

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Luther G. Weeks, Glastonbury

File No. 2007-370

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that Cornwall Town Hall elections officials failed to comply with post election audit procedures enacted in Public Act 07-194, and procedures provided to election officials by the Office of the Secretary of the State, by zeroing out the memory cards *after* the manual audit.

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

1. Public Act 07-194 created an audit procedure by which the accuracy of results of the optical scan voting machines at primaries or elections could be verified or disputed based on a comparison of a manual tabulation of readable cast ballots as against the counts of each voting machine used to cast those same ballots.
2. On September 14, 2007, the Town of Cornwall was notified by the Office of the Connecticut Secretary of State that Cornwall was one of the polling places chosen at random for an audit of the September 11, 2007 primary results.
3. On September 21, 2007, the Office of the Connecticut Secretary of State emailed a document entitled "Audit Procedures Optical Scan Voting Equipment September 2007" ("Procedures") containing the audit procedures.
4. The random audit held on September 26, 2007 was conducted pursuant to P.A. 07-194, which requires manual audits to be conducted in a percentage of municipalities. The Cornwall Registrars of Voters and two appointees conducted the audit.
5. For the audit, the tabulator carrying case was retrieved from the town clerk's office, at which time the outer seal on the carrying case was broken and the Registrars two appointees manually tabulated the paper ballots cast and counted by the tabulator. It was determined that that all 136 ballots were undisputed as to readability.
6. On September 26th the audit by manual tally of the undisputed paper ballots revealed the count was the same as shown on the tabulator on September 11, 2007, and that there were no discrepancies discovered between the manual tabulations and the original tally.

7. Subsequently, the Registrars "cleared the counter" of the optical scanner used in the primary and reran the ballots through it. The memory card of the tabulator used in the primary remained locked in place until further instructions from the Office of the Secretary of State were issued pursuant to preparation for the municipal election of November 5, 2007.
8. Complainant admits that he witnessed the manual audit as described above and does not dispute the characterization or results of the audit.
9. Public Act 07-194 as codified by Connecticut General Statutes § 9-320f, provides in pertinent part:

(a) Not earlier than the fifteenth day after any election or primary and not later than two business days before the canvass of votes by the Secretary of the State, Treasurer and Comptroller, for any federal or state election or primary, or by the town clerk for any municipal election or primary, *the registrars of voters shall conduct a manual audit of the votes recorded in not less than ten per cent of the voting districts in the state, district or municipality, whichever is applicable. Such manual audit shall be noticed in advance and be open to public observation. ...*

(b) *The voting districts subject to the audit described in subsection (a) of this section shall be selected in a random drawing by the Secretary of the State and such selection process shall be open to the public. The offices subject to the audit pursuant to this section shall be, ... (4) in the case of a primary election, all offices required to be audited by federal law, plus one additional office, if any, but in no event less than twenty per cent of the offices on the ballot, selected in a random drawing by the municipal clerk.*

...

(d) *The manual audit described in subsection (a) of this section shall consist of the manual tabulation of the paper ballots cast and counted by each voting machine subject to such audit. Once complete, the vote totals established pursuant to the manual tabulation shall be compared to the results reported by the voting machine on the day of the election or primary. The results of the manual tabulation shall be reported on a form prescribed by the Secretary of the State which shall include the total number of ballots counted, the total votes received by each candidate in question, the total votes received by each candidate in question on ballots that were properly completed by each voter and the total votes received by each candidate in question on ballots that were not properly completed by each voter. ... (i) *If the audit**

officials are unable to reconcile the manual count with the electronic vote tabulation and discrepancies, the Secretary of the State shall conduct such further investigation of the voting machine or tabulator malfunction as may be necessary for the purpose of reviewing whether or not to decertify the voting machine or machines in question or to order the voting machine to be examined and recertified pursuant to subsection (g) of this section. Any report produced by the Secretary of the State as a result of such investigation shall be filed with the State Elections Enforcement Commission and the commission may initiate such further investigation in accordance with subdivision (1) of subsection (a) of section 9-7b of the general statutes, as may be required to determine if any violations of the general statutes concerning election law have been committed.

(j) The individual paper ballots used at an election or primary shall be carefully preserved and returned in their designated receptacle in accordance with the requirements of section 9-266, 9-302 or 9-310 of the general statutes, whichever is applicable.

...

(i) After an election or primary, any voting machine may be kept locked for a period longer than that prescribed by sections 9-266, 9-310 and 9-447 of the general statutes, if such an extended period is ordered by either a court of competent jurisdiction, the Secretary of the State or the State Elections Enforcement Commission. Either the court or the Secretary of the State may order an audit of such voting machine to be conducted by such persons as the court or the Secretary of the State may designate, provided the State Elections Enforcement Commission may order such an audit under the circumstances prescribed in subsection (f) of this section. If the machine utilized in such election or primary is an optical scan voting system, such order to lock such machine shall include the tabulator, memory card and all other components and processes utilized in the programming of such machine....

(o) As used in this section, "discrepancy" means any difference in vote totals between machine and manual counts in a voting district that exceeds one-half of one per cent of the lesser amount of the vote totals between machine and manual counts where such differences cannot be resolved through an accounting of ballots that were not marked properly in accordance with subsection (e) of this section, "state election" means "state election", as defined in section 9-1 of the general statutes, and "municipal election" means a municipal election held pursuant to section 9-164 of the general statutes.
[Emphasis added.]

10. Connecticut General Statutes § 9-447, provides in pertinent part:

The voting machines used in any primary shall not be unlocked for a period of fourteen days from the date of the primary, unless otherwise ordered by any judge of the Superior Court, or by the State Elections Enforcement Commission. If a contest or investigation is pending, such machines shall not be unlocked for such longer period of time as may be ordered by any judge of the Superior Court, unless a recanvass has been applied for under the provisions of section 9-445 or unless an order has been issued by the State Elections Enforcement Commission.

11. The Office of the Secretary of the State "Audit Procedures Optical Scan Voting Equipment September 2007" indicates at paragraph 23: "Once completed, all ballot materials and voting machines shall be returned to a secure location until such time as the Secretary of the State notifies each municipality that the voting machine seals can be removed and the memory cards can be reprogrammed for any future election related event." (Emphasis added.)

12. The single issue in this matter is whether the tabulators and memory cards were under order by the Secretary of the State to remain locked out and unaltered during the audit and until further notice.

13. This is a question of first impression for the Commission. Public Act 07-194, as codified by Conn. Gen. Stats. § 9-320f, is capable of the following construction: Once the Town of Cornwall was selected to be audited, the audit procedures direct that any Town participating in the audit shall not alter the machines or memory cards in any way, and there is a lock out order until further notice once the Town was selected to participate in the audit.

14. However, the Commission concludes, and the Secretary of the State has confirmed, that Cornwall did not receive any direct order to keep their tabulators and memory cards sealed after its random audit on September 26, 2007.

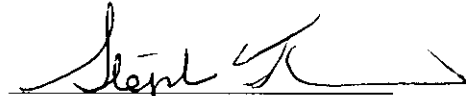
15. In this instance, if the September 26, 2007 audit in the Town of Cornwall had yielded discrepancies between the manual tabulation and the primary results, this case might be viewed differently by the Commission. Under such circumstances, altering the machine or memory card after the manual tally could negate the ability to determine what, if anything, had gone wrong with the tabulator at the primary. However, in this instance, where no discrepancy was revealed by audit, the Commission declines to take any further action.

ORDER

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

That the case be dismissed.

Adopted this 12th day of March, 2008 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission