

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Susan A. Koneff, et al, Monroe

File No. 2010-152

FINDINGS AND CONCLUSIONS

The Complainants, Susan A. Koneff & Jeanette K. Benson, respectively the Democratic and Republican Registrars of Voters in the Town of Monroe, brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that Respondent, [REDACTED] was not a bona fide resident in Monroe when she cast a ballot there on Election Day November 2, 2010 in violation of General Statutes §§ 9-7b (a)(2)(C), 9-42 & 9-172.

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

1. Complainants here allege that on Election Day, November 2, 2010, the Respondent had been moved to the "inactive" voter list pursuant to General Statutes § 9-35 because she had failed to respond to a canvass letter sent to her registered address in February 2008 and had not cast another ballot during the intervening period.
2. When the Respondent presented herself to vote at her polling place in Monroe on November 2, 2010, she was restored to the active registry list and voted after swearing to and submitting a "Restoration of Voter" form pursuant to General Statutes § 9-42.
3. After the aforementioned events, the Respondents allege that they reviewed information about the Respondent from the Monroe Tax Collector that they believe supports a finding that at the time the Respondent cast her ballot, she was not a bona fide resident at her registered address in Monroe, but had moved to [REDACTED]. However, no evidence was submitted by the Complainants in support of the allegation that the tax records suggested that the Respondent was not a bona fide resident of Monroe on the relevant date.
4. The Respondent generally denies the Complainants' allegation. She specifically asserts that she has lived at the registered address in Monroe her entire life. The property is owned and occupied by her parents, but she maintains a bedroom and stores the majority of her personal items at the property. She eats and cooks there as well as entertains friends. She helps her parents with the management and upkeep of the household, including but not limited to purchasing food and participating in maintenance and upkeep of the property.
5. The Respondent asserts that because of the nature of her work as a police officer in the town of [REDACTED] she has taken certain measures to protect her personal safety, some of which involve intentionally obfuscating the location of her true abode. According to the Lieutenant in charge of the [REDACTED] division at the [REDACTED] Police Department, the Respondent has been an officer in good standing at the department for six years. In order to protect police officers from potential retributive acts by those subject to investigatory and/or enforcement actions, the [REDACTED] Police Department allows its officer employees to use the address of police headquarters as

their contact address for such things as receiving mail and registering cars and operators' licenses with the Department of Motor Vehicles ("DMV"). The Respondent in this matter takes advantage of this practice for her personal safety and that of her parents; much of her contact information, including but not limited to DMV registrations, bills, etc. points to the police headquarters. What other limited correspondence that has not been directed to the police department goes to the property in [REDACTED]

6. Regarding the property in [REDACTED] the Respondent admits that she does own real property there, but that such property was purchased as an investment. She admits that she has no tenants at the [REDACTED] property and does stay there occasionally. However, she asserts that her primary residence has not changed merely by the act of owning and making occasional use of a property elsewhere.
7. In addition to the evidence above, the Respondent submitted a written statement from her parents and local friends supporting the Respondent's assertion of bona fide residence in Monroe.
8. Turning to the question of the Respondent's eligibility as a voter in Monroe, an elector is eligible to vote in a particular town only if such voter is a bona fide resident of such town. 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.]

9. 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.]

10. If a registered voter's name appears on the inactive list, such voter may be restored to active status and cast a ballot if such voter affirms 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.]

11. 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.]

12. 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.]

13. 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.]

14. In order to establish liability in the present case, Respondent must not have been qualified to vote in Monroe on November 2, 2010. 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 she restored her registration and voted. Moreover, no allegation has been made, and no evidence has been found, that the Respondent voted in any other place on the date in question. As such, the initial question to answer here is whether Respondent was a “bona fide resident” of Monroe at the time.

15. 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.”) (Emphasis added.)

16. 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*; see also *Maksym v. Board of Election Com’rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (January 27, 2011), 2011 WL 242421 at *8 (“[O]nce residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. . . .”)
17. 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.)
18. Thus, the initial issue in the present matter are whether 1) the Respondent truly resided at the home in Monroe when she voted in that town on November 2, 2010 and, if so, 2) whether she had legitimate, significant, and continuing attachments to that home.
19. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.
20. Here, the Respondent maintains that she was a bona fide resident of the town of Monroe at all times relevant to the instant complaint. The Respondent considered the home her primary residence and treated it accordingly. Evidence was submitted that the Monroe property was in fact her primary residence. She spent a significant portion of her time at the Monroe residence and maintained significant personal attachments to the property. Because of the nature of her work, she is unable to produce objective evidence such as a drivers license and/or bills pointing to the Monroe property. However, the Commission finds that she compensated for the absence of such evidence by producing third-party statements from a supervisor at the

police department and from family and friends, all supporting her assertion of bona fide residence.

21. Based on the statements and evidence presented by the parties in this matter, the Commission concludes that there is insufficient evidence to support a claim that the Respondent was not a bona fide resident of the Town of Monroe at the time she presented herself to vote on November 2, 2010. The Respondent spent a significant amount of time in the Monroe home prior to that date and maintained legitimate, significant, and continuing attachments thereto. There is has been no compelling evidence found to show that the Respondent had abandoned her access and attachments to the property such that she should have lost her privilege to choose to be an elector in the Town of Monroe. Accordingly, the matter should be dismissed.

ORDER

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

That the matter be dismissed.

Adopted this 16th day of February, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission