

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Dayna McDermott-Arriola, Hampton

File No. 2009-100

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b and alleges facts giving rise to 9 separate causes of action against Respondent Joan Fox, all stemming from a September 15, 2009 Democratic primary held in the Town of Hamden. After the investigation, the Commission makes the following findings and conclusions:

1. On September 15, 2009 a Democratic primary was held in the Town of Hamden.
2. At all times relevant to the instant Complaint, Respondent Fox was the Democratic Registrar of Voters (“ROV”) for the Town of Hampton. Ms. Fox took office in January 2009; before that time, the Complainant, Ms. McDermott-Arriola was the Democratic ROV.¹ The primary that is the subject of the instant Complaint was her first as ROV.
3. At all times relevant to the instant Complaint, Ms. McDermott-Arriola was the acting Republican Registrar of Voters for the Town of Hampton.²
4. The parties do not here dispute that, on the date in question, the Respondent was also acting as the moderator for Hampton’s single polling place. The Complainant and the Respondent had chosen a different individual as moderator, but had named the Respondent as the alternate. However, on the date in question, the chosen moderator fell ill and the Respondent was pressed into service.

COUNTS ONE, TWO, THREE, & FOUR: Failure of Elections Officials to Timely Arrive, Failure to Timely Swear in Elections Officials, Opening Polling Place after 6:00 a.m., Closing Polling Place Prior to 8:00 p.m.

5. Complainant alleges that the Respondent and the other “elections officials,” whom the Complainant fails to name, did not arrive at the polling place until 5:45 a.m. on the morning of the Primary, causing the polls to be opened at 6:10 a.m. Complainant further alleges that the elections officials were not sworn in until after the polls were opened. Finally, Complainant alleges that the polling place closed prior to 8:00 p.m. Complainant does not allege that any material harm occurred as a result of the above-alleged violations. That is,

¹ Ms. Fox was re-elected in 2010, but subsequently left her position and is currently no longer Democratic ROV.

² The Complainant switched parties in 2008, took the position as Deputy Republican ROV and subsequently became Republican ROV after the elected Republican ROV, Ms. Katherine Newcombe, resigned and became Assistant ROV in the Complainant’s stead. Complainant was elected as Republican ROV in 2010.

she does not allege that any voter was turned away or otherwise unreasonably made to wait to cast a ballot.

6. General Statutes § 9-259 (b) provides:

On the morning of the election, *the election officials shall meet at the room where the election is to be held at least forty-five minutes before the time for opening the polls.* The moderator shall then cause the sample ballot and instructions to be posted and everything put in readiness for the commencement of voting at the hour of opening the polls. The moderator and the registrars of voters, or the assistant registrars of voters, as the case may be, shall examine the numbers on the seals of the tabulator. (Emphasis added.)

7. General Statutes § 9-438 provides, in pertinent part:

In each municipality or voting district, the polling places for primaries held under sections 9-382 to 9-450, inclusive, shall be the same as those used for the election to be held. When unaffiliated electors are authorized under section 9-431 to vote in the primary of either of two parties, both parties shall hold their primaries in the same room of each such polling place. *On the day of the primary, the polls shall remain open for voting from six o'clock a.m. until eight o'clock p.m.* (Emphasis added.)

8. General Statutes § 9-439 provides, in pertinent part:

The moderator in each polling place shall have charge of the primary held therein. The other officials shall have, as nearly as may be, the same duties as at a regular election. The checkers at each polling place shall check the name of each elector on the list or lists of eligible electors of the municipality or the voting district, as the case may be, when the elector offers himself to vote. *All officials serving at any primary shall be sworn to the faithful performance of their duties.* (Emphasis added.)

9. The Respondent here does not deny the general allegation that she and/or the unnamed poll workers arrived at the polling place less than 45 minutes prior to the 6:00 a.m. opening time. She asserts that “[a]ll appropriate poll workers arrived at the polling place between 5:30 a.m. and 5:45 a.m. Their arrival time in no way affected the time the polls opened.” She also admits that the polling place opened “a few minutes” after 6:00 a.m. But, she

asserts that it was less than the 10 minutes alleged by the Complainant and that only two voters were made to wait “a few minutes” and that such voters were willing to attest that they were not inconvenienced or materially harmed by the minor delay.

