

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by Daria K. Hart,
City of New Hartford, Registrar of Voters

File No. 2016-066

FINDINGS AND CONCLUSIONS

This matter was referred to the Commission by a Registrar of Voters, pursuant to General Statutes §9-7b, alleging that Ms. Lila Tuxbury, of the Town of New Hartford violated elections law by simultaneously holding the positions of New Hartford Registrar of Voters (“ROV”) and Regional Election Monitor for the Northwest Hills Council of Regional Government (“NHCOG”). After the investigation of the referral, the Commission makes the following findings and conclusions:

1. Complainant at all times relevant to this referral was the New Hartford Democratic ROV and referred this matter to the Commission. Ms. Hart alleged that Ms. Tuxbury, who at all times relevant to this complaint was the New Hartford Republican ROV violated elections law by simultaneously serving as a Registrar of Voters and as the NHCOG Regional Election Monitor (“REM”).
2. More specifically, Complainant alleged that Ms. Tuxbury:
 - (1) Violated General Statutes § 9-229 in that she cannot *coordinate* with the Office of the Secretary of the State (SOTS) and her own Registrars’ office while serving as both NHCOG REM and New Hartford Registrar of Voters;
 - (2) Violated § 9-229 in that she cannot oversee the preparation and conduct of elections, primaries and potential recounts and/or transmit orders of the SOTS regarding the same, while serving as both NHCOG REM and New Hartford ROV; and,
 - (3) Violated § 9-229b in that she cannot serve in a *nonpartisan* manner or be under the direction and control of the SOTS as required of REMs pertaining to the administration and conduct of elections, primaries and recounts, while she remains the Republican ROV in New Hartford.
3. Additionally, Ms. Hart alleged various violations of Title 1 and Title 4, General Statutes. The Commission declines to address these allegations in the disposition of this matter as they are outside the Commission’s purview pertaining to Elections Law pursuant to § 9-7b.
4. The NHCOG is a regional council of governments (“COG”) that serves as a coordinating body for representatives from twenty-one municipalities in northwest Connecticut. *See* General Statutes § 4-124i to § 4-124p (regarding the creation, membership, function, duties and

operations of regional councils of governments). Pursuant to Public Act 15-5, Title 9, General Statutes, was amended to provide for the appointment of a REM by each COG to monitor and facilitate the conduct and administration of elections between the member towns within a COG and the SOTS.

5. General Statutes § 9-229, as amended by Public Act 15-5, provides in pertinent part:

(a) The registrars of voters in the several towns and, in towns where there are different registrars for different voting districts, the registrars of voters in such districts shall appoint the moderators of regular and special state and municipal elections in their respective towns or districts. For the purpose of providing a reserve group of persons who may serve as moderators, the registrars shall designate alternate moderators from among those persons chosen as official checkers, or tabulator tenders, in the following minimum numbers: In towns with one or more but not exceeding three voting districts, one alternate moderator; in towns with four or more but not exceeding eight voting districts, two alternate moderators; in towns with more than eight voting districts, a number of alternate moderators equal to one-fourth of the number of voting districts rounded off to the nearest multiple of four. In case the registrars fail to agree in the choice of a moderator or alternate moderator, the choice shall be determined between such registrars by lot. In the case of a primary, the registrar, as defined in section 9-372, shall so appoint such moderators and alternate moderators. Moderators and alternate moderators shall be appointed at least twenty days before the election or primary. The registrars shall submit a list of the names of such moderators and alternate moderators to the municipal clerk, which list shall be made available for public inspection by such clerk. Each person appointed to serve as moderator or alternate moderator shall be certified by the Secretary of the State in accordance with the provisions of subsection (c) of this section, except as provided in subsection (d) of this section or section 9-436.

(2) The Secretary of the State shall also: (A) Coordinate with each regional election monitor under contract pursuant to section 9-229b to hold regional instructional sessions for moderators and alternate moderators, in accordance with the curriculum established under subdivision (1) of this subsection; (B) establish the number of such regional instructional sessions to be held, provided at least one such regional instructional session shall be held within each planning region at the facilities of the regional council of governments prior to each regular election; and (C) train and certify each regional election monitor for purposes of performing the duties of the position. The Secretary shall certify as a regional election monitor each individual who successfully completes training under subparagraph (C) of this subdivision, ... Only certification in accordance with this subdivision shall satisfy the requirement of subdivision (4) of subsection (b) of section 9-229b, and the Secretary may revoke any such certification, with or without cause, at any time.

(3) The duties of each regional election monitor shall include, but not be limited to: (A) Holding the regional instructional sessions described in subdivision (2) of this subsection; (B) communicating with registrars of voters to assist, to the extent permitted under law, in preparations for and operations of any election, primary or recanvass, or any audit conducted pursuant to section 9-320f; and (C) transmitting any order issued by the Secretary of the State, pursuant to subsection (b) of section 9-3. [Emphasis added.]

6. General Statutes § 9-229b, pursuant to Public Act 15-5, provides:

(a) There shall be a regional election monitor within each planning region, as defined in section 4-124i, who shall represent, consult with and act on behalf of the Secretary of the State in preparations for and operations of any election, primary or recanvass, or any audit conducted pursuant to section 9-320f.

(b) Not later than March first of the year of each regular election, each regional council of governments shall contract with an individual, in accordance with section 4-124p, to serve as the regional election monitor for such planning region. ***The regional election monitor shall (1) be an elector of this state, (2) perform the duties of the position in a nonpartisan manner, (3) have prior field experience in the conduct of elections, and (4) be certified by the Secretary of the State*** in accordance with subdivision (2) of subsection (b) of section 9-229 or as soon after execution of such contract as practicable. The regional election monitor shall not be considered a state employee and shall, in accordance with such contract, be compensated for the performance of any duty agreed upon by the parties and reimbursed for necessary expenses incurred in the performance of such duties. The regional council of governments shall, in accordance with such contract, provide the regional election monitor with any space, supplies, equipment and services necessary to properly carry out the duties of the position. The regional council of governments may terminate such contract for any reason.

(c) Not later than March first of the year of each regular election, each regional council of governments shall enter into a memorandum of understanding with the Secretary of the State concerning the regional election monitor under contract pursuant to subsection (b) of this section. ***The regional council of governments shall confirm*** within such memorandum of understanding ***that (1) each requirement described in subsection (b) of this section is satisfied and the contract between the regional council of governments and the individual who shall serve as regional election monitor specifies minimum expectations of performance under such contract, (2) such regional election monitor is subject to the control and direction of the Secretary of the State, (3) revocation by the Secretary of the State of such regional election monitor's certification constitutes breach of such contract and results in immediate termination of such contract, and (4) such regional election monitor is retained, absent termination of such contract by the council, until at least thirty days after such regular election. [Emphasis added.]***

7. General Statutes § 9-229 provides that the SOTS shall “[c]oordinate with each regional election monitor ... to hold regional instructional sessions for moderators and alternate moderators.” Further, § 9-229b provides that the REM “...shall represent, consult with and act on behalf of the Secretary of the State in preparations for and operations of any election, primary or recanvass, or any audit conducted pursuant to section 9-320f.” Finally, § 9-229b provides that the REM shall “perform the duties of the position in a nonpartisan manner.”
8. In response to this complaint and investigation Ms. Tuxbury denied that she lacked the ability to perform her duties and responsibilities as both NHCOC REM and New Hartford ROV. Furthermore, Complainant provides no specific details, in support of her suspicions, that Ms. Tuxbury could not exercise both positions without *per se* violating the law.
9. The Commission, pursuant to this referral and investigation, inquired of the SOTS regarding whether a written opinion pursuant to General Statutes § 9-3 had been issued by that office regarding whether an individual could simultaneously serve as both a Registrar of Voters and an REM for a COG. While the SOTS did not issue a formal opinion or instructions regarding this specific issue it did confirm concerns regarding a REM also serving as a ROV within a member municipality on Election Day because of the likely potential for conflicting demands being placed on that individual simultaneously exercising the duties and responsibilities of two distinct offices.
10. The Commission shares with the SOTS the practical concerns of an individual serving the dual roles of ROV and REM. The Commission agrees that such service, by its nature, will invite potentially conflicting duties as that individual attempts to administer and conduct the same elections, primaries and recounts for while at once being responsible to the SOTS and COG as REM and to a municipality as ROV.

11. The Commission also finds troubling the potentiality that an ROV, who also serves as REM, would be under direct orders from the SOTS at an election and therefore creating an authority for one ROV over an otherwise co-equal ROV. Finally, the Commission notes that the dual roles held by an individual on Election Day would also likely contribute to potential public confusion and fuel unwarranted public concerns regarding the fair and efficient administration of elections referenda and recounts.
12. Nevertheless, because the Commission finds no specific statutory bar to simultaneously serving as a REM and a ROV within a member municipality pursuant to General Statutes § 9-229b and § 9-229b, the Commission must determine on the specific facts of this matter whether Ms. Tuxbury violated the aforementioned statutes.
13. After investigation, the Commission finds a lack of evidence that Ms. Tuxbury failed at oversight regarding her duties pertaining to NHCOCG REM and New Hartford ROV or that she otherwise failed to carry out the orders of the SOTS as to the conduct and administration of elections, referenda or recounts. Furthermore, after investigation, the Commission finds a lack of evidence to support the finding that Ms. Tuxbury while holding the position of NHCOCG REM and New Hartford ROV exercised her authority in a partisan way or failed to otherwise perform the position of REM in a nonpartisan manner. Finally, there was a lack of evidence that Ms. Tuxbury failed to coordinate with the SOTS regarding her duties and responsibilities as NHCOCG REM.
14. The Commission concludes, for the reasons detailed herein, that Ms. Tuxbury did not violate General Statutes § 9-229 and § 9-229a by being appointed the NHCOCG REM while simultaneously remaining the Republican ROV of New Hartford, a member municipality of NHCOCG, or as otherwise alleged. The Commission therefore dismisses the allegations that formed the basis of this complaint.

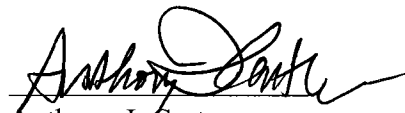
15. The Commission strongly urges Ms. Tuxbury and the NHCOC to consider the inherent incongruity of administering election laws simultaneously for the same election, as well as to weigh the great risks that holding these distinct positions could very well compromise her ability to exercise the legal requirements of Title 9, General Statutes in the administration of elections, referenda and recounts.
16. The Commission stresses, regardless of the specific outcome pertaining to the allegations detailed herein, that there remains inherent potential conflicts when an individual serves both as a REM to a COG and as a ROV to a member municipality of that COG, which should be considered in the future.

ORDER

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

That the matter is dismissed.

Adopted this 22nd day of March 2017, Hartford, Connecticut.


Anthony J. Castagno
Chairman
By Order of the Commission