

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Daniel Garrett, Plainville

File No. 2012-024

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that during the General Election held in the town of Hamden on November 8, 2011, Respondent Nancy Barry violated General Statutes § 9-236 by improperly placing the markers indicating the 75' foot boundary line enumerated in § 9-236 (a) more than 75' away from the outside entrances at the West Wood School polling place and violated his rights under the 1st Amendment to the United States Constitution by attempting to enforcing § 9-236 (a) outside the 75' boundary.

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

1. The Respondent here is Nancy Barr, who was the moderator at the polling place at the West Wood School in Hamden during the November 8, 2011 General Election
2. General Statutes § 9-236 proscribes certain activities in and around a polling place on the day of any primary, referendum or election. Section 9-236 reads, in pertinent part:

(a) On the day of any primary, referendum or election, no person shall solicit in behalf of or in opposition to the candidacy of another or himself or in behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person *within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place* or in any room opening upon any such corridor, passageway or approach, except as provided in section 9-294. . . . The moderator shall evict any person who in any way interferes with the orderly process of voting.

(b) (1) *The selectmen shall provide suitable markers to indicate the seventy-five-foot distance from such entrance.* Such markers shall consist of a board resting on an iron rod, which board shall be not less than twelve inches square and painted a bright color and shall bear the figures and letters "75 feet" and the following words: "On the day of any primary, referendum or election no person shall solicit in behalf of or in opposition to another or

himself or peddle or offer any ballot, advertising matter or circular to another person or loiter within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach.” (2) Notwithstanding the provisions of subdivision (1) of this subsection, the selectmen may provide the markers required by the provisions of this subsection in effect prior to October 1, 1983, except that *in the case of a referendum which is not held in conjunction with an election or a primary, the selectmen shall provide the markers required by subdivision (1) of this subsection.* (3) *The moderator and his assistants shall meet at least twenty minutes before the opening of a primary, referendum or an election in the voting district, and shall cause to be placed by a police officer or constable, or such other primary or election official as they select, a suitable number of distance markers.* Such moderator or any police officer or constable shall prohibit loitering and peddling of tickets within that distance. [Emphasis added.] (Emphasis added.)

3. Turning first to the Complainant’s allegations regarding the 75’ markers, the Commission notes that the Complainant here has made substantially similar allegations regarding sign placement at the West Wood School in Hamden in a prior matter. In *Complaint by Daniel Garrett, Hamden*, File No. 2009-008, Mr. Garrett alleged that a different polling place moderator violated § 9-236 (b) by placing the 75’ markers more than 75’ from the entrance to the polling place.
4. As alleged here, Respondent Barr placed the 75’ markers in the same locations as found and described in File No. 2009-008. As such, the Commission adopts the findings of facts from File No. 2009-008 regarding the description of the polling place, and restate them in pertinent part here:

8. The West Wood School is a Hamden elementary school, which on the date in question housed the polling place for the Ninth District in Hamden. . . . On the date in question, a portion of the cafeteria, which is located at the front of the building, was used as the polling place. A single entrance leading directly into the cafeteria was used as the outside entrance to the polling place. Leading from the polling place entrance there is a wide sidewalk that runs the length of the front school. Halfway between the polling place door and the end of the sidewalk there is a cross-walk leading across an interior roadway to a set of gradually-sloped stairs that lead to the lower front parking lot, which sits a lower elevation than the school and the roadway. On the side of the roadway near the stairs there are approximately

10 upper level parking spots opposite from the school and on the same elevation as the roadway.

9. On the date in question, one 75' marker at the West Wood School polling place was placed across the roadway at the top of the stairs and a second marker was placed in front of the upper level parking spots. No marker was placed at the 75' point along the sidewalk in front of the school. Perhaps because of the location of these markers, literature was distributed only in the stair area across the roadway on the date in question.

5. In *Garrett*, File No. 2009-008, the Commission considered the question as to whether the moderator violated § 9-236 (b) by placing a marker more than 75' from the entrance to the polling place at the front of the upper level parking lot and failing to place a marker along the sidewalk in front of the school.

10. After investigation, the Commission finds that Respondent Grabowski accurately placed the upper lot marker at approximately 75' from the outside door to the polling place, but inaccurately placed the marker at the top of the stairs at approximately 101'. Had a marker been placed at the 75' point along the sidewalk in front of the school, the marker would have been located at the point where the crosswalk meets the sidewalk.

11. . . . On the date in question, Respondent . . . was given two markers by the Town Registrars. She decided that placing the markers on the other side of the roadway was in the best interest of public safety at the polling place. She was aware that the marker at the top of the stairs is more than 75' from the outside door, but had she followed the same line, she would have had to have placed the marker in the middle of the roadway. She did not request another marker to place across the street, at the 75' distance on the sidewalk, as she was concerned about the safety of children entering and exiting the schools during school hours. Moreover, she was concerned that the distribution of literature at the point across the roadway where the crosswalk meets the sidewalk might force those voters wishing to avoid being accosted to deviate outside of the crosswalk and into the roadway, thus creating a potentially dangerous situation.

12. Respondent believed that by placing the two signs where she did, she struck the right balance between respecting the rights of those wishing to distribute literature—and, she felt, giving them the best opportunity/placement to do so given that the majority of those entering and exiting the lot climb those stairs—while at the same time assuring the safety

of those entering and exiting the polling place, as well as the safety of the students, staff and other personnel on the school campus. According to the Respondent, on the date in question, no person other than the Complainant spoke to her about the placement of the 75' markers at this polling place.

13. The Commission turns first to the question of whether Respondent Mary Grabowski erred in placing one of the markers 101' from the outside door instead of exactly 75'. This question must be answered in the negative. First, if she had placed a marker at exactly 75' along that particular line from the outside door, the marker would have been in the middle of the roadway, which not only could have blocked vehicle traffic in the roadway itself, but also could have created a dangerous situation by encouraging the distribution of literature in the middle of the roadway. Instead, she placed the marker at the next safest point along that line from the outside door. Second, the evidence shows that at least one of the two markers were placed at an accurate distance. Under the facts and circumstances of this case, the Commission finds that Respondent Mary Grabowski did not violate General Statutes § 9-236 (b) by placing one of the markers at 101' instead of 75'.

14. The Commission next turns to the question of whether Respondent Mary Grabowski was required to place a marker across the roadway at the 75' point on the sidewalk in front of the school. This question must also be answered in the negative. General Statutes § 9-236 (b)(3) requires that "the moderator . . . shall cause to be placed by a police officer or constable, or such other primary or election official as they select, a suitable number of distance markers." (Emphasis added.) However, the statute does not require that the moderator place markers covering the entire 75' radius from the outside door, nor does it specify how many markers are a "suitable" number. In this instance, Respondent Grabowski, taking into account both the rights of those wishing to distribute literature, as well as the safety of those entering and exiting the polling place and the students, staff and other personnel on the school campus, made a judgment as to which two points best struck a balance between those interests. She did so in good faith and not in an attempt to limit any campaign from speaking to voters. The Respondent may find placement of a third sign would be helpful in fulfilling her responsibilities to prohibit campaigning within the 75' radius of the entrance to the polling place, but the Commission does not find that it was required. Accordingly, the Commission finds that Respondent Mary Grabowski did not violate General Statutes § 9-236 by failing to place a marker across the roadway at the 75' point on the sidewalk in front of the school.

6. For the same reasons set forth in *Garrett*, File No. 2009-008, the Commission here concludes that Respondent Nancy Barr did not violate General Statutes § 9-236 (b) by placing the 75' signs in the locations and in the manner which she did on November 8, 2011 at the West Wood School. As such, this allegation should be dismissed.

7. However, the Commission reiterates that:

although polling place officials may in some instances have discretion in placing the marker beyond the actual 75' point or in choosing which points along the 75' radius to place a limited number of markers, an individual attempting to "loiter or peddle or offer any advertising matter, ballot or circular to another person" does not violate General Statutes § 9-236 (a) unless such individual does so within the actual 75' distance from the outside door to the polling place, regardless of where such markers are placed. Accordingly, if, for instance, the Complainant wished to distribute literature on the West Wood School sidewalk, he would not have violated § 9-236 (a), unless he did so within the 75' radius from the outside door to the polling place.

Garrett, File No. 2009-008, ¶ 15.

8. Turning to the Complainant's allegation that the Respondent violated his rights under the First Amendment to the United States Constitution by refusing to allow him to pass out literature outside the 75' boundary, the Commission notes that it does not have jurisdiction to decide Constitutional matters. As such, this allegation is dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 23rd day of May, 2012 at Hartford, Connecticut.


Stephen F. Cashman, Chairperson