

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Martin Steege of Hartford,

File No. 2010-111

FINDINGS AND CONCLUSIONS

Complainant filed this Complaint with the Commission pursuant to General Statutes § 9-7b, alleging that Hartford City Clerk John M. Bazzano (the "Municipal Clerk"), violated General Statutes § 9-140 (g) by failing to mail him absentee voting papers within twenty-four hours of his request and subsequently failing to provide him with the absentee voting papers immediately upon his personal appearance at the Municipal Clerk's Office.

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

1. On August 2, 2010 the Complainant, Martin Steege of Hartford, sent an absentee ballot application by facsimile machine to the Hartford Municipal Clerk's Office (the "facsimile absentee ballot application") for the August 10, 2010 Democratic primary.
2. The facsimile absentee ballot application stated that the Complainant would be unable to vote in person because of his absence from town during all hours of voting. The absentee ballot application listed the Complainant's telephone number.
3. The Municipal Clerk has provided an affidavit reporting the following: That the Municipal Clerk's Office's facsimile machine broke at an unspecified time on Monday, August 2, 2010. Because of this, the staff was not able to retrieve the facsimile absentee ballot application, along with other documents, from the facsimile machine until an unspecified time on Friday, August 6, 2010. This prevented the Municipal Clerk's Office's effective receipt of the facsimile absentee ballot application until an unspecified time on August 6, 2010.

4. The report of the broken facsimile machine containing the facsimile absentee ballot application remains uncontested but also uncorroborated.
5. The Municipal Clerk has provided a copy of the facsimile absentee ballot application received by the Municipal Clerk's Office. The header of the document reflects a received time of August 2, 2010 at 1:32pm. The document is not otherwise stamped or marked as received by the Municipal Clerk's Office.
6. The specific time of day on August 6, 2010 that the Municipal Clerk's Office reportedly recovered the facsimile absentee ballot application from the facsimile machine, and thus had effective notice and receipt of such application remains unknown.
7. Because the facsimile absentee ballot application extracted from the reported broken facsimile machine bore the time stamp of August 2, 2010 at 1:32pm, the time and cause of the delay between the Complainant sending the facsimile absentee ballot application on August 2, 2010 and the Municipal Clerk's Office's effective receipt of such application on August 6, 2010 was readily apparent to the reasonably prudent observer at the Municipal Clerk's Office's.
8. The Municipal Clerk states that, upon receiving facsimile absentee ballot application on August 6, 2010, the Municipal Clerk's Office "immediately" mailed the absentee ballot set to the Complainant.
9. The facsimile absentee ballot application, received by the Municipal Clerk's Office, was marked by the Municipal Clerk's Office and recorded that the absentee ballot set was issued to the Complainant by mail on August 6, 2010. The Complainant has provided the envelope with the postmark for this mailing. The postmark on the envelope reads August 7, 2010.
10. At all times relevant hereto, Diane Williams, a temporary worker in the Municipal Clerk's Office, was hired to assist with elections matters ("Ms. Williams").
11. On August 9, 2010, the Complainant, having not received the absentee ballot set, appeared in person at the Municipal Clerk's Office to file an additional absentee ballot application and personally obtain an absentee ballot set. At such time, Ms. Williams checked the computer system for the status of the application, which revealed that an absentee ballot set had already been issued to the Complainant on

August 6, 2010. As a result, Ms. Williams did not process the Complainant's new absentee ballot application.

12. According to the Complainant's sworn statement and corroborated by the Municipal Clerk's affidavit, Ms. Williams informed the Complainant that the absentee ballot set should arrive in the Complainant's mail that day, August 9, 2010, and that the Complainant should return to the Municipal Clerk's Office by 5:00pm if it did not.
13. The evidence supports that, during the Complainant's personal appearance at the Municipal Clerk's Office, Ms. Williams did not offer to accept the Complainant's original absentee ballot application, cancel the absentee ballot set issued in response to the facsimile absentee ballot application, and issue the Complainant a new absentee ballot set.
14. The Complainant did not return to the Municipal Clerk's Office on August 9, 2010.
15. According to the Municipal Clerk's affidavit, at no point during the week of August 2, 2010, or at any time thereafter, was the Complainant's original absentee ballot application received by the Municipal Clerk's Office.
16. In his sworn statement, the Complainant reports that the absentee ballot set did not arrive on August 9, 2010 and states that he needed to leave the state on business after August 9, 2010 and did not return until Wednesday August 11, 2010.
17. The Complainant did not cast his ballot in the August 10, 2010 Democratic primary.
18. General Statutes § 9-140 provides, in relevant 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...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,

(b) A municipal clerk may transmit an application to a person under this subsection by facsimile machine or other electronic means, if so requested by the applicant. *If a municipal clerk has a facsimile machine or other electronic means, an applicant may return a completed application to the clerk by such a machine or device, provided the applicant shall also mail the original of the completed application to the clerk, either separately or with the absentee ballot that is issued to the applicant. If the clerk does not receive such original application by the close of the polls on the day of the election, primary or referendum, the absentee ballot shall not be counted.*

(d) An absentee voting set shall consist of an absentee ballot, inner and outer envelopes for its return, instructions for its use, and if applicable, explanatory texts concerning ballot questions, as provided for in sections 2-30a and 9-369b. No other material shall be included with an absentee voting set issued to an applicant except as provided in sections 9-153e and 9-153f or where necessary to correct an error or omission as provided in section 9-153c.

(g) On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. *When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, within twenty-four hours, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the clerk shall comply with the request.* Any absentee voting set to be mailed to an applicant shall be mailed to the bona fide personal mailing address shown on the application. Issuance of absentee voting sets shall also be subject to the provisions

of subsection (c) of this section, section 9-150c and section 9-159q concerning persons designated to deliver or return ballots in cases involving unforeseen illness or disability and supervised voting at certain health care institutions.

[Emphasis added.]

19. The documentary evidence alone is inconclusive as to whether Municipal Clerk's Office complied with the twenty-four hour window to mail an absentee ballot set after receipt of an absentee ballot application, as prescribed by General Statutes § 9-140 (g). According to the Municipal Clerk's affidavit, the Municipal Clerk's Office mailed the absentee ballot set to the Complainant "immediately" after the effective receipt of the facsimile absentee ballot application on August 6, 2010.
20. Based on the inconclusive documentary evidence and the Municipal Clerk's affidavit, the evidence is insufficient to conclude that the Municipal Clerk's Office failed to mail an absentee ballot set to the Complainant within the twenty-four hours of receipt of the absentee ballot application, as prescribed by General Statutes § 9-140 (g).
21. Based on the Municipal Clerk's affidavit that at no point during the week of August 2, 2010, or at any time thereafter, did the Municipal Clerk's Office receive the Complainant's original absentee ballot application, the Municipal Clerk's Office did not fail to provide the Complainant an absentee ballot set during his personal appearance at the Municipal Clerk's Office on August 9, 2010, as prescribed by General Statutes § 9-140 (g).
22. The Municipal Clerk's affidavit appears to attempt to raise the defense of the requirement of General Statutes § 9-140 (b) that a Municipal Clerk must receive an original absentee ballot application by the close of polls on election day for the absentee ballot to be counted, and points to the fact that the Complainant did not, in fact, succeed in filing an original absentee ballot application.
23. The Commission finds this defense, while technically accurate, highly unsympathetic. The Commission concludes that, as prescribed by General Statutes § 9-140 (b), absent the timely receipt of an original absentee ballot application from the Complainant, the Complainant's absentee ballot would not have been counted.

As stated above, the evidence does not support that the Complainant completed his submission of an original absentee ballot application to the Municipal Clerk's Office.

24. The Municipal Clerk's Office could have enabled the Complainant to cast his ballot on August 9, 2010 by receiving his original absentee ballot application, cancelling the absentee ballot set sent in response to the facsimile absentee ballot application, and immediately issued the Complainant a new absentee ballot set.
25. When the Complainant arrived in person at the Municipal Clerk's Office on August 9, 2010, his clearly stated intent was to file an original absentee ballot application and receive an absentee ballot set. Without the instruction from Ms. Williams to the Complainant to return home and await the arrival of the mail, the Complainant would have filed an original absentee voting application in person, immediately received an absentee ballot set, and have been able to cast his ballot before the close of polls.
26. The Municipal Clerk's Office was compliant with the minimum standard of conduct to avoid a finding of a violation of General Statutes § 9-140 (g). However, noting that the Commission's investigative and persuasive powers under General Statutes §§ 9-7b (a) (1) and (6), are more expansive than its prosecutorial powers, the Commission makes the following additional findings.
27. The Commission finds that the August 7, 2010 postmark on the absentee ballot set envelope raises some question as to the Municipal Clerk's affidavit's precise use of the term "immediate" regarding the mailing of the absentee ballot set.
28. The Commission finds that the evidence does not support the inference that upon learning its faulty facsimile machine delayed the receipt of the absentee ballot application from August 2, 2010 to August 6, 2010 that the Municipal Clerk's Office made any effort to expedite the mailing of the absentee ballot set either through overnight delivery or other rapid delivery system. Recognizing the increased cost of any mailing, the Commission also looks to whether the Municipal Clerk's Office attempted to communicate with the Complainant by telephone call or other means.
29. The Commission finds that the Complainant's phone number is clearly listed upon the facsimile absentee ballot application provided by the Respondent. The evidence does not support that the Municipal Clerk's Office or any agent thereof, attempted to

communicate with the Complainant, by telephone or any other means, regarding the issue that ultimately cost the Complainant the right to cast his ballot until he arrived in person at the Municipal Clerk's Office on August 9, 2010.

30. The Commission finds that the Municipal Clerk's Office, upon learning that the technical problem of the Municipal Clerk's Office's facsimile machine delayed the receipt of the Complainant's application from August 2, 2010 to August, 6, 2010 for a primary scheduled for August 10, 2010 took no apparent corrective action.
31. The Commission finds that the technical problem with the facsimile machine for the period of Monday, August 2, 2010 to Friday, August 6, 2010, prior to the August 10, 2010 Democratic primary, was not followed by any degree of care for the elector's rights other than the minimum standard necessary to avoid a finding of a violation.
32. The Commission concludes that, due to this minimum standard of care, the Municipal Clerk Office's actions and omissions effectively deprived the Complainant of his right to vote in the August 10, 2010 Democratic primary.

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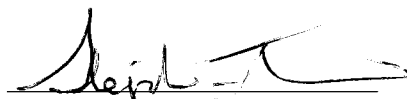
ORDER

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

That the matter be dismissed.

The Commission instructs that courtesy copies of these Findings and Conclusions shall be sent to the Hartford Court of Common Council, the appointing authority for the Hartford Municipal Clerk.

Adopted this 21ST day of September 2011 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission