

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by John Kisluk, Plainville

File No. 2011-075

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that during a budget vote held in the Town of Plainville the Respondent unlawfully closed the polling place before 8 p.m., in violation of General Statutes § 7-9b.

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

1. On three occasions in the Spring of 2011 a question concerning the 2011 budget for the Town of Plainville was submitted to the electors of the town pursuant to its Charter: April 26, May 10, and May 24. The events relevant to the instant matter concern the vote held on April 26.
2. Chapter VII, § 6 of the Plainville Town Charter, reads, in pertinent part:

There shall be a Town Meeting solely for the purpose of voting on the budget on the Last Tuesday of April at such polling places, as the Council shall determine. Voting at the Town Meeting shall commence at 6:00 a.m. and cease at 8:00 p.m. Voting shall be by way of a "Yes" or "No" vote on voting machines, as that term is defined by the State Statutes, with the voting machine ballot labels provided by the Town Clerk. The Town Clerk and such assistants shall conduct and moderate the vote. The Town Budget shall be adopted by a majority vote of those attending and entitled to vote.

3. General Statutes § 9-1 (n) defines the term "Referendum" as follows:

"Referendum" means (1) a question or proposal which is submitted to a vote of the electors or voters of a municipality at any regular or special state or municipal election, as defined in this section, (2) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters, which meeting is not an election, as defined in subsection (d) of this section, and is not a town meeting, or (3) *a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters pursuant to section 7-7 or pursuant to charter or special act;*

4. As an initial matter, the Commission concludes that the vote that occurred in the Town of Plainville on April 26 was a “referendum” as defined in General Statutes § 9-1.
5. The April 26 referendum was held at a single polling place set up at Plainville Town Hall. Respondent Lena Nichols was the moderator for this referendum.
6. The Complainant alleges that the clock that the Respondent used to keep the official time in the polling place was incorrect and resulted in the polling place opening early and closing early, in violation of General Statutes § 7-9b. He does not claim that the alleged violation resulted in either he or any other voter being deprived of the opportunity to cast a ballot on the day in question.
7. General Statutes § 7-9b prescribes the hours of voting for a referendum in which no state or local election is being conducted. Section 7-9b reads, in pertinent part:

Whenever any municipality conducts a referendum on a day other than a state or local election, *the polls shall be open between twelve noon and eight p.m.*, but any municipality may, any provision of any special act to the contrary notwithstanding, by vote of its legislative body provide that the polls at any such referendum shall open at an earlier hour *but not earlier than six a.m.* (Emphasis added.)

8. The investigation revealed that for the April 26 referendum, Plainville expanded the required hours of voting to 6 a.m. to 8 p.m.
9. Here, the evidence shows that the Respondent used a clock on the wall of the polling place to keep time during the referendum. The Respondent asserts that she used the polling place clock to open voting at the polling place at exactly 6 a.m. and used it again to close voting at exactly 8 p.m.
10. In this Complaint, the Complainant does not allege that the polling place was open for less than 14 hours, but rather alleges that the time on the clock used at the polling place and the time on his mobile telephone differed by approximately 3 minutes. Accordingly, he alleges, the polling place was opened 3 minutes early at 5:57 a.m. and closed 3 minutes early at 7:57 p.m. No further evidence was presented to support this claim.
11. The question of whether a moderator has failed to either open or close a polling place at the correct time is a question of fact, not law. See *Complaint of Jeffrey Nield, Morris*, File No. 2000-276. While General Statutes § 7-9b and General Statutes § 9-174 both prescribe the hours of voting, neither statute enumerates a particular standard of time and/or timepiece that must be followed.

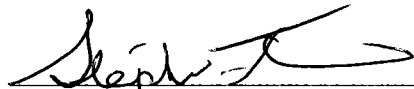
12. The Commission has in the past concluded that moderators have violated either General Statutes § 7-9b or 9-174 for failing to open or close a polling place at the correct time. *See, e.g., Complaint of John Pernal, Jr., Hamden, File No. 2009-137* (polling place opened 20 minutes late) and *Complaint of Olivia Almagro-Johnson, Hartford, File No. 2004-176* (polling place closed no less than 5 to 10 minutes early). In both of these matters, the variance in time was 5 minutes or more and objective evidence supported the Complainant's allegation.
13. However, when the dispute has been purely between the time on the polling place clock versus the voter's own timepiece, the Commission has found that so long as the moderator followed the same clock for opening and closing the polls, an alleged 5-minute variation between the Complainant's watch and the polling place clock was insufficient to support a violation. *See Nield, supra.*
14. Here, the facts more closely resemble those in *Nield*, than they do in either *Pernal* or *Almagro-Johnson*. While the Complainant's "timepiece" in this instance was a mobile telephone, there is insufficient evidence to show that the mobile telephone was any more reliable and/or accurate than the Complainant's watch in *Nield*.
15. Moreover, the evidence suggests that the variation between the polling place clock and the Complainant's timepiece was no more than 3 minutes.
16. Finally, even assuming the Complainant's allegation to be true, no evidence has been presented that any voter was turned away during the 3 minute period after the close of polls.
17. Considering the aforesaid, the Commission concludes that there is insufficient evidence to show that the Respondent violated General Statutes § 7-9b. Accordingly, the matter should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 19th day of October, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission