

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Diane S. Krevolin, West Haven

File No. 2010-144

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b and alleges that she was deprived her right to vote when she attempted to vote at the Washington School polling place in West Haven on November 2, 2010. Specifically, she alleges that when she arrived at the polls at 6:20 p.m. she became aware that a voter was questioning why a certain candidate's name did not appear on the ballot. The Complainant alleges that, at that point, she and approximately 20 other individuals were told to wait while the election officials attempted to contact the Registrars to notify them of the problem. According to the Complainant, the election officials told those individuals that they could wait or leave and return later to vote. The Complainant further alleges that she and a few others asked if they could fill out a different ballot so they could cast a vote for 85% of those candidates running for office. She asserts that her request was denied and, after waiting until 7:30 p.m. she left the polling place without being permitted to vote on the correct ballot. She further indicated that she was not offered a provisional ballot.

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

1. The Moderator's diary for the Washington School polling place contains an entry for November 2, 2010 at 6:00 p.m. that states "wrong ballots." There is no subsequent entry indicating if, or when, the correct ballots were delivered.
2. City Clerk Deborah Collins, and Washington School polling place Moderator Rose Bradley provided written responses to the Complaint. According to the Registrars of Voters of West Haven, Michelle Hufcut and Jo Ann Callegari, at approximately 1:00 p.m. on Election Day they notified City Clerk Deborah Collins that she needed to order more ballots as voter turnout was much higher than expected. They maintain that Ms. Collins ordered more ballots from Adkins printers and personally picked them up and delivered them directly to the necessary polling places, including Washington School polling place. They further maintain that at approximately 6:00 p.m. Moderator Rose Bradley notified them that the wrong ballots had been delivered to the Washington School polling place. They assert that they immediately notified Ms. Collins who thereupon photocopied the correct ballots and marked each one with the City seal. The Registrars also assert that the correct photocopied ballots were delivered to the Washington School polling place within a matter of 15-20 minutes.
3. City Clerk Deborah Collins confirmed the Registrars recollection of the events at issue. She also maintains that they decided to photocopy the ballots because they felt that would be "faster" and that the Registrars' assistants delivered them to the polling place which was two blocks away. Ms. Collins admits that she mistakenly delivered the wrong ballots to the Washington School polling place.

4. Moderator Rose Bradley provided a sworn written response to the Complainant's allegations. Her response is consistent with that of the Registrars and City Clerk except that she asserts that the Registrars first delivered approximately 80 photocopied ballots within 15 minutes of the discovery of the wrong ballots and then delivered a second batch within the next 20 minutes. She also asserts that not all the photocopied ballots were used. She also maintains that the Complainant was informed that she could use the AVS machine to vote or cast her ballot in the auxiliary bin but she refused and decided to leave rather than utilize those options or wait for the correct ballots to arrive. Finally, she maintains that the Complainant's allegations "were not true."
5. This is the first time the Commission has been presented with this issue since the change in Connecticut from the lever voting machine system to the optical scan voting system. The Commission has reviewed the applicable law and has found that presently, there do not appear to be any statutes or regulations that expressly require election officials to check the accuracy of the ballots delivered to the polling places *after* the opening of the polls.
6. General Statutes § 9-259 does provide that the moderator shall cause everything to be "put in readiness for the commencement of voting *at the hour of opening the polls.*" [Emphasis added.] Similarly, section 9-242a-8 of the Regulations of Connecticut State Agencies provides that enough ballots for three hours of voting must be provided to the election officials *prior to* the opening of the polls and that those election officials, without opening any ballot packages, must check that the ballots provided to their polling place are accurate. [Emphasis added.] The *Moderator's Handbook* prepared by the Office of the Secretary of the State states this as well. See pgs. 10-11. Here, however, the ballots were delivered well *after* the opening of the polling place.
7. Currently, the Office of the Secretary of the State does not provide any written instructions on this issue.
8. General Statutes § 9-250 does provide in relevant part as follows:

Ballots shall be printed in black ink, in plain clear type, and on clear white material of such size as will fit the tabulator, and shall be furnished by the registrar of voters. The size and style of the type used to print the name of a political party on a ballot shall be identical with the size and style of the type used to print the names of all other political parties appearing on such ballot. The name of each major party candidate for a municipal office, as defined in section 9-372, except for the municipal offices of state senator and state representative, shall appear on the ballot as it appears on the registry list of the candidate's town of voting residence, except as provided in section 9-42a. **The name of each major party candidate for a state or district office, as defined in section 9-372, or for the municipal office of state senator or state representative shall appear on the ballot as it appears on the certificate or statement of consent filed under section 9-388, subsection (b) of section 9-391, or section 9-400 or 9-409.** . . . The name of each minor party candidate shall appear on the ballot as it appears on the registry list in accordance with the provisions of section 9-452. The name of each nominating petition

candidate shall appear on the ballot as it is verified by the town clerk on the application filed under section 9-453b. The size and style of the type used to print the name of a candidate on a ballot shall be identical with the size and style of the type used to print the names of all other candidates appearing on such ballot. Such ballot shall contain the names of the offices and the names of the candidates arranged thereon. The names of the political parties and party designations shall be arranged on the ballots, either in columns or horizontal rows as set forth in section 9-249a, immediately adjacent to the column or row occupied by the candidate or candidates of such political party or organization. When two or more candidates are to be elected to the same office, the ballot shall be printed in such manner as to indicate that the elector may vote for any two or such other number as he is entitled to vote for, provided in the case of a town adopting the provisions of section 9-204a, such ballot shall indicate the maximum number of candidates who may be elected to such office from any party. If two or more candidates are to be elected to the same office for different terms, the term for which each is nominated shall be printed on the official ballot as a part of the title of the office. If, at any election, one candidate is to be elected for a full term and another to fill a vacancy, the official ballot containing the names of the candidates in the foregoing order shall, as a part of the title of the office, designate the term which such candidates are severally nominated to fill. No column, under the name of any political party or independent organization, shall be printed on any official ballot, which contains more candidates for any office than the number for which an elector may vote for that office. [Emphasis added.]

9. Pursuant to General Statutes § 9-3, the Secretary of the State is the Commissioner of Elections and her written rulings, instructions and opinions are presumed as correctly interpreting and effectuating the administration of elections and primaries. However, the Secretary of the State has not yet provided a clear and explicit directive as to whether and when the aforementioned provision, or any other, applies. The Commission will not, therefore, take further action in this matter as the Commissioner of Elections of the state, the Secretary of the State, has not yet issued anything in writing concerning this issue.
10. In addition, the evidence reveals that the error that was committed was made by Ms. Collins as she was attempting in good faith to expeditiously accomplish the Registrar's directive that she deliver the correct ballots to the Washington School polling place. Furthermore, rather than bring the ballots to the Registrars' office prior to delivery to the polling place, Ms. Collins elected instead to bring the ballots directly to the polling place so they did not run out of ballots. It was at that point that the error occurred. Furthermore, the Complainant could have cast her ballot using the Vote-by-Phone voting system which was available for use at the Washington School polling place. The Complainant would not have been entitled to vote via provisional ballot pursuant to General Statutes § 9-232l as that provision requires that the Complainant's name not appear on the registry list for the Washington School polling place or that she be challenged pursuant to General Statutes §§ 9-232 to 9-232f. Neither occurred in the present case.
11. Instead, the Commission will apprise the Secretary of the State's Office of the issue at hand so that they can instruct Registrars of Voters, Town Clerks, and/or election officials about their responsibility to ensure that the correct ballots are available for use and/or used at each

polling place. In addition, the Commission will seek the Secretary of State's written guidance as to the application of the law in the future so that the Commission can apply those instructions pursuant to General Statutes § 9-3 when presented with a complaint alleging similar facts.

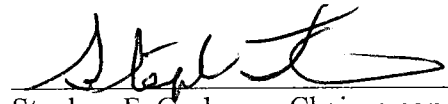
12. In the interim, the Commission does, however, *strongly advises* the West Haven Registrars of Voters and Town Clerk to ensure that in the future, the correct ballots are available for use and/or used at each polling place throughout the day of the election, primary and/or referendum.

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