

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Sharon Benedict, Roxbury

File No. 2013-089

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Judith Doran, of the Town of Roxbury, County of Litchfield, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Complainant here alleged that during the voting hours for a special election for a vacancy on the Region 12 Board of Education, she witnessed candidate Gregory Cava, *inter alia*, electioneering within the 75' zone prescribed in General Statutes § 9-236 (a). The allegations against Mr. Cava are addressed in a separate decision.
2. At issue in this matter was a special election set by the Roxbury Board of Selectmen and held on June 4, 2013 between noon and 8pm for a single vacancy on the Region 12 Board of Education. Gregory Cava and one other individual were candidates for the position. Mr. Cava won the special election by a margin of 227 to 177 (404 total voting, 394 in person).
3. The diary of the Respondent Judith Doran, the Democratic registrar of voters, who served as the moderator for the special election, reflects that around 2pm she witnessed Mr. Cava "standing outside the polling place" conversing with a voter and asked him to move outside of the 75' limits of the building. The diary reflects that the voter (who is unnamed) replied that they were talking about her grandchildren and not the special election, but that Mr. Cava immediately complied and moved "beyond the 75 foot limit." The diary also reflects that the son of Mr. Cava's opponent complained that Mr. Cava was within the 75' limit, but that when she looked, Mr. Cava was "well beyond the limit."
4. Mr. Cava asserted that as he was leaving Town Hall after voting, he was approached by an individual entering Town Hall who wished to speak with him. He demurred and stated that he needed to speak with her later and continued to a point that he surmised was beyond 75' from the entrance to Town Hall at which point he variously spoke with voters and conducted non-election-related business on his cellphone and laptop.

5. Finally, Respondent Cava asserted that because the registrars had failed to post signs demarcating the 75' limit, it was unclear to him where he was allowed to stand during the hours of voting and that he made best efforts to comply.
6. Respondent Doran submitted statements in response to the instant investigation indicating that that she did not place signs demarcating the 75' limit, but did inform the candidates that they should stay behind a "large memorial stone" which they estimated to be "a little farther away" than 75' from the entrance to Town Hall. She indicated that she did not believe that she was required to post 75' markers because of what she believed to be the nature of the event.
7. General Statutes § 9-236 reads, in pertinent part:

(a) On the day of any primary, referendum or election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on 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. Nothing contained in this section shall be construed to prohibit (1) parent-teacher associations or parent-teacher organizations from holding bake sales or other fund-raising activities on the day of any primary, referendum or election in any school used as a polling place, provided such sales or activities shall not be held in the room in which the election booths are located, (2) the registrars of voters from directing the officials at a primary, referendum or election to distribute, within the restricted area, adhesive labels on which are imprinted the words "I Voted Today", or (3) the registrars of voters in a primary, election or referendum from jointly permitting nonpartisan activities to be conducted in a room other than the room in which the election booths are located. The registrars may jointly impose such conditions and limitations on such nonpartisan activity as deemed necessary to ensure the orderly process of voting. 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 the moderator's 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.)

8. Considering the aforesaid, the evidence in this matter is clear that the Respondent did not place signs demarcating the 75' perimeter for the June 4, 2013 special election that is at issue here.
9. Here, the Respondent asserts that she considered the event to be an "adjourned town meeting" under General Statutes § 7-7. Since the event was what she believed to be an "adjourned town meeting," it was Ms. Doran's stated belief that she was not required to place the markers.

10. However, as candidates were being selected for elected office, the true nature of the event was a “special election” as that term is defined in General Statutes § 9-1¹
11. General Statutes § 9-236 (b) (3) requires that the moderator place the markers “before the opening of a primary, referendum or an election.” As established above, the election of officers to the Region 12 Board of Education was an “election” as that term is defined in General Statutes § 9-1 (d).²
12. Considering the aforesaid, the Commission concludes that the Respondent violated General Statutes § 9-236 (b) (3) by failing to place the 75’ markers.
13. Connecticut General Statutes § 9-7b (a) (2) (B) provides that the Commission may, *inter alia*, levy a civil penalty not to exceed two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the commission finds to have failed to discharge a duty imposed by any provision of chapter 146 or 147.
14. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
 - (1) the gravity of the act or omission;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
15. A total failure to post the required 75’ markers is a matter of first impression for the Commission. The closest relevant matter is *likely In the Matter of a Complaint by Barry J. Piesner, Newtown, 2001-261* in which the moderator failed to place the signs, but did

¹ General Statutes § 9-1, reads, in pertinent part:

Except as otherwise provided, the following terms, as used in this title and sections 3-124, 7-5, 7-6, 7-7, 7-17, 7-20, 7-39, 7-157, 7-214, 7-275, 7-295, 7-343, 7-407, 8-1, 8-5, 8-19, 10-219, 11-36, 13a-11, 30-10, 30-11, 45a-18, 45a-19 and 51-95 have the following meanings:

...
 (d) “Election” means any electors’ meeting at which the electors choose public officials by use of voting tabulators or by paper ballots as provided in section 9-272;

...
 (r) “Special election” means any election not a regular election; . . .

² Indeed, even an “adjourned town meeting” to vote on a question under General Statutes § 7-7 is a “referendum” as that term is defined in General Statutes § 9-1 (n) and requires placement of the 75’ markers.

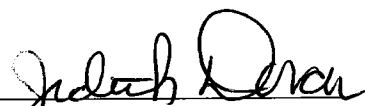
attempt to enforce the statute by placing duct tape and drawing chalk lines at the 75' perimeter. In *Piesner*, the Commission established that the statute is very specific about the requirements and that only a sign as described in the statute will comply. The Commission settled with the respondent moderator in *Piesner* with a consent agreement and an order to henceforth comply with General Statutes § 9-236 (b).

16. Here, on one hand, the Respondent failed to comply with the requirement to post notice of the distance, while appearing to appreciate the applicability of the 75' buffer for this election. While she appears to have had a faulty understanding of the law, she should have made greater strides to clarify her responsibilities under the circumstances.
17. However, with the above in mind, the election was extremely limited (394 total votes at the polling place), which may explain—though not excuse—her more casual approach to the signage requirement. Additionally, the evidence suggests that there were no individuals other than Mr. Cava there to electioneer for either of the candidates. Finally, Ms. Doran has no prior matters with the Commission.
18. On balance, while the Commission does not take the Respondent's failure to perform her duty lightly, we also do not believe that a civil penalty is necessary to insure her immediate and continued compliance with the requirements of General Statutes § 9-236 (b).
19. In consideration of the aforesaid, and in exchange for this Agreement by the Respondent to henceforth comply with General Statutes § 9-236, the Commission will take no further action in this matter.
20. The Respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
21. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the parties in any subsequent hearing, if the same becomes necessary.
22. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER


IT IS ORDERED THAT that Respondent Judith Doran will henceforth strictly comply with the requirements of General Statutes § 9-236.

The Respondent:


Judith Doran
Roxbury, CT

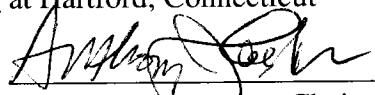
Dated: 3-23-14

For the State of Connecticut:

BY: 
Michael J. Brandt, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: April 4 2014

Adopted this 16th day of April of 2014 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission