

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Deborah Evangelista, West Haven

File No. 2010-039

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b and alleges facts giving rise to 7 cognizable allegations of violations of the election administration statutes by Respondent Michelle Hufcut, all stemming from a March 2, 2010 town committee primary held in the City of West Haven. After the investigation, the Commission makes the following findings and conclusions:

1. On March 2, 2010 a town committee primary was held in the City of West Haven.
2. The primary was contested, with full slates of candidates on both the endorsed and the challenge side.
3. At all times relevant to the instant Complaint, Respondent Michelle Hufcut was the Democratic Registrar of Voters in West Haven.

COUNTS ONE & TWO: Failure to Timely Inspect & Test Tabulators & Ballot Cards or to Notify the Candidates of the Testing Session

4. The Complainant alleges that Respondent Hufcut failed to timely test the voting tabulators and ballot cards. The Complainant further alleges that Respondent Hufcut was required to notice the candidates of such testing session, but failed to do so.
5. Section 9-242a-5 of the Regulations of Connecticut State Agencies provides, in relevant part:

Beginning as soon as ballots and ballot cards are available and not later than the tenth day before the election or primary, the registrars shall conduct ballot card testing of every programmed memory card with samples of each different ballot card printed for the election or primary. The purpose of the test is to ensure that (1) ballots are printed properly, (2) timing, diagnostic and card identification marks are correctly located on the ballot, (3) memory cards are programmed with accurate information, and (4) the voting tabulators tally ballots correctly. . . . (Emphasis added.)

6. General Statutes § 9-244 provides, in relevant part:

(a) *Such registrars of voters shall give written notice to the chairpersons of the town committees of the political parties of the day and place a mechanic or mechanics will begin the preparation, test voting and sealing of the machines for the election, including any additional machines required under section 9-238. Such notice shall be given at least one day before the work on the preparation of such machines begins.*

(b) Each such chairperson and any candidate for an office appearing on the ballot may be present, or may designate a watcher who may be present, during the preparation of such machines, but such chairpersons, candidates and watchers shall not interfere with, or assist in, the preparation of the machines. . . . (Emphasis added.)

7. During the instant investigation and the investigation of *Complaint of Beth Denton, West Haven*, File No. 2009-087, Respondent Hufcut admitted that she conducted a testing session 7 days prior to the primary. She also admitted that she did not send notice to any specific candidate of the testing session, but she did assert that she sent written notice to the chairpersons of the respective political slate committees supporting the endorsed and challenge slate of candidates.
8. As an initial matter, the Registrar of Voters is not required to notice candidates in a primary of the date and time of the testing session. General Statutes § 9-244 required Respondent to notice only the chairperson of the town committee, but not the candidates. No allegation has been made, or evidence presented of a failure to comply with § 9-244. Count Two is dismissed.
9. Turning to Count One, the Commission concludes that this issue was addressed by the Commission in File No. 2009-087, which dealt with the same allegation against the Respondent concerning a party primary that occurred on September 15, 2009, six months prior to the events here. That matter was resolved by an agreement between the Commission and Ms. Hufcut in which she agreed to henceforth abide by General Statutes § 9-244 and Section 9-242a-5 of the Regulations of Connecticut State Agencies. Since File No. 2009-087 was decided during the pendency of the instant matter and since the issue in Count One is the same as alleged in Count Two of File No. 2009-087, the Commission concludes that it sufficiently moots and resolves the issues against the Respondent here. The Commission will take no further action as to Count One.

COUNTS THREE & FOUR: Failure to Have Supplementary Voter List at Polls; Failure to Provide Campaigns with Supplementary Voter List

10. The Complainant alleges that Respondent Hufcut failed to supply supplementary voter lists, in violation of General Statutes § 9-55. She elaborated that the candidate/"unofficial" checkers for the slate purportedly supported by the Respondent were given a voter list date-stamped March 2, 2010 (the date of the primary) while the candidate/"unofficial" checkers for the slate allegedly opposed by the Respondent were given a voter list date-stamped February 23, 2010.

11. General Statutes § 9-55 provides, in relevant part:

(a) The registrars shall cause to be printed at least once during the calendar year a sufficient number of copies of complete, corrected enrollment lists certified by them as correct, provided a supplementary or updated list shall be printed within one week after a session held on the fourteenth day before a primary.

...

(d) Whenever a list is required by this section to be printed within one week after the session held on the fourteenth day before the primary, a supplement to such list shall be compiled by the registrars of persons who after such date and prior to twelve o'clock noon of the last business day before the primary become eligible to vote in such primary. *The registrars may combine such separate compilation with the foregoing printed list either by inserting the names in writing or by reprinting the list incorporating the supplementary or updated list into a single printed list.*

(e) The registrars shall file one copy of each such list with the town clerk which copy shall be available for public use in the office of the town clerk until the printing of the next completed, corrected enrollment list; and *they shall deliver to the chairman of the town committee of each political party five copies of each such list for each voting district in the town. Upon request the registrars shall give one complete set of such lists to each candidate for nomination for any office or for election as a town committee member.* They shall deliver a sufficient number of copies thereof to the moderator of each primary. With each printing the registrars shall retain at least six copies of each such list and such copies shall be available for public use in the office of the registrars until the printing of the next

complete, corrected enrollment list. No petition brought under the provisions of section 9-63 shall operate to delay the completion and printing of such lists. If the petition of any elector is granted after any such list has been completed, the registrar or assistant registrar shall issue to such elector a certificate showing that the elector is entitled to the privileges accompanying enrollment in the political party named in the elector's petition. . . . (Emphasis added.)

12. Respondent generally denies that the slates were treated unequally or received different information. She asserts that for the March primary she did the same thing as she did in the September 2009 primary addressed in File No. 2009-087: instead of using the printed supplements required by § 9-55 (d) along with the original list required by § 9-55 (a), she would print the entire combined list over after the registration deadline had passed and hand-write late-added supplemental voters. That original list, with hand-written additions as necessary, was the list that was available at the polls to all checkers. Moreover, the Respondent asserts, as she did in 2009-087, that multiple copies of this full list were available at the Town Clerk's Office for the campaigns to pick up if they wanted.
13. As an initial matter, the Commission concludes that the evidence is insufficient to show that the Respondents failed to supply a voter list to the polling places that included all of the eligible voters on that day. The Registrars are permitted to reprint the entire list in lieu of adding supplements. No evidence has been presented that they failed to do this. Count Three is dismissed.
14. Concerning the allegation that the Respondents failed to provide the campaigns with a supplementary list, the Commission concludes that there is no affirmative duty to do so. Rather, General Statutes § 9-55 (e) requires that “[u]pon request the registrars shall give one complete set of [the original and supplementary] lists to each candidate for nomination for any office or for election as a town committee member.” (Emphasis added.) No evidence has been presented that upon request, the Respondents failed to give such lists to any candidate for any office in the March 2, 2010 primary. Count Four is dismissed.

COUNT FIVE & SIX: Failure to Timely Notice Candidates of Right to Submit Lists of Polling Place Workers; Failure to Evenly Divide Polling Place Workers

15. The Complainant alleges that Respondent failed to timely send the candidates the notice required in General Statutes § 436 (e) (Rev. to May 24, 2011) and failed to “equally divide” representation of polling place workers.

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

(e) . . . 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. . . .(Emphasis added.)

17. As concerns Count Five, the Commission concludes that as an initial matter, the evidence presented by the Complainant in the Complaint establishes that notice was given to her by the Respondent of her rights under General Statutes § 9-436 (e). Respondent sent out a generic notice letter to the Complainant dated February 16, 2010 advising her that she had until February 19, 2010 to submit a list of primary day officials for the town committee primary.
18. The only question here was whether notice was timely. Here, the notice is dated 2/16/10. The deadline was 2/19/10. While the window given by the Respondent was tight, there is no timing requirement written into the statute. While the Commission may reasonably presume that notice must come prior to the deadline, the statute does not establish how far prior to the deadline. For this reason and also because the Complainant should have been on constructive notice of her own rights in this instance, the Commission dismisses Count Five.
19. Additionally, the investigation revealed insufficient evidence to support the allegation that the polling place workers were not divided evenly “as nearly as may be.” Accordingly, Count Six is dismissed.

COUNT SEVEN: Failure to Notify Challengers of Supervised Absentee Balloting and Failure to Include Challengers in Supervised Absentee Balloting

20. The Complainant alleges that the challenge slate of candidates was “never informed of the balloting in the Nursing Homes and had no representative to observe.”

21. General Statutes § 9-159q, provides, in relevant part:

(a) As used in this section:

(1) "Institution" means a veterans' health care facility, residential care home, health care facility for the handicapped, nursing home, rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility; and

(2) "Designee" means an elector of the same town and political party as the appointing registrar of voters which elector is not an employee of the institution at which supervised voting is conducted.

(b) Notwithstanding any provision of the general statutes to the contrary, if less than twenty of the patients in any institution in the state are electors, absentee ballots voted by such electors shall, upon request of either registrar of voters in the town of such electors' voting residence or the administrator of such institution, be voted under the supervision of such registrars of voters or their designees in accordance with the provisions of this section. The registrars of voters of a town other than the town in which an institution is located may refuse a request by the administrator of such institution when, in their written opinion, the registrars agree that such request is unnecessary, in which case this section shall not apply. Such registrars shall inform the administrator and the town clerk of the electors' town of voting residence of their refusal.

...

(g) The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a. *If any elector asks for assistance in voting*

his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope "rejected" and note the reasons for rejection. Nothing in this section shall limit the right of an elector to vote his ballot in secret.

...

(i) When an institution is located in a town having a primary, the registrar in that town of the party holding the primary shall appoint for each such institution, *one designee of the party-endorsed candidates and one designee of the contestants from the lists, if any, submitted by the party-endorsed candidates and contestants.* Such registrar shall notify all party-endorsed candidates and all contestants of their right to submit a list of potential designees under this section. Each party-endorsed candidate and each contestant may submit to such registrar in writing a list of names of potential designees, provided any such list shall be submitted not later than ten days before the primary. If no such lists are submitted within said period, such registrar shall appoint one designee of the party-endorsed candidates and one designee of the contestants. Each designee appointed pursuant to this section shall be sworn to the faithful performance of his duties, and the registrar shall file a certificate of each designation with his town clerk.

(j) Any registrar of voters who has filed a request that the absentee balloting at an institution be supervised and any registrar required to conduct a supervision of voting under this section, who neglects to perform any of the duties required of him by this section so as to cause any elector to lose his vote shall be guilty of a class A misdemeanor. Any registrar from the same town as a registrar who has filed such a request may waive his right to participate in the supervision of absentee balloting.

... (Emphasis added.)

22. Here, the Complainant presented no evidence in support of either of her claims. Moreover, the notice referenced above in Counts Five & Six suffices as notice under § 9-159q as well. The notice, dated February 16, 2010, generically advised the Complainant that she had until

February 19, 2010 to submit a list of primary day officials for the town committee primary. This notice was timely both under General Statutes § 9-436 (e) above, as well as General Statutes § 9-159q, here. While the Respondent's notice letter could have been more specific, there is no statutory requirement to enumerate the specific primary officials and/or events for which the notice is directed.


23. Moreover, Complainant's claim that somehow the Respondent was the proximate cause of the challenge slate's failure to submit a list of designees is unsupported by the facts and the law. The slate was on constructive notice of the specific officials for whom they had rights to submit a list of designees. While registrars of voters are required to send notice under §§ 9-436 (e) and 9-159q (i), the candidates and contestants have a responsibility to know and exercise their statutory rights in this instance. Furthermore, the challenge slate in this instance was the West Haven mayor's own slate of candidates in what has been historically a very politically active municipality; they cannot here plausibly claim ignorance of the law and/or that the Respondent was the proximate cause of any failure on their part to submit lists of names under these statutes.
24. Considering the aforesaid, Commission dismisses Count Seven.

ORDER

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

- 1) Count One: No further action.
- 2) Counts Two through Seven: Dismissed.

Adopted this 15th day of May, 2013 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission