

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Dennis Machol, Newington

File No. 2017-081

FINDINGS AND CONCLUSIONS

The Complainant alleged that at the November 7, 2017 General Election held in the town of Newington, Respondent Roy Zartarian violated General Statutes § 9-19j by being present in the Newington EDR location during the hours of voting.¹

Background

1. On November 7, 2017 a municipal General Election was held in the town of Newington.
2. At all times relevant to the instant Complaint, Respondent Roy Zartarian was the incumbent candidate for mayor.
3. During all hours of voting, the Town Hall, Community Center Gym was utilized as the designated election day registration location pursuant to General Statutes § 9-19j.

Law

4. General Statutes § 9-19j enumerates the procedures for registering and voting on Election Day. Subsection (j) addresses electioneering in the 75' zone surrounding the polling place and reads:

(j) No person shall solicit in behalf of or in opposition to the candidacy of another or himself or herself or in behalf of or in opposition to any question being submitted at the election, 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 the

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

registrars' of voters designated location for election day registration balloting or in any corridor, passageway or other approach leading from any such outside entrance to such registrars' of voters designated location or in any room opening upon any such corridor, passageway or approach.

5. General Statutes § 9-19j (j) is a word-for-word reproduction of the first section of General Statutes § 9-236 (a), which reads, in full.

(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. (Emphasis added.)

Allegation

6. The Complainant here, who was employed as an election official at the Newington EDR location at all times relevant, alleges that Respondent Zartarian "walked past my table...in the EDR Dept, continued on his way out a side door. He was approached by the Moderator

[the ROV's EDR designee Gloria Oleson] who informed him that he was not supposed to be here. His response was 'I am the Mayor, I can do anything I want.' No other conversation was conducted, and the day proceeded without incident."² No other statements, evidence, and/or testimony was provided in support of this allegation.

Respondents' Answer

7. The Respondent responded promptly in this matter and did not challenge that he entered the EDR location on the date in question during voting hours.
8. The Respondent asserts that on the day in question he walked over to say hello to Gloria Olesen, a friend of many years. He asserts that he did not see any members of the public present and that he was not wearing any campaign paraphernalia. After he said hello to Ms. Olesen, he asserts that she told him that he could not be in the area, at which time he immediately left without incident.
9. The Respondent apologized: "My action in entering the area, although innocently motivated, was a lapse in good judgement and one which I profoundly regret. At no time did I intend nor did I take any action to gain advantage in the election of that day."

Investigation

10. The investigation was limited as the Respondent generally admitted to being present at the EDR location, as asserted by the Complainant, although there was no corroboration of the statement attributed to the Respondent.

Analysis/Conclusion

11. There is only one other matter concerning an allegation of a violation of the 75' rule in General Statutes § 9-19j (j).
12. *In re: Referral of Middletown Registrar of Voters Janice Gionfriddo*, File No. 2014-160 concerned an incident in which the respondent entered into the EDR area wearing a coat emblazoned with the names of the Democratic candidates for governor and lieutenant

² EDR locations do not have moderators, as that role is enumerated in § 9-229, *et seq.* However § 9-19j (c) (2) does allow that "the registrars of voters may appoint one or more election officials to serve at such location and may delegate to such election officials any of the responsibilities assigned to the registrars of voters. The registrars of voters shall supervise such election officials and train such election officials to be election day registration election officials."

governor, both of whom were on the ballot on that day. The Commission found, and the respondent agreed, that the prior § 9-236 case law was applicable in the matter and that those matters had consistently held that wearing campaign paraphernalia in the prohibited zone constituted soliciting on behalf of or in opposition to the candidacy of another, which is prohibited under both statutes (aka, "electioneering").

13. However, the Commission notes that unlike General Statutes § 9-236 (c), § 9-19j lacks language expressly prohibiting anyone who is neither a voter nor an election worker from entering the room in which the voting machines are being used during the hours of voting. As such, any analysis of § 9-19j (j) may only look to matters involving § 9-236 (a) as relevant precedent.
14. Looking to § 9-2369 (a) matter, the Commission has also found that a candidate's mere presence within the prohibited area can constitute electioneering depending on the facts. *In the Matter of a Complaint by Judith Rajala*, File No. 2012-029 concerned a sitting 1st Selectman whose office window was visible to voters as they entered the town hall building leading to the polling place. The Commission in *Rajala* held that:
 25. . . . the Commission notes that any person with other business in the building must take care to avoid triggering § 9-236 (a), especially the clause on loitering within the statutory zone. *This danger is particularly acute for candidates.*
 26. Turning to the specific facts of this case, the Commission finds that the location of Respondent's office was within the 75' distance of the outside entrance leading to the polling place. Immediately to the right of the front door of Town Hall is a floor-to-ceiling exterior window that looks into the First Selectman's office. If the Respondent were in her office, especially at night, she would be clearly visible to anyone entering Town Hall, including voters.
 27. Under the circumstances then, the Commission would have to consider, despite a colorable defense that she had a legitimate non-election reason for being in the office, whether a candidate could remain so visible within the statutory 75" zone without triggering a violation.
15. The facts in *Rajala* did not support that the candidate was in her office during the hours of voting, but the Commission was prepared to consider that the candidate's continued presence inside the 75' zone could have constituted a violation of § 9-236 (a) depending on the intensity and duration of said presence.

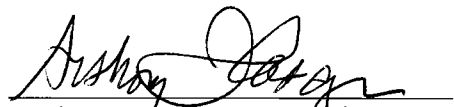
16. As noted above, because § 9-19j (j) does not include the language of § 9-236 (c), a brief incursion by a candidate (or any other person) into the room housing the EDR location would not constitute a *per se* violation as it might if it were a polling place regulated under § 9-236. However, looking the precedent concerning § 9-236 (a), a candidate's mere presence either in or within the 75' zone could constitute a violation of the prohibition on electioneering and/or loitering depending on the intensity and duration of the candidate's presence.
17. Turning then to the basic facts here, the Respondent was the sitting mayor, whose office was located in the same building. There was a reasonable expectation that the Respondent would travel around the building and even within the 75' leading to the entrance to the EDR location in the service of his duties as the mayor.
18. The Respondent here went further and actually entered not just the 75' zone, but the actual EDR room in which the electors would register and vote during the hours of voting.
19. However, the Respondent was promptly informed by the registrars' EDR designee, Ms. Olesen, that he needed to leave. By the account of both the Complainant and the Respondent, he did so after being asked.
20. Considering the aforesaid, the Commission concludes that facts in this matter do not support a conclusion that it was more likely than not that the Respondent's visit to the EDR location constituted either electioneering or loitering under § 9-19j (j). There is no claim that the Respondent interacted with any potential elector and no claim that his visit was anything other than brief. The intensity and duration of this particular incursion did not rise to the level of a violation. Accordingly, this matter should be dismissed.

ORDER

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

Dismissed.

Adopted this ~~14~~²³th day of ~~February~~^{March}, 2018 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission