

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral of the Hampton Registrars of Voters

File No. 2012-195

FINDINGS AND CONCLUSIONS

The Hampton Registrars referred this matter concerning Mr. Brian K. Murphy of Woodstock, Connecticut (the "Respondent"), a potentially unqualified voter who registered to vote and cast his ballot in Hampton for the 2012 general election.

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

1. From 1997 to 2011, the Respondent's primary residence was in Hampton.
2. The Respondent moved his primary residence to Woodstock in 2011.
3. At all times relevant hereto, the Respondent owned residential property in Hampton, which was formerly his primary residence from 1997 to 2011 and which he used periodically, but continuously since that time.
4. The Respondent was lawfully placed on Hampton's inactive voter list in May of 2012.
5. On the date of the 2012 general election, the Respondent registered to vote and cast his ballot in the town of Hampton, Connecticut.
6. In 2012, the Respondent paid taxes to Hampton for registered motor vehicles
7. The Respondent did not vote in Woodstock in the 2012 general election.
8. Upon learning of the concern of the Hampton Registrars based upon the instant referral, the Respondent voluntarily registered at Woodstock.
9. The Respondent has cooperated fully with the investigation.
10. 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 (a), provides in pertinent part:

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.)

11. When registering to vote, an elector must declare under penalty of perjury, his bona fide residence on a form prescribed by the Secretary of the State. General Statutes § 9-20, provides in pertinent part:

(a) Each person who applies for admission as an elector in person to an admitting official shall, upon a form prescribed by the Secretary of the State and signed by the applicant, state under penalties of perjury, his name, bona fide residence by street and number, date of birth, whether he is a United States citizen, whether his privileges as an elector are forfeited by reason of conviction of crime, and whether he has previously been admitted as an elector in any town in this or any other state. Each such applicant shall present his birth certificate, drivers' license or Social Security card to the admitting official for inspection at the time of application. Notwithstanding the provisions of any special act or charter to the contrary, the application form shall also, in a manner prescribed by the Secretary of the State, provide for application for enrollment in any political party, including, on any such form printed on or after January 1, 2006, a list of the names of the major parties, as defined in section 9-372, as options for the applicant. The form shall indicate that such enrollment is not mandatory. (Emphasis added.)

12. 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.)

13. 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.)

14. In order to establish liability in the present case, the Respondent must not have been qualified to register and/or vote at the above address in Hampton at the time that he submitted his voter registration forms and at the times that he cast his ballot using that registered address. 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 they registered to vote, restored their registrations and/or voted. Moreover, no allegation has been made, and no evidence has been found, that the Respondent voted, or tried

to vote, in any other place on the dates in question. As such, the question to answer here is only whether the Respondent was a “bona fide resident” at the address in Hampton 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. . . .”)

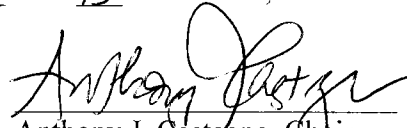
17. As such, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047; *Complaint of Carole Dmytryshak, Salisbury*, File No. 2012-197; *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 issues in the present matter are whether: 1) the Respondent truly resided at the home in Hampton on or before the date in question, and 2) whether he had legitimate, significant, and continuing attachments to that home. If the above two questions can be answered in the affirmative, only the Respondent's abandonment of the residence in Hampton will extinguish his right as an elector in that town.
19. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.
20. The Commission finds that, based on the factual findings and legal standards described above, the Respondent had previously established residency in Hampton and had not abandoned the property. Accordingly, the Commission concludes that the Respondent was a bona fide resident of Hampton and that the Respondent did not violate any of the relevant statutes.
21. The Commission further finds that, although the Respondent did not violate the law, the Registrars made the referral in good faith and in an effort to protect the integrity of the electoral system.

ORDER

The following is ordered on the basis of the aforementioned findings:

That the matter be dismissed.

Adopted this 19 day of June of 2013 at Hartford, Connecticut



Anthony J. Castagno, Chair
By Order of the Commission