

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Linda Palermo

File No. 2009-128

FINDINGS AND CONCLUSIONS

The Complainant filed the instant complaint with the Commission pursuant to General Statutes § 9-7b, and asserts on September 15, 2009, at the Wooster Middle School polling place in Stratford, Connecticut an elector was accompanied by Republican Registrar of Voters, Lou DeCilio, (hereinafter the "Respondent") to the Accessible Voting System (hereinafter the "AVS") and later to the voting tabulator. In addition, the Complainant alleges that after that voter had left the polling place, the Respondent placed that voter's ballot in the voting tabulator.

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

1. The AVS is composed of a telephone with very large buttons and a facsimile machine. The AVS allows voters to cast their ballots using that telephone. Any voter in Connecticut may choose to vote using the AVS.
2. In doing so, the voter goes to the poll and checks in as usual. A poll worker uses the designated telephone to call the system, enters the Poll Worker ID and Ballot Access ID to bring up the appropriate ballot, then gives the phone to the voter and leaves the voting area. The voter listens to the directions on the handset or headset and makes his/her choices using the keypad. When the voter is finished making his/her selections, the system will ask the voter to verify his/her choices. The voter will be given the opportunity to change any of those choices and even to spoil the ballot and start again. After the voter completes the voting process, the fax machine will print a cover sheet, the voter's paper ballot, and an ending sheet. The ballot produced by AVS will have a different appearance from the absentee ballots and/or the optical scan ballots used in the election. The voter will place his/her ballot in the designated ballot box and his/her vote will be complete. Once the polls are closed, that ballot will be hand-counted by an election official.
3. The Respondent is the Republican Registrar of Voters for the Town of Stratford. The Complainant was the moderator of the Wooster Middle School in Stratford for the September 15, 2009 primary.
4. The evidence establishes that an elector expressly requested that the Respondent help him vote at the Wooster Middle School polling place during the September 15, 2009 primary in Stratford. In accordance with that request, the Respondent accompanied that elector to the AVS while the moderator/Complainant got that system set up. He later waited with that elector while the facsimile machine was printing what they believed was that

elector's ballot. While printing, the Respondent requested a privacy sleeve and, upon completion of printing, placed the print out in that sleeve on behalf of the elector.

5. There is no evidence that the Respondent saw the contents of that paper. Instead, he mistakenly assumed it was the ballot. The Respondent had forgotten that the AVS prints a cover sheet before printing the ballot.
6. At that point, nothing else had printed so the Respondent accompanied the elector to the voting machine to place the ballot in the auxiliary bin. The elector then left the polling place satisfied that he had cast what he believed was his ballot.
7. The evidence further establishes that, shortly thereafter, the Respondent noticed another paper printing on the AVS. He then learned that this printout was in fact the elector's actual ballot.
8. The Respondent attempted to get the elector back to the polling place but was unsuccessful as he had already left. As such, the Respondent placed the ballot in a privacy sleeve and put it in the voting tabulator.
9. The Respondent maintains that he did not want the elector to lose his vote because he erroneously failed to recognize that initial print out was not that elector's ballot. He asserts that he did not realize that because he was trying to protect the elector's right to vote in privacy and did not look at the contents of the initial print out. He also asserts that there was a long delay between the printing of the first paper and the ballot that caused confusion too. The Commission has not uncovered any evidence to the contrary.
10. The Respondent notified the elector of the situation at a later time and the elector approved of the Respondent's actions.
11. While there are no statutes or regulations addressing the use of the AVS, the complaint does raise the issue of whether the Respondent improperly viewed an elector's ballot in violation of the law.
12. General Statutes § 9-236b (a)(9) provides all voters with the right to vote independently and in privacy at the polling place.
13. In addition, General Statutes § 9-366 further provides in pertinent part as follows:

Any person who . . . attempts to get in such position to do any act so that he will be enabled to see or know how any elector other than himself votes on such [voting] machine, or does any act which invades or interferes with the secrecy of the voting or causes the same to be invaded or interfered with, shall be imprisoned not more than five years. [Emphasis added.]

14. Furthermore, General Statutes § 9-262 expressly states that “[n]o 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 or how he has voted.”

15. However, General Statutes § 9-261 (e) provides the following in relevant part:

If any elector, after entering the voting booth, asks for further instruction concerning the manner of voting, the election officials shall give such instructions or directions to the elector; **but no election official instructing or assisting an elector, except as provided in section 9-264, shall look at the ballot in such a way as to see the elector's markings or in any manner seek to influence any such elector in the casting of the elector's vote.** [Emphasis added.]

16. In the present case, the evidence establishes that the elector requested that the Respondent help him vote. General Statutes § 9-264 (a) expressly allows the Respondent to do so by providing the following in relevant part:

An elector who requires assistance to vote, by reason of blindness . . . may be given assistance by a person of the elector's choice . . . The person assisting the elector may accompany the elector into the voting machine booth. Such person shall register such elector's vote upon the machine as such elector directs. . . .

17. General Statutes §§ 9-261 (e) and 9-264 (a) are exceptions to the prohibition set forth in § 9-262 and depending on the scope of the elector's request, may also protect an individual from a finding of liability pursuant to General Statutes §§ 9-236b and 9-366.

18. In the present case, the elector clearly requested the Respondent's assistance pursuant to § 9-264. In addition, the evidence is insufficient to establish that the Respondent saw the elector's ballot choices when he took the second print out from the AVS.

19. The Commission therefore concludes that the Respondent did not violate General Statutes §§ 9-236b, 9-261, 9-262 or commit a prohibited act pursuant to General Statutes § 9-366.

20. It is worth noting that the elector assisted by the Respondent in this matter does not feel that his right to vote in privacy was violated by the Respondent in any way.

21. The complaint also raises the issue of whether the Respondent committed a prohibited act pursuant to General Statutes § 9-360 when he placed the elector's actual ballot in the voting tabulator after that elector had left the polling place.

22. General Statutes § 9-360 provides in relevant part as follows:

Any person not legally qualified who fraudulently votes in any . . . primary . . . in which the person is not qualified to vote, and any legally qualified person who, at such . . . primary . . . fraudulently votes more than once at the same . . . primary . . . shall be fined not less than three hundred dollars or more than five hundred dollars

and shall be imprisoned not less than one year or more than two years and shall be disfranchised. Any person who votes or attempts to vote at any . . . primary . . . by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised.

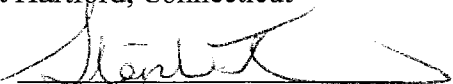
23. While the evidence does establish that the Respondent placed a ballot in the voting tabulator in the name of another elector, it does not support a finding that he did so fraudulently. That elector initially asked the Respondent to help him vote via the AVS.
24. Furthermore, the Respondent only placed the actual ballot in the voting tabulator after that elector left the polling place because the Respondent knew that that is what that elector intended but unknowingly failed to accomplish because of the Respondent's mistaken belief that the cover sheet was that elector's ballot.
25. It is important to add that the elector who was assisted by the Respondent approved of the Respondent's actions because the Respondent acted in line with that elector's earlier request for voting assistance. Furthermore, the elector feels that had the Respondent not placed the actual ballot in the voting tabulator after he had left the polling place, he would have been deprived of his right to vote.
26. The Commission therefore concludes that the Respondent did not commit a prohibited act pursuant to General Statutes § 9-360. We note, however, that the facts of this case are unique as the Respondent acted in accordance with the request of an elector in placing the ballot in the voting tabulator. Had the Respondent voted an unclaimed marked ballot that was found in a privacy booth, a finding of liability may have resulted. Fortunately, however, those facts did not present themselves here.

ORDER

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

That the matter be dismissed.

Adopted this 20th day of January 2010 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission