

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by
Scott Merrell

File No. 2009-108

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Susan Byciewicz, in her capacity as Secretary of the State, impermissibly denied him the opportunity to submit petitions for his candidacy for Governor using the "Independent Party" name during the 2006 general election. After the investigation, the Commission makes the following findings and conclusions:

1. During the 2006 general election, the Complainant attempted to run for Governor as a petitioning candidate, along with a slate of other candidates, by presenting an application for nominating petition using the party name "Independent Party"
2. On or about June 21, 2006, an authorized representative of the Secretary of the State's office informed Michael Telesca, a representative and member of the slate, via postal mail that the application must be rejected pursuant to General Statutes § 9-453u [(c)] since the party designation "Independent" was already in effect for the state offices listed in the slate's application.
3. General Statutes § 9-453u, provides in pertinent part:
 - (a) An application to reserve a party designation with the Secretary of the State and to form a party designation committee may be made at any time after November 3, 1981, by filing in the office of the secretary a written statement signed by at least twenty-five electors who desire to be members of such committee.
 - ...
 - (c) The statement shall include the party designation to be reserved which (1) shall consist of not more than three words and not more than twenty-five letters; (2) shall not incorporate the name of any major party; (3) shall not incorporate the name of any minor party which is entitled to nominate candidates for any office which will appear on the same ballot with any office included in the statement; (4) shall not be the same as any party designation for which a reservation with the secretary is currently in effect for any office included in the statement; and (5) shall not be the word "none", or incorporate the words "unaffiliated" or "unenrolled" or any similarly antonymous form of the words "affiliated" or "enrolled". [Emphasis added.]
4. However, an authorized representative of the Secretary of the State informed the slate that they could petition using the party name "Independent Party of CT." Relying on

the advice of the Secretary of the State's representative, circulators for the petitioning slate began gathering signatures under the party name "Independent Party of CT."

5. Subsequent to this advice, an authorized representative of the Secretary of the State's office informed Mr. Telesca via electronic mail that the office made a mistake in its prior advice and that pursuant to General Statutes § 9-453u, the name "Independent Party of CT" could also not be used as it incorporated the name of a minor party already in existence. The petitioning slate would have to choose a different party name.
6. Because it had previously given out erroneous advice upon which the petitioning slate relied, the Secretary of the State's Office sought advice from the Attorney General's as to whether it could accept any petitions submitted by the slate under the "Independent Party of CT" party name and apply those petitions the petitioning slate under a different name.
7. In a letter to the Secretary of the State dated July 12, 2006, the Attorney General opined that pursuant to General Statutes § 9-3, the Secretary of the State, as Commissioner of Elections, has the "authority to issue rulings and instructions necessary to remedy possible harm—such as the potential disapproval of 2000 petition signatures—flowing from reliance on advice subsequently determined to be erroneous."
8. In letters to Mr. Telesca dated July 14 and 28, 2006, the Secretary of the State directly opined that pursuant to General Statutes § 9-453u, the "Independent Party" and "Independent Party of CT" party names could not be used by the petitioning slate under the conditions existing at that time for the reasons previously stated.
9. General Statutes § 9-3, provides in pertinent part:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, **the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title**, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. [Emphasis added.]

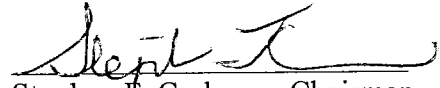
10. The Commission finds no state statute otherwise providing it the authority to review the Secretary of the State's written interpretation of General Statutes § 9-453u under these facts. As such, the Commission presumes that the Secretary of State's written opinion applying the statute to the facts of this case was correct.

ORDER

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

That the Complaint be dismissed.

Adopted this 22nd day of Sept. of 2010 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission