

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Marsha Motter Beno, Monroe

File No. 2009-038

FINDINGS AND CONCLUSIONS

Complainant brings this complaint pursuant to §9-7b, General Statutes of Connecticut, alleged that: Lori Pfau mailed approximately 200 letters with blank absentee ballot applications that included stamped envelopes addressed to the Town Clerk's office, unsolicited without warning or eligibility requirements or possible penalties, without registering first with the Town Clerk and duplicated down loaded applications, in violation of General Statutes § 9-140.

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

1. On April 7, 2009, a budget referendum was held in the Town of Monroe. The referendum failed by 150 votes with a total of 2,539 "yes" votes and 2,689 "no" votes.
2. Lori Pfau, a resident of Monroe, attended a meeting of the Communications Committee of the Monroe Board of Education prior to the April 7th referendum. Subsequently, Ms. Pfau acquired approximately 200 absentee ballot applications from Democratic Registrar of Voters Susan A Koneff.
3. Ms. Pfau produced and disseminated a letter advocating support for the referendum and disseminated each letter with an unsolicited absentee ballot application. In addition, Ms. Pfau provided a return envelope with postage and the Town Clerk's address with the absentee ballot applications she disseminated.
4. Ms. Pfau asserts that she spent less than \$200 of her own money for postage and materials to disseminate her mailing that was directed to the individuals whose names and addresses she received from Ms. Koneff. The Commission finds no evidence to contradict this assertion.
5. General Statutes § 9-140 provides in pertinent part:
 - (a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. Any person who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. Such signature shall be made under the penalties of false statement in absentee

balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. The municipal clerk shall not distribute with an absentee ballot application any material which promotes the success or defeat of any candidate or referendum question. ***The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application.*** The application shall be signed by the applicant under the penalties of false statement in absentee balloting on (1) the form prescribed by the Secretary of the State pursuant to section 9-139a, (2) a form provided by any federal department or agency if applicable pursuant to section 9-153a, or (3) any of the special forms of application prescribed pursuant to section 9-150c, 9-153a, 9-153b, 9-153d, 9-153e, 9-153f or 9-158d, if applicable. Any such absentee ballot applicant who is unable to write may cause the application to be completed by an authorized agent who shall, in the spaces provided for the date and signature, write the date and name of the absentee ballot applicant followed by the word "by" and his own signature. If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.

...

(k) (1) ***A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family.*** Such requirement shall not apply to a person who is the designee of an applicant.

(l) No candidate, party or political committee, or agent of such candidate or committee ***shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector or applicant to potential civil and criminal penalties.*** As used in this subsection, "agent" means any person authorized to act on behalf of another person.

(m) *The Secretary of the State shall conspicuously post on the Secretary of the State's web site, adjacent to the absentee ballot application form available for downloading, a notice that the application may be downloaded by a person only for (1) the person's own use, (2) the use of a member of the person's immediate family, or (3) the use of a designee of the applicant. The notice shall also contain an advisory statement concerning the requirements of subsection (k) of this section.*
[Emphasis added.]

6. General Statutes § 9-369c provides, in pertinent part:

(a) Whenever a referendum, as defined in subdivision (2) or (3) of subsection (n) of section 9-1, is to be held on any question or proposal, *the question or proposal shall be submitted to the municipal clerk in the form in which it will appear on the ballot at least three weeks prior to the date on which the referendum is to be held*, and the municipal clerk shall make absentee ballots available for use at the referendum in accordance with the provisions of this section, *provided, if any other provision of the general statutes, a special act, a charter provision or an ordinance specifically authorizes a referendum to be held with less than three weeks' notice, absentee ballots shall be made available for each such referendum within four business days after the question or questions which are to be voted on at the referendum are finalized.* Notwithstanding any provision of the general statutes to the contrary, *a municipal clerk may only provide an absentee ballot for such referendum held with less than three weeks' notice to a person who applies in person at the office of the municipal clerk for an absentee ballot* (1) for himself or (2) for a prospective applicant who designates such person for such purpose. The designee may be a licensed physician, registered or practical nurse or any other person who is caring for the applicant because of the applicant's illness, a member of the applicant's family or a police officer, registrar of voters or deputy registrar of voters in the municipality in which the applicant resides. The designee may also return the ballot in person to the municipal clerk not later than the close of the polls.

...

(f) The procedures for issuing, returning, casting and counting absentee ballots, declaring the count and packaging the ballots at elections, *shall apply, as nearly as may be, to absentee ballots at referenda.*

[Emphasis added.]

7. *In the Matter of a Complaint by Patricia Ulatowski, Monroe, File No. 2009-062, the Commission determined that the same April 7, 2009 budget referendum in the Town of Monroe was a referendum held with less than three weeks notice and therefore General Statutes § 9-369c prescribes the procedures for issuing absentee ballots. Specifically, the Commission found and concluded:*

General Statutes § 9-369c specifically prescribes the procedures for issuing absentee ballots for certain standalone municipal referenda. As such, the Commission finds as a preliminary matter that when such referenda are held, the more specific provisions of § 9-369c concerning referenda held with less than three weeks notice govern over those provisions prescribing the procedures for issuing absentee ballots in elections, as prescribed by General Statutes § 9-140.

Further, the Commission concludes that when a referendum, as defined in subdivision (2) or (3) of subsection (n) of section 9-1, is held with less than three weeks notice, the requirement in subsection (a) of General Statutes § 9-369c—that absentee ballots be issued to only those electors or their legal designees who appear in person at the office of the municipal clerk—is mandatory, not advisory.


8. The Commission notes that because the April 7, 2009 referendum in the Town of Monroe was determined in *Ulatowski, supra* as described in paragraph 7 above, to be a referenda called with less than three weeks notice, the Complainant as Monroe Town Clerk should *not* have mailed absentee ballots to those electors who had submitted applications, but rather, was required to follow the absentee ballot procedure outlined in subsection (a) of General Statutes § 9-369c, issuing absentee ballots only to applicants who appeared in person (or their designees).
9. The Commission also acknowledged in *Ulatowski* that it was an issue of first impression and that the Respondent Town Clerk, Complainant in the instant matter, made a good faith effort to follow the law, as she understood it to be.
10. Nevertheless, the conclusion that the April 7, 2009 referendum was a referendum held with less than three weeks notice compels the conclusion that the complained of provisions of § 9-140, were in fact, inapplicable, and warrants a dismissal of the instant complaint.

ORDER

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

That the complaint be dismissed.

Adopted this 18th day of August of 2010 at Hartford, Connecticut.



Stephen F. Cashman
By Order of the Commission