

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Dianne M. Daniels, et al., Norwich

File No. 2013-128

FINDINGS AND CONCLUSIONS

The Complainants, Dianne M. Daniels and Dianne M. Slopak, Registrars for the City of Norwich (hereinafter "Complainants" or "Registrars"), filed this complaint against Geoff Luxenberg (hereinafter "Respondent"), a State Representative, pursuant to General Statutes § 9-7b. Although the Complainants do not specify which statute the Respondent allegedly violated, in the light most favorable to the Complainants, the allegation that the Respondent was a "combative" individual and other related allegations may imply a violation of General Statutes § 9-364a.

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

1. In summary, the Complainants allege the following occurred on or about September 9 and 10, 2013: The Respondent allegedly made a call to the Registrars' office using a "combative tone." The Respondent was allegedly very insistent that the Registrars' office issue absentee ballots to two electors. The Complainants allege that the Respondent had been contacting an ill elector multiple times in an attempt to urge her to obtain an absentee ballot. The Complainants alleged that the Respondent appeared at the City Clerk's office and was "very combative and raised his voice several times" in trying to convince the Registrars to deliver an absentee ballot to the ill elector. The Respondents allege that during his phone calls and visits, the Respondent "displayed a negative and combative nature, repeatedly mentioning the possibility of lawsuits and complaints to the Elections Enforcement division as a method of getting his way." The Complainants alleged that, in connection with another similar instance with a second elector, the Respondent "mentioned in a combative tone of voice that if [the elector] was not provided with an absentee ballot that he would 'see us in court.'" The above summary of the allegations does not serve to indicate that the Commission adopts such allegations as factual findings.
2. The Complainants have provided the Commission with an audio recording of messages by the Respondent to support their allegations. A review of such audio recordings suggests nothing sufficiently out of the course of ordinary conduct to merit the degree of alleged concern.
3. There is no allegation or evidence that the Respondent threatened to use his elective office to obtain any result or otherwise interfere with the Registrars' duties.

4. The Respondent was not a candidate at the time of the allegations and there is no allegation or evidence that he ever came into possession of an actual absentee ballot.
5. One of the electors at issue in the absentee ballot request described the Respondent as “a perfect gentleman.” The elector denied that the Respondent have made any threats or otherwise forced her to fill out an application or even suggested which candidate to vote for. The second elector did not have a sufficient recollection of the events at issue.
6. The Respondent has been fully cooperative with the investigation.
7. General Statutes § 9-364a provides:

Any person who influences or attempts to influence by force or threat the vote, or by force, *threat*, bribery or corrupt means, the speech, of any person in a primary, caucus, referendum convention or election; or wilfully and fraudulently suppresses or destroys any vote or ballot properly given or cast or, in counting such votes or ballots, wilfully miscounts or misrepresents the number thereof; and any presiding or other officer of a primary, caucus or convention who wilfully announces the result of a ballot or vote of such primary, caucus or convention, untruly and wrongfully, shall be guilty of a class C felony [Emphasis added].

8. Under General Statutes § 9-7b, for potential violations of § 9-364a the Commission has only investigative authority and the ability to refer matters to the Chief State’s Attorney. The Commission does not possess any direct administrative jurisdiction such as the ability to notice hearings under the Uniform Administrative Procedures Act or impose penalties after such hearings.¹
9. Statutes that contain criminal penalties should be strictly construed against the state.² Accordingly, the Commission has strictly construed § 9-364a to determine whether any individual’s “vote” or “speech” were influenced.³
10. The Commission had applied the following dictionary definition of “threat” for purposes of § 9-364a: “1. any expression of an intention to inflict pain, injury, evil, or punishment. 2. An indication of impending danger or harm.”⁴

¹ See *Complaint of Joseph Cardillo*, File No. 2010-030 at page 4.

² See *State v. Ross*, 230 Conn. 183, 200 (1994); *State v. Russell*, 218 Conn. 273, 278 (1991); *State v. Torres*, 206 Conn. 346, 355 (1988); *In the Matter of a Complaint of Joseph Cardillo*, File No. 2010-030 at page 5.

³ See *Complaint of Joseph Cardillo*, File No. 2010-030 at page 5.

11. The Commission has applied the following dictionary definition of “corrupt” for purpose of “corrupt means” under § 9-364a. “[I]mmoral and/or depraved” or “contrary to accepted moral principles.”⁵
12. “In order to conclude that General Statutes § 9-364a was violated, the Commission must decide that, given the evidence, it is more likely than not that: 1) the Respondent voluntarily committed an act that influenced [any person’s] speech and/or voluntarily committed an act that was intended to influence [any person’s] speech regardless of whether [any person’s] speech was actually influenced; and 2) that the Respondent did so by using force, threat, bribery or corrupt means.”⁶
13. Even in the light most favorable to the Complainants, the only remotely colorable claim would need to be based on the theory that the Respondent’s warning that he would seek a formal investigation or other legal action was a “threat” for purposes of § 9-364a. The Respondent’s statements that he would pursue the matter in other legal forums – in court, the Secretary of the State’s Office or the Elections Enforcement Commission – are legal statements that are consistent with a citizen’s free speech rights. “The policy in favor of free access to the judicial system militates against the characterization as improper of threats to commence civil process, even if the claim on which the process is based eventually proves to be without foundation.”⁷ In this matter, the Respondent stated that he would pursue the matter in another legal forum, he did not “threaten” to do something illegal, such as inflict pain or injury as required under the Commission’s definition of a threat. The Respondent’s statement that he would pursue other legal remedies is not actionable as a “threat.” See *State v. DiLoreto*, 265 Conn. 145, 155-156 (2003) (a person’s speech is generally protected unless the person states a specific intent to perform illegal acts).⁸
14. Based on the above, the Commission concludes that the Respondent’s actions did not constitute a “threat” or other form of violation of § 9-364a.

⁴ *American Heritage Dictionary, Second College Edition*, 1985. See *Complaint of Joseph Cardillo*, File No. 2010-030 at page 5. Citing *Picco v. Voluntown*, 295 Conn. 148 for the proposition that to ascertain the commonly approved usage of terms, the Commission can look to their dictionary definitions.

⁵ See *Complaint of Joseph Cardillo*, File No. 2010-030 at page 6.

⁶ *Id.* at page 5.

⁷ *Williston on Contracts* Section 71:26.

⁸ See *Complaint by Joseph & Marjorie Marion, Putnam*, File No. 1993-119 (Commission dismisses allegation of violation of § 9-364a finding, inter alia, that the respondent’s act of calling the police which led to the complainant’s arrest and asking the complainant to move a campaign sign did not sufficient establish a “threat” pursuant to § 9-364a).

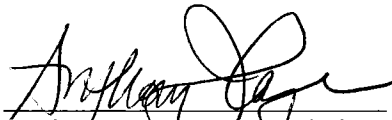
15. The Commission need not resolve any factual disputes between the Complainants and Respondent beyond those it deems necessary to make findings and conclusions to resolve questions within its jurisdiction. Aside from high criminal standard for penalties for false statement, which does not appear to be merited in this matter, the Commission has no civil penalty jurisdiction over frivolous complaints.

ORDER

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

That the matter be dismissed.

Adopted this 19th day of February, 2014 at Hartford, Connecticut.


Anthony J. Castagno, Chairman
By Order of the Commission