

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Amy Harris, Wilton

File No. 2009-144

FINDINGS AND CONCLUSIONS

The Complainant alleges that on November 3, 2009, at the Driscoll and Middlebrook School polling places in the 125th Assembly District, Al J. Alper (hereinafter, “the Respondent”), chairperson of the Wilton Republican Town Committee (hereinafter “Wilton RTC”) “interfered with the election process; willfully provided counterfeit ballots to all three polling places, refused to stop under the guise of ‘campaign literature;’ caused the fewer-than-usual number of poll workers undue hardship in ensuring the integrity of the electoral process.” The Complainant asserts that the Respondent did so by distributing “fake ballots with their [Republican] candidates marked as a mock ballot.” She further asserts that these “fake ballots” did not have any attribution identifying who paid for them. The Complainant references General Statutes §§ 9-363 & 9-366.

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

1. At the outset, it is important to note that there are a number of statutes that allow, and in some cases require, sample ballots to be made available and/or distributed to voters on or before Election Day. General Statutes § 9-280 provides that the Secretary of State is to make available to each town for “general distribution,” a certain number of sample ballots at least one week before the election. Moreover, the Voter’s Bill of Rights (General Statutes § 9-236b) lists a voter’s right to “inspect a sample ballot before voting.” Also, General Statutes § 9-607 (g) lists the distribution of sample ballots as a permissible campaign expense and § 9-601a (b) (8) exempts sample ballots from the definition of “contribution” for the purposes of Chapter 155.
2. Nevertheless, General Statutes § 9-363 provides 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.
[Emphasis added.]

3. Thus, in order to find a violation of this provision in the present case, the Commission would have to conclude that the evidence sufficiently establishes that:

- 1) The Respondent circulated improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any machine;
 - 2) Those instructions, advice or suggestions would cause that elector to lose his/her vote or any part thereof if followed; and
 - 3) The Respondent circulated those instructions with the intent to defraud an elector of his vote or cause that elector to lose his vote.
4. Respondent Alper admits that he distributed ballots marked "Sample" at the Driscoll and Middlebrook School polling places. He maintains that he downloaded that sample ballot from the Wilton Registrar of Voters webpage which appears on the Town of Wilton's website. He further maintains that after he downloaded that sample ballot he printed out approximately five hundred copies at his home using his personal computer, printer and regular paper. He stated that he then filled in the entire line of Republican candidates and distributed approximately sixty percent of the "sample ballots" he printed and altered.
 5. He further maintains that the ballot he downloaded from the Registrar's website already had the word "Sample" written across the top. In other words, he asserts that he did not add that to the ballot.
 6. Respondent Alper also asserts that he was only using the "sample ballots" at issue to demonstrate how to properly use the ballot and to show potential voters that they had to fill in the circles above the names of the candidates they supported. He asserts that he was not attempting to defraud the voters or mislead them.
 7. The Commission has not been provided with any evidence that contradicts Respondent Alper's assertions.
 8. With that in mind, the Commission concludes that the evidence is insufficient to conclude that Respondent Alper violated General Statutes § 9-363. First, the evidence presented to the Commission does not establish that the Respondent circulated the "sample ballots" with the "intent to defraud any elector of his vote or cause any elector to lose his vote."
 9. Second, General Statutes § 9-363 prohibits "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."
 10. Here, the Respondent presented a sample ballot in substantially the same form in which it would be presented to the voter. They left all of the names of each candidate on the ballot intact, even though some of those names were of non-Republican candidates. The only alteration to the document was to highlight certain names to the exclusion of others. Although the altered ballot advocates the Republican candidates by highlighting their names, there is nothing misleading about the ballot. In other words, any reasonably prudent elector would not believe that s/he must vote for just the Republican candidates based on this communication. The Commission therefore

concludes that the altered sample ballot did not rise to the level of being so misleading that it would cause any elector to lose his vote or any part thereof.

11. As a result, the Commission cannot conclude that Respondent Alper violated General Statutes § 9-363 by distributing the altered "sample ballots" to voters at multiple polling places on November 3, 2009. This allegation is therefore dismissed.
12. The Commission notes that the Complainant also referenced General Statutes § 9-366 in the Complaint, however, given the evidence in this case, any allegation that § 9-366 was violated is without merit. Section 9-366 concerns inducing voters to place distinguishing marks on their ballots to indicate to another how such elector voted and inducing electors to do anything with a view to enabling another person to see or know how that elector voted. None of those facts were alleged or presented here.
13. Finally, the Complainant alleges that the altered "sample ballots" did not have any attribution identifying who paid for them.
14. General Statutes § 9-621 (a) now provides in pertinent part as follows:

No individual shall make or incur any expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, and no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication, or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or solicits funds to benefit any political party or committee unless such communication bears upon its face (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its campaign treasurer; or (C) in the case of a party committee, the name of the committee, and (2) the words "approved by" and the following: (A) In the case of an individual making or incurring an expenditure with the cooperation of, at the request or suggestion of, or in consultation with any candidate, candidate committee or candidate's agent, the name of such individual; or (B) in the case of a candidate committee, the name of the candidate.

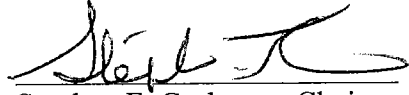
15. The evidence establishes and Respondent Alper admits that the Complainant is correct. As a consequence, the Commission strongly advises the Respondent to adhere to the requirements of that provision when distributing future written communications. The Commission declines however to take further action against the Respondent concerning this provision as the evidence establishes that the Respondent omitted an attribution in good faith and has not had any previous violations of that provision.

ORDER

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

That no further action be taken.

Adopted this 17th day of November, 2010 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read 'Stephen F. Cashman', written over a horizontal line.

Stephen F. Cashman, Chairperson
By Order of the Commission