

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Sandra M. Jenkins, Stratford

File No. 2008-163

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that on November 4, 2008 (hereinafter "Election Day") at the Franklin School polling place in Stratford an individual took her ballot and attempted to feed it into the voting machine. She also maintains this individual may have seen her ballot selections.

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

1. At approximately 5:45 p.m. the Complainant went to the Franklin School polling place to vote. She asserts that after marking her ballot, she attempted to feed it into the voting machine but the machine would not accept it.
2. She maintains that two men were standing nearby and the one closest to the machine suggested that she try feeding the ballot into the machine again. She merely described that individual as a "[b]lack male." According to the Complainant, she followed that election official's suggestion but the machine still would not accept her ballot.
3. The Complainant asserts that, at that point, that election official took her ballot and unsuccessfully tried to force it into the machine. She stated that he seem "puzzled" and kept trying to push the ballot into the machine. She maintains that she stood at the machine for approximately two minutes before noticing a message on the machine's LCD display. She asserts that after reading the message to the election official holding her ballot, he viewed the message, and pressed a button on the machine. She maintains that, at that point, the machine accepted her ballot.
4. The Complainant alleges that the election official should not have touched her ballot and should have known how to properly handle machine malfunctions. She also asserts that the election official "probably" saw her ballot selections.
5. Connecticut General Statutes § 9-262 provides in pertinent part as follows:

During the entire period of an election, at least one of the election officials shall be stationed approximately three to four feet from the voting tabulator to regulate the submission of the elector's ballot. . . . **No election official shall remain or permit any person to remain in any position or near any position that would permit him to see or ascertain how an elector votes.** [Emphasis added.]

6. The Regulations of Connecticut State Agencies § 9-242a-16 further provides as in relevant part as follows:

The voting tabulator tenders shall be stationed approximately three to four feet from the voting tabulator. They shall control access to the voting tabulator and shall prevent anyone from tampering with the voting tabulator. They shall instruct electors in the proper method for inserting the ballot. They shall ascertain that the ballot has been accepted by the voting tabulator before a voter leaves the polling place. **The voting tabulator tender shall advise the elector of any error messages displayed by the voting tabulator. If a ballot is rejected by the voting tabulator they shall advise the elector how to correct the problem. They shall not look at the markings on an elector's ballot.** If a new ballot is needed, the voting tabulator tender shall direct the elector to the ballot clerks. **If the voting tabulator jams or malfunctions, the voting tabulator tender shall summon the moderator or another election official before any corrective action is taken.** An election official shall clear any jammed ballots in accordance with instructions provided for the voting tabulator and shall avoid looking at the markings on the ballots. The voting tabulator shall not be opened unless one election official from an opposing political party is present. The moderator shall make a memorandum as to whether the voting tabulator indicates that it has counted the ballot. . . . No person shall be permitted to leave the polling place with a ballot, either marked or unmarked. When an elector's ballot has been accepted by the voting tabulator, the elector shall be directed to immediately leave the polls. [Emphasis added.]

7. In addition, Regulations of Connecticut State Agencies § 9-242a-18 provides as follows concerning overvoted ballots:

An overvote occurs when an elector votes for more candidates for an office than he is entitled to. When an overvote message appears on the voting tabulator, the voting tabulator tender shall instruct the elector to recheck the ballot and obtain a new ballot if necessary. If the elector insists that the ballot be processed with the overvote, the voting tabulator tender shall instruct him votes for the overvoted office will not be counted but that the votes for the other offices will be counted. **The elector shall be instructed to deposit the ballot in the auxiliary bin.** [Emphasis added.]

8. Regulations of Connecticut State Agencies § 9-242a-19 further provides as follows concerning blank ballots:

A blank or unreadable ballot is one on which the tabulator cannot read a single vote for any office. If this occurs, the tabulator tender shall review with the elector the instructions and direct the elector to obtain a new ballot. If the elector requests that the ballot be processed when no votes are readable by the tabulator, the voting tabulator tender shall instruct the elector that the ballot will be counted by hand after the polls close, but if the election officials are unable to determine

the intent of the elector, some or all of his votes could be lost. **If the elector insists that the ballot be processed, the elector shall then be instructed to deposit the ballot in the auxiliary bin. [Emphasis added.]**

9. Finally, the Office of the Secretary of the State issues the following instructions to polling place moderators concerning the location of those individuals stationed next the voting machines (i.e., tabulator tenders):

The tabulator tender shall be stationed at least four feet from the voting tabulator. They shall control access to the tabulator and shall prevent anyone from tampering with the tabulator. They shall instruct voters in the proper method for inserting the ballot. They must ascertain that the ballot has been accepted by the tabulator before a voter leaves the polling place. The tabulator tender shall advise the voter of any error message displayed by the tabulator. If a ballot is rejected by the tabulator, they shall advise the elector on how to correct the problem. **THEY SHALL NOT LOOK AT THE MARKINGS ON AN ELECTOR'S BALLOT; A VOTER'S RIGHT TO A SECRET BALLOT MUST BE PRESERVED.** If a tabulator tender's assistance is needed, they should use a privacy or other folder to cover the exposed ballot while explaining the problem or solution. If a new ballot is needed, the tabulator tender shall instruct the voter to return to the ballot clerk. If the tabulator jams or malfunctions, the tabulator tender shall summon the Moderator before any corrective action is taken. The tabulator tender and Moderator shall clear any jammed ballots in accordance with instructions provided for the tabulator and shall avoid looking at the markings on the ballot. The tabulator shall not be opened unless the Moderator is present. The Moderator shall make a record of such event in the Moderator's Diary as to whether the tabulator indicates that it has counted the ballot. No one shall be permitted to leave the polling place with a ballot, either marked or unmarked. Once a voter's ballot has been accepted by the tabulator, the voter shall be directed to immediately leave the polls. (Regs. 9-242a-16) (See Appendix for more information).

* * *

When the tabulator rejects a ballot, it displays a message indicating the reason for the return of the ballot. The tabulator tender shall advise the voter of these messages. The tabulator tender **SHALL NOT LOOK AT THE MARKINGS ON AN ELECTOR'S BALLOT; A VOTER'S RIGHT TO A SECRET BALLOT MUST BE PRESERVED.** In many cases simply inserting the ballot in a different orientation ('bottom-first' vs. 'top-first'; 'upside-down' instead of 'right-side-up') may solve the problem; however the two special cases discussed below require special procedures. . . .

An overvote occurs when a voter votes for more candidates for an office than they are entitled to. Sometimes, stray marks on the card can be read by the tabulator as an extra vote. When an overvote message appears on the voting tabulator, the voting tabulator tender shall instruct the voter to recheck the ballot to be sure that

they did not overvote for an office and that there are no stray marks on the ballot. The tabulator tender shall instruct the voter to obtain and remark a new ballot. . . .

If the voter insists that the ballot be processed as is, the tabulator tender shall instruct the voter that the tabulator will not count the vote for the overvoted office but will count the other votes. The voter shall then be instructed to deposit the ballot in the **auxiliary bin**. . . .

A blank or unreadable ballot is one on which the tabulator cannot read a single vote for any office. It might occur if someone submitted a ballot and intentionally did not vote for anyone; however, it is much more likely that the voter has incorrectly recorded every one of their votes on the ballot (e.g., circled the names, used X's or checks that the tabulator could not pick up, or used the wrong kind of pen or pencil). If this occurs, the tabulator tender shall review with the voter the instructions and direct the voter to obtain a new ballot. See: "OBTAINING A NEW BALLOT (SPOILED BALLOT)", below.

If the voter requests that the ballot be processed as is, the tabulator tender shall instruct the voter that the ballot will be counted by hand after the polls close, but that if the election officials are unable to determine the intent of the voter, some or all of their votes could be lost. If the voter insists that the ballot be processed as is, the voter shall then be instructed to deposit the ballot in the **auxiliary bin**. (Regs. 9-242a-16, 9-242a-19) [Emphasis in original].

Moderator's Handbook for Elections and Primaries (Rev. 10/09), pgs.15-18).

10. The Secretary of State's *Training Guide for Connecticut Poll Workers* provides the same instructions.

11. Finally, General Statutes § 9-355 provides in pertinent part as follows:

Any person who, without reasonable cause, neglects to perform any of the duties required of him by the laws relating to elections . . . and for which neglect no other punishment is provided . . . shall be fined not more than three hundred dollars or be imprisoned not more than one year or be both fined and imprisoned.
General Statutes

12. In the present matter, the Complainant maintains that an election official stationed near the voting machine approached her, took her ballot, attempted to assert it into the machine several times, and ultimately hit a button on the machine to allow the machine to take the ballot.

13. The Complainant has not, however, identified that individual beyond describing him as a "[b]lack male." One of the tabulator tenders at the Franklin School polling place on Election Day does fit that description. That individual fervently denies the allegations in the complaint and maintains that it is a "lie." He adds that he was

sitting three to four feet away from the voting machine and that when voters had problems with the machine he told them what to do from his seat. He further maintains that he did not view any ballots, was not interested in seeing anyone's ballot, and would never invade the privacy of voting.

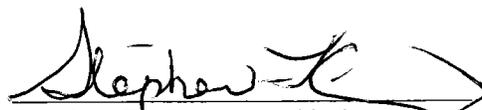
14. In addition, the moderator of that polling place and Assistant Registrars of Voters Tracey Chavis and Barbara Fennell all indicated that they had no knowledge of the incident referenced in the complaint. Mr. Chavis also asserts that he and several other African American males worked at that polling place on Election Day.
15. The Complainant has not provided and the Commission has not uncovered any additional evidence to corroborate the Complainant's allegations. As such, the Commission cannot conclude that the evidence is sufficient to establish that a violation of General Statutes §§ 9-262 and/or 9-355 occurred.
16. Nevertheless, the Commission *strongly advises* all election officials in Stratford and throughout the state to strictly comply with the requirements of General Statutes § 9-262 as well as Regulations of Connecticut State Agencies §§ 9-242a-16, 9-242a-18, 9-242a-19. The Commission also advises the state's Registrars of Voters to ensure that the election officials they appoint understand and comply with those requirements.
17. Finally, the Complainant alleges that the election official at issue "probably" saw her ballot selections. While the Commission notes that General Statutes § 9-236b (a) (9) does provide that the Complainant had the right to vote in privacy at a polling place, in the present matter, there is no evidence that the Complainant was deprived of that right.

ORDER

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

That no further action be taken.

Adopted this 14th day of October, 2010 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission