

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Jeff Yazmer, Killingworth

File No. 2009-092

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that the Killingworth Town Clerk, Linda Dudek, (hereinafter the "Respondent") would not immediately provide an updated list of individuals that submitted absentee ballots for the September 15, 2009 primary (hereinafter the "Primary"). The Complainant also asserts that voters that were confused about how to vote were told to vote for the endorsed slate of candidates.

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

1. The Complainant alleges that on September 14, 2009, he requested from the Respondent the list of individuals that submitted absentee ballots for the Primary. The Complainant maintains that the Respondent did not comply with that request on September 14th but rather provided the list at 6:00 a.m. the next morning.
2. The Respondent was the incumbent town clerk and was cross-endorsed by the Republican and Democratic parties as their candidate for that office. She was challenged by another Republican candidate and was, therefore, a candidate in the Primary.
3. The Respondent maintains that the list of individuals that returned absentee ballots was always provided upon request. She further maintains that, to the best of her recollection, no one requested that list on September 14, 2009, and that the Complainant received his list immediately after his request.
4. General Statutes § 9-140c (a) provides in relevant part as follows:

The municipal clerk shall retain envelopes containing absentee ballots received by him under section 9-140b and shall not open such envelopes. . . . The clerk shall keep a list of the names of the applicants who return absentee ballots to the clerk under section 9-140b. The list shall be preserved as a public record as required by section 9-150b.

5. While the aforementioned provision required the Respondent to keep and preserve a list of absentee ballot applicants that return absentee ballots, it does not require the Respondent to provide that list upon request or to do so in a particular time frame. In fact, there is no such requirement in any of Connecticut's election laws.
6. The Commission therefore concludes that the Complainant's allegation that the Respondent did not timely provide the returned absentee ballot list is without merit.

7. The Commission notes that the list at issue may be required to be disclosed to members of the public upon request pursuant to the State's Freedom of Information Act. The Commission does not, however, have jurisdiction over that Act. See General Statutes § 9-7b (identifying the scope of the Commission's jurisdiction).
8. The Complainant also alleges that he was told that individuals who were confused were instructed at their respective polling places to vote for the endorsed candidates.
9. General Statutes § 9-363 provides in relevant part as follows:

Any person who, with intent to defraud any elector of his vote or cause any elector to lose his vote or any part thereof, gives in any way, or prints, writes or circulates, or causes to be written, printed or circulated, any improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any machine, the following of which or any part of which would cause any elector to lose his vote or any part thereof, or would cause any elector to fail in whole or in part to register or record the same on the machine for the candidates of his choice, shall be fined not more than five hundred dollars or be imprisoned not more than five years or be both fined and imprisoned.

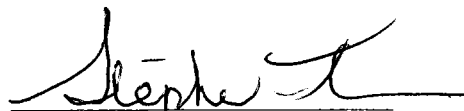
10. With respect to this allegation, the Complainant did not provide the names of any of the individuals that were allegedly instructed to vote for particular candidates nor could he provide the names of any individuals that gave such instructions. In addition, the Complainant has not provided any other evidence to support this allegation.
11. The Commission cannot therefore conclude that the evidence is sufficient to establish that a violation of General Statutes § 9-363 occurred.

ORDER

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

That the case be dismissed.

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



Stephen F. Cashman, Chairperson
By Order of the Commission