

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Garritt Kelly, East Hampton

File No. 2011-113

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and raised allegations that Respondents Melissa Engel and Douglas Logan impermissibly handled absentee ballot applications and/or absentee ballots related to the November 2, 2010 referendum held in the Town of East Hampton.

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

1. On or about October 19, 2010 the East Hampton Town Council voted to submit a referendum question to eligible voters as to whether to adopt a proposed ordinance overturning the Town Council's prior decision to eliminate the position of Chief of Police in East Hampton. Pursuant to the East Hampton Town Charter, the Town Council set the date of the referendum for November 2, 2010, the same day as the 2010 General Election.
2. Because the referendum was called and held in the above time and manner, the referendum question was voted on separate ballots, including but not limited to separate absentee ballots.
3. Where, as here, a referendum is held with less than three weeks notice, the provisions of General Statutes § 9-369c apply to the use of absentee ballots. It reads, in pertinent part:

(a) Whenever a referendum, as defined in subdivision (2) or (3) of subsection (n) of section 9-1, is to be held on any question or proposal, *the question or proposal shall be submitted to the municipal clerk in the form in which it will appear on the ballot at least three weeks prior to the date on which the referendum is to be held*, and the municipal clerk shall make absentee ballots available for use at the referendum in accordance with the provisions of this section, *provided, if any other provision of the general statutes, a special act, a charter provision or an ordinance specifically authorizes a referendum to be held with less than three weeks' notice, absentee ballots shall be made available for each such referendum within four business days after the question or questions which are to be voted on at the referendum are finalized*. Notwithstanding any provision of the general statutes to the contrary,

a municipal clerk may only provide an absentee ballot for such referendum held with less than three weeks' notice to a person who applies in person at the office of the municipal clerk for an absentee ballot (1) for himself or (2) for a prospective applicant who designates such person for such purpose. The designee may be a licensed physician, registered or practical nurse or any other person who is caring for the applicant because of the applicant's illness, a member of the applicant's family or a police officer, registrar of voters or deputy registrar of voters in the municipality in which the applicant resides. The designee may also return the ballot in person to the municipal clerk not later than the close of the polls.

...
(e) Any person who is eligible to vote by absentee ballot as provided in this section may apply in person or by mail to the municipal clerk for an absentee ballot. Application shall be made on a form furnished by the Secretary of the State, as provided in subsection (d) of this section. Upon receipt of an application or upon the nineteenth day before the date of the referendum, whichever is later, the municipal clerk shall give to the applicant or mail, as the case may be, the absentee ballot and the envelopes furnished by the Secretary of the State. No absentee ballot shall be issued after the opening of the polls at the referendum, except as provided in section 9-150c.

(f) The procedures for issuing, returning, casting and counting absentee ballots, declaring the count and packaging the ballots at elections, *shall apply, as nearly as may be, to absentee ballots at referenda.* [Emphasis added.]

4. General Statutes § 9-369c specifically prescribes the procedures for issuing absentee ballots for certain standalone municipal referenda, as defined in subdivision (2) or (3) of subsection (n) of section 9-1. As such, the Commission has concluded that when such referenda are held, the more specific provisions of § 9-369c concerning referenda held with less than three weeks notice govern over those provisions prescribing the procedures for issuing absentee ballots in elections, as prescribed by General Statutes § 9-140. *Complaint of Patricia Ulatowski, Monroe*, File No. 2009-062.
5. Further, the Commission has concluded that when a referendum, as defined in subdivision (2) or (3) of subsection (n) of section 9-1, is held with less than three weeks notice, the requirement in subsection (a) of General Statutes § 9-369c—that absentee ballots be issued to only those electors or their legal designees who appear in person at the office of the municipal clerk—is mandatory, not advisory. *Id.*

6. This matter was filed with the Commission by the Complainant as a representative of the East Hampton Police Department, at which he is a Sergeant. According to the Complainant, he was ordered by the Police Chief, Matthew Reimondo to investigate Mellissa Engel and Douglas Logan, the Respondents here, in relation to 11 absentee ballot applications filed with the East Hampton Town Clerk, each of which bore Ms. Engel's attestation that she assisted the applicant in filling out the form.
7. After investigation, Sgt. Kelly filed the instant complaint with the Commission. In it, he alleges that the police investigation raises questions as to whether: a) The Respondent mailed unsolicited applications to the 11 applicants without the warning required by General Statutes § 9-140 (*l*); b) Respondents delivered some of the applicants' completed applications to the town clerk without qualifying as a "designee" under General Statutes § 9-369 (a); and c) Respondents delivered some of the applicants' completed absentee ballots to the town clerk without qualifying as a "designee" under General Statutes § 9-369 (a).
8. According to separate statements by East Hampton Town Clerk Sandra Wieleba and Assistant Town Clerk Bernice Bartlett, Ms. Engel appeared personally at the offices of the Town Clerk and requested approximately 11 absentee ballot applications. She recorded her name in the absentee ballot log and was given approximately 11 Form ED-3R "Application for Absentee Ballot for Referendum Authorized to be Held with Less than 3 Weeks Notice."
9. The Complainant alleges and the evidence obtained in this matter from the Town Clerk's Office shows that 11 absentee ballot applications were returned to the East Hampton Town Clerk on which the Respondent signed as an assister. Specifically, they were for the following individuals: Donna Kelley, Richard Kelley, Albert Dennler, Robert Richter, Laura Richter, Michael Duffield, Kenneth Moors, Douglas Logan, Sheryl Logan, John Lockwood and Sandra Lockwood.
10. Turning to the Complainant's first allegation, he asserts that he found evidence suggesting that the Respondent may have sent the above individuals unsolicited absentee ballot applications and failed to include the warning required by General Statutes § 9-140 (*l*). A former resident of East Hampton stated to the Complainant that she heard Richard and Donna Kelley state that they had not solicited the absentee ballot applications delivered to them by Melissa Engel. The Complaint does not indicate whether Mr. & Mrs. Kelley were contacted by the East Hampton Police Department in association with their investigation.
11. General Statutes § 9-140 (*l*) reads:

l) No candidate, party or political committee, or agent of such candidate or committee shall mail unsolicited applications for absentee

ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector or applicant to potential civil and criminal penalties. As used in this subsection, "agent" means any person authorized to act on behalf of another person.

12. The Respondent asserts that the Complainant's witness is incorrect and that each of the above absentee ballot applicants specifically solicited her to obtain an application on their behalf.
13. After investigation, the Commission finds that the evidence does not establish that the Respondent sent unsolicited applications to any of the above 11 individuals. Each individual made statements to the Commission supporting the Respondent's assertion that the applications were not unsolicited. In consideration of the aforesaid, this allegation is dismissed.
14. Turning to the Complainant's next two allegations, he asserts that the Respondents delivered certain applicants' completed applications as well as their completed absentee ballots to the town clerk without qualifying as a "designee" under General Statutes § 9-369 (a).
15. The Complaint alleges, and the records of the East Hampton Town Clerk establish, that Ms. Engel was the designee for two of the applicants, Robert and Laura Richter, who are husband and wife. The Complaint also alleges, and the records also establish, that Mr. Logan was the designee for John and Sandra Lockwood, also husband and wife.
16. The evidence in this matter establishes that Mrs. Richter is Respondent Engel's sister and that Mr. Richter is her brother-in-law by marriage. It also establishes that Mrs. Lockwood is Mr. Logan's daughter and Mr. Lockwood is his son-in-law by marriage.
17. It is a question of first impression for the Commission as to whether the above individuals constituted members of the Respondents' "family" under General Statutes § 9-369c, which is not defined specifically by this provision or by reference in any other provision.
18. Here, the relevant language in § 9-369c is as follows:

The designee may be a licensed physician, registered or practical nurse or any other person who is caring for the applicant because of the applicant's illness, *a member of*

the applicant's family or a police officer, registrar of voters or deputy registrar of voters in the municipality in which the applicant resides. (Emphasis added.)

19. General Statutes § 1-2z provides, in pertinent part:

Relevant legislation and precedent guide the process of statutory interpretation., *the meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes.* If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the statute shall not be considered. (Emphasis added.)