10. The Respondent further asserts that the delay was in fact due to an error by the Complainant herself in sealing the tabulator after testing, which caused the Respondent difficulty in connecting the tabulator with the ballot box.
11. The Respondent further asserts that the polling place workers were sworn in at 6:05 a.m., after the polls opened because she was concerned with fixing the aforementioned problem with the tabulator.
12. Finally, the Respondent asserts that while the ender tape indicated a closing time of 19:59:35, she used a clock on the wall to both open and close the polls and the clock read 8:00 p.m. at the time the polls were closed.
13. The Commission notes that the Complainant submitted with her Complaint a copy of what appears to be the moderator’s log. A notation in the log indicates that the polls opened 6:10 a.m. However, it appears that the time was originally written as 6:05 a.m. and that the “:10” was written over it. In her response, the Respondent asserts that 6:05 a.m. was a more accurate reflection of the time of opening of the polls. There is insufficient evidence in the record to indicate why the time was changed in the log or who made such change. The log does not indicate the time that the polls were closed.
14. Considering the aforesaid, the Commission concludes that by the Respondent’s own admission, the Hampton elections officials did not timely meet at the polling place and the polling place was opened late. Per General Statutes §§ 9-259 (b) & 9-438, they should have arrived no later than 5:15 a.m. for a 6:00 a.m. opening of the polls. While the Respondent denies that such late arrival impacted the opening of the polls, it stands to reason that had the Respondent had more time, it is more likely that the issue with the tabulator could have been addressed before 6:00 a.m. However, the Commission also concludes that there is insufficient evidence to show that the Respondent’s errors were material or negatively affected the outcome of the primary in Hampton. Moreover, this was the Respondent’s first time serving as Registrar of Voters for a primary or an election. The Commission expects the Respondent to henceforth comply, however we will take no further action regarding Counts One, Two and Three. There is insufficient evidence to support the allegation that the polling place closed before 8:00 p.m. Count Four should be dismissed.

COUNTS FIVE & SIX: No Registrar of Voters on Duty & Leaving Registrar's Office

15. Here, the Complainant alleges that between the hours of 9:45 a.m. and 12:05 p.m., the Assistant Registrar of Voters left the polling place. She alleges that Assistant Registrar of Voters Matthew LaFontaine was ineligible because he was serving as a Ballot Clerk at the time.

16. General Statutes § 9-258 (Rev. to July 13, 2011) provides, in relevant part:

For municipalities with one voting district, the election officials of such polling place, except voting tabulator technicians, shall be electors of the town and shall consist of: *One moderator, at least one, but not more than two official checkers, not more than two challengers if the registrars of voters have appointed challengers pursuant to section 9-232, at least one and not more than two voting tabulator tenders for each voting tabulator in use at the polling place and at least one but not more than two ballot clerks. Additionally, such election officials may consist of two registrars of voters of opposite political parties, or two assistant registrars of voters of opposite political parties, as the case may be, subject to the requirements of sections 9-259 and 9-439, who shall: (1) Be available by telephone and notify all registrars of voters' offices in the state of such telephone number, (2) be connected to the state-wide computerized registry list, and (3) have all voter card files in the polling place for reference. . . . Head moderators, central counting moderators, absentee ballot counters and voting tabulator technicians appointed pursuant to law shall be deemed to be election officials. . . .(Emphasis added.)*

17. Here, the evidence is sufficient to show that there was more than one Ballot Clerk present at the polls in Hampton on the date in question, Mr. LaFontaine and Marjorie Newcombe. As such, Mr. LaFontaine could serve as Assistant Registrar of Voters during all of the hours that the appointed Assistant Registrar of Voters is alleged to have been absent. Accordingly, no violation occurred. Count Five should be dismissed.

18. In Count Six, the Complainant alleges that the Respondent failed to appoint an alternate moderator and impermissibly named herself as moderator when the appointed moderator fell ill. She further alleges that by doing so, she left the Office of Registrar of Voters “unmanned for a portion of the polling hours.”

19. General Statutes § 9-229 (a) (Rev. to June 13, 2011) provides, in relevant part:

The registrars of voters in the several towns and, in towns where there are different registrars for different voting districts, the registrars of voters in such districts shall appoint the moderators of regular and special state and municipal elections in their respective towns or districts. For the purpose of providing a reserve group of persons who may serve as moderators, *the registrars shall designate alternate moderators from among those persons chosen as official checkers, or machine tenders, in the following minimum numbers: In towns with one or more but not exceeding three voting districts, one alternate moderator; . . .*(Emphasis added.)

20. As an initial matter, the Commission finds, and the Respondent does not generally deny, that the evidence is sufficient to show that the Respondent did not name an alternate moderator for the primary. Accordingly, the Commission concludes that the Respondent violated General Statutes § 9-229. However, the Commission also concludes that the evidence is insufficient to establish that the services of the Office of Registrar of Voters were not available to voters simply because she was at the polling place and acting as the moderator under the emergency circumstances. The evidence is insufficient to support the allegation that either the office was unmanned or that the Respondent was incapable of performing her duties as Registrar while at the polling place. In consideration of the aforesaid, the Commission will take no further action as to Count Six.

COUNT SEVEN: “Political” Remark by Election Official

21. Here, the Complainant alleges that absentee ballot clerk Renee Cuprak violated General Statutes § 9-297 by making what she deems a “political” remark inside the polling place. The Complainant presented evidence from another poll worker that Ms. Cuprak was heard to say “[w]e saw all the Melanie signs going up, so we all got together and painted some Kate signs,” referring to opposing candidates in the primary.

22. General Statutes § 9-297 reads, in pertinent part:

No official or other person at any election shall, *in the enclosure where the ballot box and stub box are placed*, or in any room or booth herein mentioned, suggest to any elector the name of any political party or candidate for any office. . . . (Emphasis added.)

23. When allegations of political activity within the polling place are alleged, the Commission also considers General Statutes § 9-236 (a) which reads, in pertinent part:

On the day of any primary, referendum or election, no person shall solicit in behalf of or in opposition to the candidacy of another or himself or in behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach, except as provided in section 9-294. Nothing contained in this section shall be construed to prohibit (1) parent-teacher associations or parent-teacher organizations from holding bake sales or other fund-raising activities on the day of any primary, referendum or election in any school used as a polling place, provided such sales or activities shall not be held in the room in which the election booths are located, (2) the registrars of voters from directing the officials at a primary, referendum or election to distribute, within the restricted area, adhesive labels on which are imprinted the words "I Voted Today" or (3) the registrars of voters in a primary, election or referendum from jointly permitting nonpartisan activities to be conducted in a room other than the room in which the election booths are located. The registrars may jointly impose such conditions and limitations on such nonpartisan activity as deemed necessary to ensure the orderly process of voting. The moderator shall evict any person who in any way interferes with the orderly process of voting. (Emphasis added.)

24. After investigation the Commission concludes that the evidence is insufficient to conclude that the comment made by Ms. Cuprak was made "in the enclosure where the ballot box and stub box" were located or was made in the presence of any voter. Moreover, the Commission concludes that while Ms. Cuprak, as a polling place official, should have taken better care to refrain from discussing political activity within the polling place, the comment, as alleged, does not rise to the level of "solicit[ing] in behalf of or in opposition to the candidacy of another or himself or in behalf of or in opposition to any question being submitted at the election or referendum. . . ." Accordingly, Count Seven should be dismissed.

COUNTS EIGHT & NINE: Failure to Timely Notify Opposing Primary Campaigns of Right to Submit List of Polling Place Official Designees and Failure to Equitably Proportion Polling Officials Among Opposing Primary Campaigns

25. The Complainant alleges that the Respondent failed to timely notify the party-endorsed candidates and contestants in the primary of their right to designate a list of recommended polling place officials from their campaign and failed to designate an even balance of polling place officials at the primary. The Complainant provided no evidence in support of this allegation.

26. General Statutes § 9-436 (e) (Rev. to May 24, 2011) provides, in relevant part:

The registrar shall designate one of the moderators so appointed by the registrar to be head moderator or shall appoint as head moderator an elector who is not also moderator of a polling place and who shall be deemed a primary official. The registrar may also appoint a deputy head moderator to assist the head moderator in the performance of his duties. A deputy head moderator shall also be deemed to be a primary official. *Each registrar's appointments of primary polling place officials, except moderators of polling places, and of designees to conduct supervised voting of absentee ballots pursuant to sections 9-159q and 9-159r shall be divided equally, as nearly as may be, between designees of the party-endorsed candidates and designees of one or more of the contestants*, provided, if a party-endorsed candidate is a member of a party other than the one holding the primary, such primary officials, except voting machine mechanics, shall be enrolled party members of the party holding the primary. Names of designees and alternate designees for such positions shall be submitted in writing by party-endorsed candidates and contestants to the registrar not later than ten days before the primary, except that names of designees and alternate designees for the position of moderator shall be so submitted not later than twenty-one days before the primary and, if such lists are not so presented, all such appointments shall be made by the registrar but in the above-mentioned proportion. *The registrar shall notify all such candidates and contestants of their right to submit a list of designees under this section.* Notwithstanding any other provision of this section, the registrar shall appoint as moderators only persons who are certified to serve as moderators or alternate moderators pursuant to section 9-229, unless there is an insufficient number of such persons who are enrolled members of the registrar's party in the municipality or political subdivision holding the primary, in which case the

registrar may appoint a new moderator in accordance with section 9-229, but only to the extent of such insufficiency. Primary central counting moderators and absentee ballot counters shall also be deemed primary officials. No primary official shall perform services for any candidate at the primary on primary day. (Emphasis added.)

27. The Respondent generally denies the allegations and presented evidence in support of her attempts to notify the campaigns of their right to designate polling place officials.
28. Considering the aforesaid, the Commission concludes that there is insufficient evidence to support the allegations that the Respondent failed to timely notice the party-endorsed candidates and contestants of their right to submit a list of designees or that the polling place officials were not divided equally, *as nearly as may be*, between the two opposing campaigns. Accordingly, Counts Eight and Nine should be dismissed.

ORDER

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

Counts One, Two, Three, and Six: No further action is taken.

Counts Four, Five, Seven, Eight and Nine: Dismissed.

Adopted this 21st day of September of 2011 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission