

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Paul Krell, Bristol

File No. 2013-004

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that Sharon Krawiecki, City of Bristol, Republican Registrar of Voters (hereinafter the "Respondent") disregarded chain of custody with regards to absentee ballots received from the town clerk prior to and during the November 6, 2012 election in violation of General Statutes § 9-140c (j) & (k).

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

1. The Complainant alleged that during the testing and preparation of voting tabulators on October 24, 2012 that Respondent suggested that he use Respondent's key to enter the storage room "unattended" where the ballots, memory cards and voting machines were located for the November 6, 2012 election. The Complainant maintains therefore that Respondent violated election law by "luring" him into a violation pertaining to the "chain of custody" for election equipment.
2. The Complainant further alleged that during the election of November 6, 2012 Respondent permitted Mr. Jon P. Fitzgerald to remove absentee ballots during the delivery of absentee ballots by the Town Clerk's office to the Registrars of Voters office, in violation of election law.
3. The Respondent was the incumbent Republican Registrar of Voters in the City of Bristol at all times relevant to this complaint. Mr. Fitzgerald was the duly appointed Deputy Head Moderator for the November 6, 2012 election in the City of Bristol. Further, Mr. Fitzgerald had a long record of serving as an elections official in prior elections; including certification as a Moderator and therefore had experience and familiarity with all intended duties such certification carries.
4. General Statutes § 9-244, provides:
 - (a) Such registrars of voters shall give written notice to the chairpersons of the town committees of the political parties of the day and place a registrar or registrars will begin the preparation, test voting and sealing of the tabulators for the election, including any additional tabulators required under section 9-238. Such notice shall be given at least one day

before the work on the preparation of such tabulators begins.

(b) Each such chairperson and any candidate for an office appearing on the ballot may be present, or may designate a watcher who may be present, during the preparation of such tabulators, but such chairpersons, candidates and watchers shall not interfere with, or assist in, the preparation of the tabulators.

(c) After the registrar or registrars have prepared the tabulators, the registrars of voters, or their designees, shall test and seal such tabulators for use in the election. The chairpersons of the town committees of the political parties and any candidate for an office appearing on the ballot may also be present, or may designate a watcher who may be present, during the testing and sealing, but such chairpersons, candidates and watchers shall not interfere with the testing or sealing. All such persons who are present for the testing and sealing of the tabulators shall file a written report, as provided in section 9-245, certifying (1) to the numbers of the tabulators, (2) as to whether all the candidate and question counters are set at zero (000), (3) as to the numbers registered on the protective counters, if provided, and the numbers on the seals, (4) that the ballot is properly prepared, and (5) that the tabulators have been test-voted and found to be working properly.

5. Complainant alleged that Respondent violated election law by “luring” him into a violation election laws pertaining to a *chain of custody* for election equipment during the testing and preparation of voting tabulators prior to the November 6, 2012 election.
6. The testing, preparation and sealing of voting tabulators is governed by General Statutes § 9-244. Even assuming the facts to be true as alleged, the Commission concludes that Complainant does not allege a violation of § 9-244, or any other section of General Statutes, Title 9, within Commission’s jurisdiction pursuant to § 9-7b.
7. The Commission therefore, for reasons detailed in paragraphs 4 through 6 above, dismisses Complainant’s allegation as it pertains to an attempt by Respondent to “lure” him unattended into a room used for storage of voting tabulators and equipment.

8. Complainant also alleged that Respondent violated the *chain of custody* as it pertained absentee ballots, in that she permitted her appointed Deputy Head Moderator Jon P. Fitzgerald to remove an absentee ballot during the certification by affidavit of the receipt of absentee ballots from the Town Clerk to the Registrar of Voters at the November 6, 2012 election. Specifically, Complainant alleges this was a violation of General Statutes § 9-140c (j) & (k), which he argues requires the absentee ballots to remain in exclusive custody of the Registrars of Voters on Election Day after transfer from the Town Clerk.

9. General Statutes § 9-140c, provides in pertinent part:

...

(b) Beginning not earlier than the seventh day before the election, primary or referendum and on any weekday thereafter, all absentee ballots received by the municipal clerk not later than eleven o'clock a.m. of such day may be sorted into voting districts by the clerk and checked as provided in this subsection. ***On any such day, beginning as soon as the ballots have been sorted, the registrars of voters, without opening the outer envelopes, may check the names of the applicants returning ballots on the official checklist to be used at the election,*** primary or referendum by indicating "absentee" or "A" preceding each such name and, if unaffiliated electors are authorized under section 9-431 to vote in the primary of either of two parties, the designation of the party in which the applicants are voting preceding each such name. ***If central counting of absentee ballots has been designated by the registrars pursuant to section 9-147a, they shall also place such indication on a duplicate of the checklist to be retained by the municipal clerk until he delivers it to the registrars at twelve o'clock noon on election, primary or referendum day for the use of the absentee ballot counters pursuant to subsection (i) of this section. ...***

...

(e) Ballots received not later than eleven o'clock a.m. on such last day before the election, primary or referendum shall be delivered by the clerk to the registrars not earlier than ten o'clock a.m. and not later than twelve o'clock noon on the day of the election or primary and at twelve o'clock noon on the day of a referendum. ***If central counting has been designated pursuant to section 9-147a,***

the clerk shall also deliver to the registrars at this time the duplicate checklist provided for in subsection (b) of this section, for the use of the absentee ballot counters pursuant to subsection (i) of this section.

...

(i) (1) The absentee ballot counters, upon receipt of the ballots delivered by the clerk to the registrars at six o'clock p.m. and at the close of the polls pursuant to subsections (g) and (h) of this section, shall check the names of the applicants returning ballots on the official checklist in the same manner as provided in subsections (b) and (c) of this section, except as otherwise provided in this subsection. (2) If central counting has been designated pursuant to section 9-147a, ***the names of applicants*** whose ballots were delivered at six o'clock p.m. shall be called in to the appropriate polling places where they shall be checked by the checkers on the official checklists, and they ***shall also be checked by the absentee ballot counters on the duplicate checklist*** required under subsection (b) of this section. (3) If central counting has been designated, the names of applicants whose ballots were delivered at the close of the polls shall be checked by the absentee ballot counters on the official checklists used at the polling places. The official checklists, bearing the certifications required by section 9-307, shall be delivered by the registrars or assistant registrars to the central counting moderator for that purpose. ...

(j) Each time ballots are delivered by the clerk to the registrars on election, primary or referendum day, the clerk and registrars shall execute an affidavit of delivery and receipt stating the number of ballots delivered. The clerk shall preserve the affidavit for six months in accordance with section 9-150b.

(k) Each group of absentee ballots shall be counted by the absentee ballot counters when received from the registrars on election, primary or referendum day, in the manner provided in section 9-150a. ...

10. General Statutes § 9-150a, provides in pertinent part:

(a) *The absentee ballot counters shall proceed to* the polling places for which they have been assigned ballots or to *the central counting location* at the times designated by the registrars of voters.

...

(g) The counters shall then count such ballots as provided in this section. *The moderator shall supervise the counting.*

(h) The Secretary of the State shall provide a procedure manual for counting absentee ballots. *The manual shall include a description of the steps to be followed in receiving, handling, counting and preserving absentee ballots. ...*

[Emphasis added.]

11. Under these circumstances, the designated Deputy Head Moderator was directed by the Head Moderator to confirm that an applicant whose absentee ballot was received on Election Day had not been marked off on the central checklist as having already voted. Confirming whether an absentee ballot applicant has already voted prior to counting the applicant's absentee ballot is consistent with the statutory procedure to ensure that absentee ballots are not counted for applicants who have previously been marked off as having voted in person. *See* §§ 9-140c, 9-150a and 9-150b. Mr. Fitzgerald, as Deputy Head Moderator, followed the aforementioned instructions of the Head Moderator who was in charge of certifying results to the Office of the Secretary of the State.
12. General Statutes § 9-140c (j) & (k), set out the duties of the Town Clerk and Registrars of Voters with regards to the transfer and receipt of absentee ballots on election day and the requirement of a certified written record of that transfer. By necessity, the counting of such absentee ballots by the elections officials occurs *after* such transfer. The aforementioned statutes do *not* set out the "chain of custody," a violation of which Complainant alleges against Respondent, as articulated by the allegation regarding the confirmation by Mr. Fitzgerald of an absentee ballot applicants status on an official checkers' list.


13. With respect to this allegation therefore, the Commission rejects the Complainant's application and construction of General Statutes § 9-140c (j) & (k) that would require exclusive and actual custody of the absentee ballots by a Registrar of Voters after they have been properly transferred by the Town Clerk to the Registrar of Voters for the subsequent purposes of counting such absentee ballots. Furthermore, the Commission declines to infer or assume a requirement that the election officials be accompanied in the performance of their duties pursuant to General Statutes *See* § 9-140c, *et al.*, in pairs or with "two sets of eyes" present.
14. The Commission notes as pertains to the delivery, certification and counting of absentee ballots on Election Day, a presumed "chain of custody" as alleged by Complainant, is not supported or evidenced by the statutes, regulations or written instructions pertaining to elections administration provided by the Office of the Secretary of the State. In fact, under the facts and circumstances of this investigation the Respondent did *not* relinquish custody of the absentee ballots to be counted on Election Day, but rather such ballots remained in the custody of her various designees who acted as elections officials at the November 6, 2012 election.
15. The Commission cannot therefore conclude that the evidence is sufficient to establish that a violation of General Statutes, § 9-140c (j) & (k), *et al.*, by Respondent or her designees occurred under these circumstances for the facts and reasons detailed herein.

ORDER

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

That the matter is dismissed.

Adopted this ^{21st}~~17th~~ day of ^{August}~~July~~, 2013 at Hartford, Connecticut.


Anthony J. Castagno, Chair
By Order of the Commission