shall send such notice not earlier than the date of such primary. *If the registrar does not receive the return card within thirty days after it is sent, the elector's name, including the name of an elector who has not voted in two consecutive*

*federal elections, shall be placed on the inactive registry list for four years. At the expiration of such period of time on the inactive registry list, such name shall be removed from the registry list. If such elector applies to restore the elector's name to the active registry list or votes during such period, the elector's name shall be restored to the active registry list. . . . [Emphasis added.]*

9. Further, in order for an elector to be eligible to vote in a particular town, such voter must be a bona fide resident of such town.

10. General Statutes § 9-12, provides in pertinent part:

(a) 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 town clerk of the town of residence of such citizen, as prescribed by law, be an elector, except as provided in subsection (b) of this section. . . . (Emphasis added.)[Emphasis added.]

11. General Statutes § 9-172, provides in pertinent part:

At any regular or special state election any person may vote who was registered on the last-completed revised registry list of the town in which he offers to vote, and he shall vote in the district in which he was so registered; provided those persons may vote whose names are restored to the list under the provisions of section 9-42 or whose names are added on the last weekday before a regular election under the provisions of section 9-17. Each person so registered shall be permitted to vote if he is a bona fide resident of the town and political subdivision holding the election and has not lost his right by conviction of a disfranchising crime. Any person offering so to vote and being challenged as to his identity or residence shall, before he votes, prove his identity with the person on whose name he offers to vote or his bona fide residence in the town and political subdivision holding the election, as the case may be, by the testimony, under oath, of at least one other elector or by such other evidence as is acceptable to the moderator. [Emphasis added.]

12. Any person who votes in any election when not qualified to do so, faces both civil and criminal liability. General Statutes § 9-7b, provides in pertinent part:

(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, . . . [Emphasis added.]

13. General Statutes § 9-357, provides in pertinent part:

Any person who fraudulently procures himself or another to be registered as an elector shall be fined not more than five hundred dollars or imprisoned not more than one year or be both fined and imprisoned. [Emphasis added.]

14. General Statutes § 9-358, provides in pertinent part:

Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms, before any registrar of voters, any moderator of any election, primary or referendum, any board for admission of electors or the State Elections Enforcement Commission, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election, primary or referendum is being passed upon and decided, shall be guilty of a class D felony and shall be disfranchised. [Emphasis added.]

15. General Statutes § 9-360, provides in pertinent part:

Any person not legally qualified who fraudulently votes in any town meeting, primary, election or referendum in which the person is not qualified to vote, and any legally qualified person who, at such meeting, primary, election or referendum, fraudulently votes more than once at the same meeting, primary, election or referendum, 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. Any person who votes or attempts to vote at any election, primary, referendum or town meeting by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised. [Emphasis added.]

16. In order to establish liability in the present case, Respondent must not have been qualified to vote in Darien on November 3, 2009. As noted above, General Statutes § 9-12 sets forth elector qualifications. In the present case, no one contests that the

Respondent was a citizen of the United States and had attained the age of eighteen years at the time he renewed his registration and voted. As such, the initial question to answer here is whether Respondent was a “bona fide resident” of Darien at the time.

17. 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).” (Emphasis added.) *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 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.”).
18. 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.*
19. 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.)
20. Thus, the initial issue in the present matter are whether 1) the Respondent truly resided at the home in Darien when he voted in that town on November 3, 2009 and, if so, 2) whether he had legitimate, significant, and continuing attachments to that home.
21. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.

22. Here, the Respondent maintains that he was a bona fide resident of the town of Darien at all times relevant to the instant complaint. The Respondent considered the home his primary residence and treated it accordingly. At all times relevant to the instant complaint, Respondent owned a residential home in the town and has so since at least 1996. Sufficient evidence was found that the Darien property was his primary residence. He spent a significant portion of his time at the Darien residence during the relevant year and maintained significant personal attachments to the property beyond his ownership thereof. Accordingly, there is insufficient evidence to support a claim that the Respondent was not a bona fide resident of the Town of Darien at the time that he presented himself to vote on November 3, 2009.

23. However, the second and dispositive issue here is whether the Respondent was a registered voter in Darien at the relevant time, such that he should have been permitted to vote. "At any regular or special state election any person may vote who was registered on the last-completed revised registry list of the town in which he offers to vote, and he shall vote in the district in which he was so registered; . . ." General Statutes § 9-172. In order to be eligible to vote in an election, a voter must submit the voter registration application to the relevant registrar of voters no less than fourteen days before such election.

24. General Statutes § 9-23g (d), provides in pertinent part:

(1) Except as otherwise provided in this subsection, the privileges of an elector for any applicant for admission under this section and section 9-23h shall attach immediately upon approval by the registrar, and the registrars shall enter the name of the elector on the registry list.

(2) Except as provided in subdivision (3) of this subsection, if a mailed application is postmarked, or *if a delivered application is received in the office of the registrars of voters, after the fourteenth day before an election or after the fifth day before a primary, the privileges of an elector shall not attach until the day after such election or primary, as the case may be.* In such event, the registrars of voters may contact such applicant, either by telephone or mail, in order to inform such applicant of the effect of such late received mail-in application and any applicable deadline for applying for admission in person.

...

25. Here, the evidence is sufficient to show that at the time the Respondent presented himself at the polling place in Darien on November 3, 2009, he was *not* registered on the last-completed revised registry list in Darien. That is, he was neither an active nor inactive voter in the Town of Darien on that day. Rather he was a registered voter at the aforementioned location in Old Saybrook. As such, while as a bona fide resident of the town it was permissible for him to *register* to vote in Darien, because he was

not a registered voter in Darien on the relevant date, it was not permissible for him to cast a ballot in Darien on that day.

26. However, the Commission considers certain factors as mitigating in this matter. First, there is no evidence in this matter that the Respondent voted anywhere but Darien on the date in question.
27. Second, up until on or about October 3, 2008, the Respondent had been a bona fide resident *and* a registered voter in Darien until at least 1996 and had regularly cast his ballot in Darien. And, as established above, the Respondent was a bona fide resident in Darien at the time he cast his ballot on November 3, 2009. Moreover, his contacts with Old Saybrook were, at most, related to his participation in a family vacation home.
28. Third, the Respondent asserts that it was not his intent to change his registration address when, on or about October 3, 2008, the Respondent submitted a voter registration application in Old Saybrook. Rather, the Respondent merely wanted to exercise his right as a property owner in Old Saybrook to cast a ballot in a referendum that had a potential impact on his property taxes, which is permitted by law in certain towns. If a town's governing body permits, certain non-electors in a town are entitled to vote in a referendum as such body prescribes.<sup>1</sup>

29. General Statutes § 9-369d, provides in pertinent part:

(a) Whenever by law a question may be submitted to voters who are not electors of a municipality, the municipality may submit the question to a vote by electors and voters held in conjunction with an election. Except as otherwise provided, the general statutes shall apply to such vote.

...

30. In order to cast a ballot in such referendum, a non-electors need not change his registration status. Not realizing that it would remove his registration status in Darien, the Respondent inadvertently disenfranchised himself from Darien by submitting the voter registration statement in Old Saybrook, when his aim was only to cast a ballot in Old Saybrook as a property owner. When he presented himself to vote in Darien, he did not realize the consequences of his act and believed that he was permitted to vote in the town in which he kept his primary residence and in which he had consistently voted in the past.
31. Finally, the most compelling mitigating factor in this matter is that the Respondent's liability should never have been triggered, as he should not have been permitted to vote in Darien. The Respondent inadvertently changed his registration to Old Saybrook over one year from the date in question. When he presented himself to the polling place in Darien on November 3, 2009, his name did not appear on either the

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<sup>1</sup> In Old Saybrook, owners of either town-registered automobiles or real property in town may vote in a budget referendum so long as the value of such property exceeds \$1000.

active or inactive registration list in that town. He should have been turned away by the polling place officials after a thorough search of the voter lists turned up no elector with his name. Instead, he was told that he would be permitted to vote on that day if he filled out a restoration form as prescribed in General Statutes § 9-42. Acting in reliance on the representation of the polling place officials, he filled out the restoration form and voted.

32. The Respondent's acts, voting in Darien when not legally permitted to do so, constituted a violation of General Statutes §§ 9-7b (a)(2)(C) & 9-172. However, based on the aforementioned findings, the Commission declines to consider the matter further.

### ORDER

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

That no further action be taken.

Adopted this 26th day of January, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson  
By Order of the Commission