20. Here, the relevant language is substantially similar to language in General Statutes § 9-140b, which concerns the standard absentee balloting procedure. This statute and General Statutes § 9-369c are the only places in Title 9 where the term “family” is used without modification by the term “immediate.” Section 9-140b reads, in pertinent part:

(a) An absentee ballot shall be cast at a primary, election or referendum only if: (1) It is mailed by (A) the ballot applicant, (B) *a designee of a person who applies for an absentee ballot because of illness or physical disability*, or (C) a member of the immediate family of an applicant who is a student, so that it is received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of the polls; (2) it is returned by the applicant in person to the clerk by the day before a regular election, special election or primary or prior to the opening of the polls on the day of a referendum; (3) *it is returned by a designee of an ill or physically disabled ballot applicant, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum;* (4) it is returned by a member of the immediate family of the absentee voter, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (5) in the case of a presidential or overseas ballot, it is mailed or otherwise returned pursuant to the provisions of section 9-158g; or (6) it is returned with the proper identification as required by the Help America Vote Act, P.L. 107-252, as amended from time to time, if applicable, inserted in the outer envelope so such identification can be viewed without opening the inner envelope. A person returning an absentee ballot to the municipal clerk pursuant to subdivision (3) or (4) of this subsection shall present identification and, on the outer envelope of the absentee ballot, sign his name in the presence of the municipal clerk, and

indicate his address, his relationship to the voter or his position, and the date and time of such return. As used in this section, "immediate family" means a dependent relative who resides in the individual's household or any spouse, child or parent of the individual.

(b) As used in this section and section 9-150c, "designee" means (1) a person who is caring for the applicant because of the applicant's illness or physical disability, including but not limited to, a licensed physician or a registered or practical nurse, (2) a member of the applicant's family, who is designated by an absentee ballot applicant and who consents to such designation, or (3) if no such person consents or is available, then a police officer, registrar of voters, deputy registrar of voters or assistant registrar of voters in the municipality in which the applicant resides. (Emphasis added.)

21. General Statutes § 9-140b (a) contains a definition for "immediate family," which is limited to a "dependent relative who resides in the individual's household or any spouse, child or parent of the individual." Under § 9-140b, an immediate family member may, without the voter's permission, return such voter's completed absentee ballot. However, a "designee," which definition includes "family," may only do so with the voter's explicit permission via a signed designation.
22. Also persuasive here is the specific definition of the term "family" under the regulations promulgated pursuant to Chapter 157 of Title 9 by the Commission concerning the Citizens' Election Program. Specifically, Section 9-706-2 of the Regulations of Connecticut State Agencies reads, in pertinent part:

(b) In addition to the requirements set out in Section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following Citizens' Election Program requirements. Participating candidates and the treasurers of such participating candidates shall not spend funds in the participating candidate's depository account for the following:

3. *Payments to the participating candidate or the participating candidate's family members, including: a participating candidate's spouse, civil union partner, sibling, child, grandchild, parent, grandparent, aunt, uncle; or the participating candidate's spouse's or civil union partner's sibling, child, grandchild, parent, grandparent, aunt,*

uncle; or the spouse, civil union partner, or child of any such individuals related to the participating candidate or his/her spouse or civil union partner, except payment(s) to the participating candidate or the participating candidate's committee worker or the participating candidate's family member serving as a committee worker if such individual is seeking reimbursement for a permissible expenditure for which he/she received authorization from the campaign treasurer to make such expenditure, and such participating candidate or committee worker provides the campaign treasurer with a written receipt or other documentary evidence from the vendor proving payment of the expenditure, as required by Section 9-607(j) of the Connecticut General Statutes;

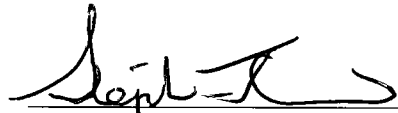
23. In consideration of the aforesaid, the Commission concludes that "family," as it is used in General Statutes § 9-369c, is a more expansive term than "immediate family" and that such term could include the child or sibling of the designee and the spouse, civil union partner, or child of any such child or sibling of the designee.
24. Accordingly, the Commission concludes that under General Statutes § 9-369c Respondent Melissa Engel was a family member of both Robert and Laura Richter and Respondent Douglas Logan was a family member of both Sandra and John Lockwood. Accordingly, the allegations that the Respondents improperly handled absentee ballot applications and/or absentee ballots should be dismissed.

ORDER

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

- 1) That the matter is dismissed.

Adopted this 21st day of March, 2012 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission