

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of Trumbull Republican Registrar of Voters William Holden File No. 2015-133

FINDINGS AND CONCLUSIONS

The Referring Official brings this Referral pursuant to Connecticut General Statutes § 9-7b, alleging that Respondent Thomas E. Kelly lacked bona fide residence at an address in the Town of Trumbull.

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

1. At all times relevant to the instant Referral, Respondent Thomas E. Kelly was a registered voter and bona fide resident at an address on Plumb Street in Trumbull. He had been registered at that address since January 10, 2008.
2. The Referring Official, the Republican Registrar of Voters in the Town of Trumbull, submitted evidence, including but not limited to a mortgage deed and the affidavit of a witness, that the Respondent purchased a property in the Town of Stratford and had been witnessed occupying the property. Based on this evidence, the Referring Official alleged that the Stratford property became his “primary” property and that the Respondent was no longer a bona fide resident of the Town of Trumbull.
3. The Referring Official alleged that the occupancy requirements of the mortgage deed for the Stratford property, that the borrower make the property his “principal residence” within 60 days after the execution of the security instrument, prove that the Respondent was not a bona fide resident at the Trumbull property.
4. An elector is eligible to register to vote in a particular town only if such voter is a bona fide resident of such town. General Statutes § 9-12, provides in pertinent part:
 - (a) 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. For purposes of this section a person shall be deemed to have attained the age of eighteen years on the day of the person’s

eighteenth birthday and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town. No mentally incompetent person shall be admitted as an elector. . . .(Emphasis added.)

5. In addition to the statutory prongs of age, citizenship and geographic location identified above, an individual's bona fide residence must qualify as 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., *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-077; *In the Matter of a Complaint by Gary Amato, North Haven*, File No. 2009-158 (2010); *In the Matter of a Complaint by 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.) *In the Matter of a Complaint by 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.)
6. 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." *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-081; (quoting *In the Matter of a Complaint by 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. . . .”)


7. The Respondent here did not deny ownership of the Stratford property. Nor did he deny occupying the property with his family. He asserted that while much of the focus of his life remains in Trumbull, he bought the Stratford property to have a home near the shore for his family to enjoy.
8. The Respondent asserted that it was never his intent to abandon the Trumbull property and that the Referral far from establishes its allegation. Moreover, he asserted that the mere fact that he owns and occupies the Stratford property for periods of time is insufficient evidence to establish that he has abandoned bona fide residence in the Trumbull Property.
9. The investigation in this matter was straightforward. The Respondent provided evidence, including but not limited to video evidence of his continued ownership and occupancy of the home in Trumbull. The video contained evidence of, including but not limited to, furniture and personal items of the Respondent's that remain at that property.
10. The records of the Towns of Trumbull and Stratford show that the Respondent is the owner of the two properties.
11. No evidence was found of any rental agreements with third parties at the Trumbull residence.
12. Based on the evidence in this matter, the Commission concludes that the facts here are insufficient to establish that the Respondent had abandoned bona fide residence at the Trumbull address.
13. It is well established that the mere ownership of properties in other districts and/or jurisdictions does not, alone, establish a lack of bona fide residence in the original district or jurisdiction. Moreover, while evidence of the intensity of the attachment to other address(es) is relevant and could potentially be dispositive, the question of whether a respondent has abandoned the original address is best answered with evidence of the present attachment to such original address.
14. No evidence has been presented by the Referring Official or found during the instant investigation that can establish that the Respondent had not sufficiently established the Trumbull address as his bona fide residence or that he had abandoned such claim to bona fide residence.
15. This matter should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 15th day of February, 2017 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission