

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by  
Ronald W. Cowles, Lebanon

File No. 2007-156

FINDINGS AND CONCLUSIONS

Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b, and alleged possible violations of Connecticut General Statutes § 9-309 in connection with the vote count at the Fire Safety Complex in the Town of Lebanon during the November 7, 2006 election. Specifically, he alleged that the moderator and checkers failed to properly "tally" the vote after the close of the polls.

After an investigation of this matter, the following Findings and Conclusions are made:

1. The Fire Safety Complex in the Town of Lebanon serves as a polling place and was used as such during the November 7, 2006 election.
2. Joe Courtney was the Democratic candidate for U.S. Representative from the 2<sup>nd</sup> Congressional District and appeared on the ballot at Row 3B at the November 7, 2006 election. Rob Simmons was the incumbent Republican Candidate for U.S. Representative from the 2<sup>nd</sup> Congressional District and appeared on the ballot at Row 3A at the Fire Safety Complex at the November 7, 2006 election.
3. Connecticut General Statutes § 9-308, provides in pertinent part:

Immediately on the close of the polls, the election officials shall proceed to canvass the returns as provided in section 9-309 and shall not stop for any purpose until the canvass is completed. The room in which such canvass is made shall be clearly lighted and such canvass shall be made in plain view of the public. No person or persons, during the canvass, shall close or cause to be closed the main entrance to the room in which such canvass is conducted, in such manner as to prevent ingress or egress thereby, but, during such canvass, no person other than the election officials shall be permitted to be on the side of the guard rail where the voting machine is located.

4. Connecticut General Statues § 9-309, provides in pertinent part:

As soon as the polls are closed, the moderator, in the presence of the other election officials, shall immediately lock the voting machine against voting and immediately open the counting compartments, giving a full view of all the counter numbers to all the election officials present. *The moderator shall, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counter numbers, giving the number indicated by each counter and indicating the candidate to whom such counter belongs, and shall read the votes recorded for each office on the voting machine ballot label.* He shall

also, in the same manner, announce the vote on each constitutional amendment, proposition or other question voted on. *The vote so announced by the moderator shall be taken down by each checker and recorded on the tally sheets.* Each checker shall record the number of votes received for each candidate on the voting machine ballot label and also the number received by each person for whom write-in ballots were cast. The counter compartment of the voting machine shall remain open until the statement of canvass and all other reports have been fully completed and signed by the moderator, checkers and registrars, or assistant registrars, as the case may be. *The result of the votes cast shall be publicly announced by the moderator, who shall read the name of each candidate, with the designating number and letter of his counter and the machine vote registered on such counter and the absentee vote as furnished the moderator by the absentee ballot counters;* also the vote cast for and against each question submitted. While such announcement is being made, *ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine and any necessary corrections shall then and there be made by the moderator, checkers and registrars or assistant registrars,* after which the doors of the voting machine shall be closed and locked. In canvassing, recording and announcing the result, the election officials shall be guided by any instructions furnished by the Secretary of the State. ... [Emphasis added.]

5. At the close of polls on November 7, 2006 each machine at the Fire Safety Complex polling place was brought to the front of the room, its back opened and turned to the full view of the audience, its machine number, seal number, and private and public counters read in a loud voice and recorded by the two registrars of voters on the moderator's return. Each counter was then identified and its count read out loud by the moderator so that the audience could hear, and the registrars recorded the results.
6. In addition to the election officials, approximately 15 members of the public, including the press, were present on November 7, 2006 for the announcement of the results at the Lebanon Fire Safety Complex. After the moderator announced that the machines were available for public inspection, no individual present took the opportunity to do so.
7. Certified copies of the November 7, 2006 moderator's returns and the November 13, 2006 "Recanvass" moderator's returns indicate 363 votes were recorded for Joe Courtney on machine #169208 at the election, while 263 votes were recorded for Joe Courtney on machine #169208 at the recanvass.
8. The Moderator at the Fire Safety Complex polling place admits that he made an error reading the counter and announcing the result for Joe Courtney on the night of the November 7, 2006. According to the Moderator, he did not correct the error on the night of the election because it was not discovered at the time, and no members of the audience present inspected the machines or pointed the error out.

9. After the closing of the polls on November 7, 2006, the total vote count for the U.S. 2nd Congressional District had Joe Courtney leading Rob Simmons by 167 votes. Therefore, because this difference in votes was "less than a vote equivalent to one-half of one per cent of the total number of votes cast for the office but not more than two thousand votes..." the entire U.S. 2nd Congressional District qualified for an automatic canvass as required by General Statutes § 9-311a.
10. In the Town of Lebanon, after the closing of the polls on November 7, 2006, the vote count at the Fire Safety Complex, the single polling place in town, revealed 1,453 votes for Joe Courtney and 1,585 votes for Rob Simmons. The canvass was conducted on November 13, 2006.
11. Connecticut General Statutes § 9-311a, provides in pertinent part:

For purposes of this section, state, district and municipal offices shall be as defined in section 9-372 except that the office of presidential elector shall be deemed a state office. Forthwith after a regular or special election for municipal office, or forthwith upon tabulation of the vote for state and district offices by the Secretary of the State, *when at any such election the plurality of an elected candidate for an office over the vote for a defeated candidate receiving the next highest number of votes was either (1) less than a vote equivalent to one-half of one per cent of the total number of votes cast for the office but not more than two thousand votes, or (2) less than twenty votes, there shall be a canvass of the returns of the voting machine or voting machines and absentee ballots used in such election for such office unless such defeated candidate or defeated candidates, as the case may be, for such office file a written statement waiving this right to such canvass with the municipal clerk in the case of a municipal office, or with the Secretary of the State in the case of a state or district office. In the case of state and district offices, the Secretary of the State upon tabulation of the votes for such offices shall notify the town clerks in the state or district, as the case may be, of the state and district offices which qualify for an automatic canvass and shall also notify each candidate for any such office. When a canvass is to be held the municipal clerk shall promptly notify the moderator, as defined in section 9-311, who shall proceed forthwith to cause a canvass of such returns of the office in question in the same manner as is provided in said section 9-311. ... No one other than a canvass official shall take part in the canvass. If any irregularity in the canvass procedure is noted by a candidate, he shall be permitted to present evidence of such irregularity in any contest relating to the election. [Emphasis added.]*

12. The November 13, 2006 Fire Safety Complex moderator's return for the canvass at row 3B indicates 263 votes for Courtney on machine #169208. The November 7, 2006 count for this row and machine had initially been recorded as 363 on the evening of the Election, and therefore the result of the canvass was to reduce the vote count for Joe Courtney by 100. The Commission takes administrative notice of other errors detected and corrected during the district wide canvass ultimately resulting in Courtney 121,248 to Simmons 121,161, an 83 vote margin of victory even closer than the results reported on Election Day,

and that Lebanon was not the only town that had transcription or computation errors.

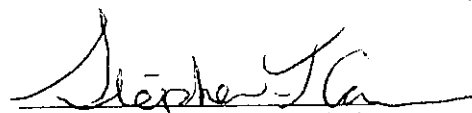
13. The Commission concludes that the transcription error that occurred on Election Day was not intentional.
14. The statutory scheme described above does not provide that election officials cannot make computational error or transcription errors in recording election results. When the procedure is properly followed, an error is less likely, but the statutory scheme contemplates such errors and provides a measure for detecting them in the event of a close race, such as the recanvass procedure in § 9-311a, General Statutes.
15. The Commission concludes that an inadvertent error in transcription does not rise to the level of a statutory violation of General Statutes § 9-309 under the facts of his case. We reserve for another day whether an *intentional* error would constitute a violation, as such facts are not present here.

#### ORDER

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

The complaint is hereby dismissed.

Adopted this 11<sup>th</sup> day of April, 2007 at Hartford, Connecticut.

  
Stephen F. Cashman, Chairman  
By Order of the Commission