

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Edward Cook, Essex

File No. 2010-073

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged and presented evidence that Respondents Richard Murray, Neill Bovaird, Kelly Way, Nancy Pilon, Janelle Rooks, M. Samantha Geiger, Amy Bovaird, Peter Nygard, Shannon Nygard, and Angela Harwood were residents of the Town of Deep River, but registered in the Town of Essex and in some cases cast ballots in Essex in violation of General Statutes §§ 9-7b (a) (2) (C), 9-20, 9-170 & 9-172.

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

1. On or about June 28, 2001 Respondent Richard Murray registered to vote in Essex and submitted in his sworn registration statement that 253 Bushy Hill Road was his bona fide residence. There is evidence that Respondent Murray cast a ballot in Essex on November 4, 2007 using this registration prior to April 14, 2008, when he was removed after submitting written notice of his moving out of town.
2. On or about August 26, 2004 Respondent Neill Bovaird registered to vote in Essex and submitted in his sworn registration statement that 253 Bushy Hill Road was his bona fide residence. There has been no evidence found that Respondent Bovaird cast any ballots in Essex between the time he registered to vote at the above address and September 17, 2009, when he was taken off the voter rolls after moving to out of state.
3. On or about October 18, 2004 Respondent Kelly Way registered to vote in Essex and submitted in her sworn registration statement that 253 Bushy Hill Road was her bona fide residence. There is evidence that prior to November 12, 2009, when her registration was removed from the Essex voter rolls, Respondent Kelly Way cast ballots in Essex on February 5, 2008, November 4, 2008, and November 3, 2009 using this registration.
4. On or about October 16, 2004 Respondent Nancy Pilon registered to vote in Essex and submitted in her sworn registration statement that 253 Bushy Hill Road was her bona fide residence. There is evidence that prior to November 12, 2009, when her registration was removed from the Essex voter rolls, Respondent Pilon cast a ballot in Essex on November 4, 2008 using this registration.
5. On or about October 26, 2004 Respondent Janelle Rooks registered to vote in Essex and submitted in her sworn registration statement that 253 Bushy Hill Road was her bona fide residence. There has been no evidence found that Respondent Rooks cast any ballots in Essex between the time she registered to vote at the above address and September 29, 2009, when she was taken off the voter rolls.

6. On or about November 5, 2004 Respondent M. Samantha Geiger registered to vote in Essex and submitted in her sworn registration statement that 253 Bushy Hill Road was her bona fide residence. There has been no evidence found that Respondent Geiger cast any ballots in Essex between the time she registered to vote at the above address and March, 13, 2009, when her registration was removed from the Essex voter rolls after she moved out of state.
7. On or about July 18, 2006 Respondent Amy Bovaird registered to vote in Essex and submitted in her sworn registration statement that 253 Bushy Hill Road was her bona fide residence. There has been no evidence found that Respondent Bovaird cast any ballots in Essex between the time she registered to vote at the above address and October 21, 2009, when her registration was removed from the Essex voter rolls after she moved out of state.
8. On or about September 24, 2008 Respondents Peter and Shannon Nygard registered to vote in Essex and submitted in their sworn registration statements that 191 Bushy Hill Road was their bona fide residence. There is evidence that prior to June 2, 2010, when their registrations were removed from the Essex voter rolls, these Respondents each cast a ballot in Essex on November 4, 2008 using these registrations.
9. On or about December 13, 2008 Respondent Angela Harwood registered to vote in Essex and submitted in her sworn registration statement that 253 Bushy Hill Road was her bona fide residence. There has been no evidence found that Respondent Harwood cast any ballots in Essex between the time she registered to vote at the above address and November 12, 2009, when she was taken off the voter rolls.
10. Complainant alleges that all of the above Respondents registered to vote at addresses that are not located in the Town of Essex, but rather are located in the Town of Deep River.
11. An elector is eligible to vote in a particular town only if such voter is a bona fide resident of such town. General Statutes § 9-12, provides in pertinent part:

(a) Each citizen of the United States who has attained the age of eighteen years, *and who is a bona fide resident of the town to which the citizen applies for admission as an elector* shall, on approval by the registrars of voters or town clerk of the town of residence of such citizen, as prescribed by law, be an elector, except as provided in subsection (b) of this section. For purposes of this section a person shall be deemed to have attained the age of eighteen years on the day of the person's eighteenth birthday and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector *if such person's dwelling unit is located within the geographic boundaries of such town.* No mentally incompetent person shall be admitted as an elector. (Emphasis added.)

12. When registering to vote, an elector must declare under penalty of perjury, his bona fide residence on a form prescribed by the Secretary of the State. General Statutes § 9-20, provides in pertinent part:

(a) Each person who applies for admission as an elector in person to an admitting official shall, upon a form prescribed by the Secretary of the State and signed by the applicant, state under penalties of perjury, his name, bona fide residence by street and number, date of birth, whether he is a United States citizen, whether his privileges as an elector are forfeited by reason of conviction of crime, and whether he has previously been admitted as an elector in any town in this or any other state. Each such applicant shall present his birth certificate, drivers' license or Social Security card to the admitting official for inspection at the time of application. Notwithstanding the provisions of any special act or charter to the contrary, the application form shall also, in a manner prescribed by the Secretary of the State, provide for application for enrollment in any political party, including, on any such form printed on or after January 1, 2006, a list of the names of the major parties, as defined in section 9-372, as options for the applicant. The form shall indicate that such enrollment is not mandatory. (Emphasis added.)

13. General Statutes § 9-170, provides in pertinent part:

At any regular or special town election any person may vote who is registered as an elector on the revised registry list of the town last completed and he shall vote only in the district in which he is so registered, provided any person may vote whose name is restored to the list under the provisions of section 9-42 or whose name is added on the last week day before a regular election under the provisions of section 9-17. Each person so registered shall be permitted to vote unless he is not a bona fide resident of the town and political subdivision holding the election or has been convicted of a disfranchising crime. Any person offering to vote and being challenged as to his identity or residence shall, before he votes, prove his identity with the person on whose name he offers to vote or his bona fide residence in the town and political subdivision holding the election, as the case may be, by the testimony, under oath, of at least one other elector or by such other evidence acceptable to the moderator. (Emphasis added.)

14. General Statutes § 9-172, provides in pertinent part:

At any regular or special state election any person may vote who was registered on the last-completed revised registry list of the town in which he offers to vote, and he shall vote in the district in which he was so registered; provided those persons may vote whose names are restored to the list under the provisions of section 9-42 or whose names are added on the last weekday before a regular election under the provisions of section 9-17. Each person so registered shall be permitted to vote if he is a bona fide resident of the town and political subdivision holding the election and has not lost his right by conviction of a disfranchising crime. Any person offering so to vote and being challenged as to his identity or residence shall, before he votes, prove his identity with the person on whose name he offers to vote or his bona fide residence in the town and political subdivision holding the election, as the case may be, by the testimony, under oath, of at least one other elector or by such other evidence as is acceptable to the moderator. (Emphasis added.)

15. Any person who votes in any election when not qualified to do so, faces both civil and criminal liability. General Statutes § 9-7b, provides in pertinent part:

(a) The State Elections Enforcement Commission shall have the following duties and powers:

...

(2) To levy a civil penalty not to exceed . . . (C) two thousand dollars per offense against any person the commission finds to have (i) improperly voted in any election, primary or referendum, and (ii) not been legally qualified to vote in such election, primary or referendum,

...

16. General Statutes § 9-358, provides in pertinent part:

Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms, before any registrar of voters, any moderator of any election, primary or referendum, any board for admission of electors or the State Elections Enforcement Commission, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election, primary or referendum is being passed upon and decided, shall be guilty of a class D felony and shall be disfranchised.

17. General Statutes § 9-360, provides in pertinent part:

Any person not legally qualified who fraudulently votes in any town meeting, primary, election or referendum in which the person is not qualified to vote, and any legally qualified person who, at such meeting, primary, election or referendum, fraudulently votes more than once at the same meeting, primary, election or referendum, 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 election, primary, referendum or town meeting by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised.

18. In order to establish liability in the present case, the Respondents must not have been qualified to register and/or vote at the above addresses in Essex at the time that they submitted their voter registration forms and/or at the times that they cast ballots using that registered address. As noted above, General Statutes § 9-12 sets forth elector qualifications. In the present case, no one contests that the Respondents were citizens of the United States and had attained the age of eighteen years at the time they registered to vote and/or voted. Moreover, no allegation has been made, and no evidence has been found, that the Respondents voted, or tried to vote, in any other place on the dates in question. As such, the question to answer here is only whether the Respondents were “bona fide residents” at the address in Essex at the time.
19. According to the Commission, an individual’s bona fide residence is the place where that individual maintains a true, fixed, and principal home to which he or she, whenever transiently relocated, has a genuine intent to return. *See, e.g., Complaint of Gary Amato, North Haven*, File No. 2009-158 (2010); *Complaint of Cicero Booker, Waterbury*, File No. 2007-157. In other words, “bona fide residence” is generally synonymous with domicile. *Id.*; *cf. Hackett v. The City of New Haven*, 103 Conn. 157 (1925). The Commission has concluded, however, that “[t]he traditional rigid notion of ‘domicile’ has . . . given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, and individuals with multiple dwellings).” (Emphasis added.) *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (Emphasis added.). *See also Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir. 2002) (stating that under certain circumstances the domicile rule for voting residency can give rise to administrative difficulties which has led to a pragmatic application of that rule in New York); *Sims v. Vernon*, Superior Court, Fairfield County, No. 168024 (Dec. 22, 1977) (concluding that an absentee ballot of an individual should be counted as that individual was a bona fide resident of the town in which the ballot was cast.); *Farley v. Louzitis*, Superior Court, New London County, No. 41032 (Oct. 4, 1972) (considering issue of voter residency with respect to college students and stating that “a student, and a nonstudent as well, who satisfies the . . . residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting

interests at the residence he selects exceed his voting interests elsewhere.”) (Emphasis added.)

20. The Commission has previously concluded that “[a]n individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual’s bona fide residence. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047. Rather, the individual only has to possess a present intention to remain at that residence. *Id*; see also *Maksym v. Board of Election Com'rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (January 27, 2011), 2011 WL 242421 at *8 (“[O]nce residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. . . .”)
21. After investigation, the Commission finds that both 191 and 253 Bushy Hill Road are addresses located in the Town of Deep River. Portions of Bushy Hill Road do run through Essex, but the Essex Assessor’s Office, as well as the Essex online Geographical Information System data confirm that the last addresses on Bushy Hill Road in Essex are numbers 99 and 110 and that while 191 and 253 are very near the border of Essex, they are located within the Town of Deep River.
22. The Commission concludes that at all times relevant to the instant Complaint, the Respondents were not bona fide residents at 191 and 253 Bushy Hill Road, Essex, as such addresses do not exist in that town.
23. During all times relevant to this Complaint, each of the Respondents here were employees of the “Incarnation Center, Inc.,” a corporation that owns large tracts of land in the Essex/Deep River area, including but not limited to approximately 765 contiguous acres spanning Deep River and Ivoryton, a village of Essex. Incarnation Center, Inc. utilizes this land for certain activities, including but not limited to the Incarnation Conference Center, the Incarnation Camp, and the Bushy Hill Nature Center. The Internet website for Incarnation Center, Inc. indicates that the Incarnation Camp was established in 1886 and asserts that it is “America's oldest co-ed camp.”
24. The Respondents here lived and worked at the Incarnation Camp, which is spread out across the property.
25. The instant investigation revealed that of the approximately 765 contiguous acres in Essex and Deep River, 728 acres are located in Deep River and are spread over multiple plots; the remaining 37 acres are spread over 4 separate, non-continuous plots located in Ivoryton/Essex.
26. The plots located in Ivoryton are largely undeveloped and contain no habitable man-made structures. There are numerous man-made structures on the Deep River side of the property, including but not limited to housing for campers and employees of the camp. During all times relevant to the instant matter, the Respondents all lived in housing on the Incarnation Camp premises located in Deep River.

27. When an elector resides on a property located in multiple towns and/or districts, the location of that elector's dwelling unit controls that elector's bona fide residence. See General Statutes § 9-12 (a), *supra*.
28. Accordingly, the Commission concludes that all Respondents violated General Statutes § 9-20 by registering to vote at 191 and 253 Bushy Hill Road, Ivoryton as none of the Respondents were bona fide residents at those addresses or anywhere else in the Town of Essex.
29. The Commission further concludes that Respondent Richard Murray violated General Statutes §§ 9-7b (a) (2) (C) & 9-170 on November 4, 2007 by improperly voting in this election when not being legally qualified to do so.
30. The Commission further concludes that Respondent Kelly Way violated General Statutes §§ 9-7b (a) (2) (C), 9-170 & 9-172 on February 5, 2008, November 4, 2008, and November 3, 2009 by improperly voting in those elections when not being legally qualified to do so.
31. The Commission further concludes that Respondent Nancy Pilon violated General Statutes §§ 9-7b (a) (2) (C) & 9-172 on November 4, 2008, by improperly voting in that election when not being legally qualified to do so.
32. The Commission further concludes that Respondents Peter and Shannon Nygard violated General Statutes §§ 9-7b (a) (2) (C) & 9-172 on November 4, 2008, by improperly voting in that election when not being legally qualified to do so.
33. However, additional facts are present that the Commission considers mitigating for all of the above Respondents in this instance.
34. The Respondents here assert that they had a reasonable understanding and belief at all times that the Incarnation Center at which they were residing was located in the Town of Essex; they assert that they did not realize that the dwelling units in which they were residing are located in the town of Deep River.
35. The Respondents' assertion that they had a reasonable belief that they were residing in the Ivoryton Village of the Town of Essex has merit. The investigation revealed that the official address of Incarnation Center, Inc. and its subsidiary units is a P.O. Box in Ivoryton. The corporation is registered with the state at the Ivoryton P.O. Box. The website for each of the subsidiary units, including the camp, incorrectly advertises that the physical location of the property is 253 Bushy Hill Road in *Ivoryton*. The Respondents assert that when they started their employment at the Incarnation Center they were all told by the management of the facility that the mailing address was the P.O. Box in Ivoryton and the delivery address for the property was Bushy Hill Road in Ivoryton.
36. With the reasonable belief that Incarnation Camp was in Essex, some of the Respondents registered the incorrect Essex addresses with the Department of Motor Vehicles and paid property taxes to that town, in some cases for many years. Some used Connecticut drivers' licenses with the Essex addresses as their proof of residence when registering to vote. The Complainant submitted evidence that at least one of the

Respondents, Mr. Murray, served on a volunteer board in Essex before moving out of state. The Commission found further evidence that an Incarnation Camp employee, Alice Smee, had even enrolled her son in the Essex school system under the mistaken belief that she was a resident of the town. Ms. Smee asserted that an Essex school system a bus would pick up and drop off her child at the entrance to the Incarnation Camp every school day.

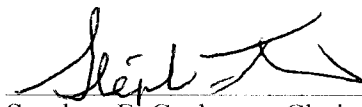
37. Considering the aforesaid, the Commission will not levy a civil penalty against the Respondents in this matter. As the Respondents have all been removed from the Essex voter rolls, the Commission will take no further action in the matter concerning these Respondents.
38. However, the Commission notes that had the Registrars of Voters in Essex been more diligent, this matter could have been avoided in the first place. While the evidence appears to show that all of the above Respondents who registered in person used official documents that included the incorrect addresses, the Registrars should have been cognizant of the range of addresses within their own jurisdiction and should have checked each registration against those ranges to assure that the address was true, *prior* to approving the registration. Had the Registrars done their due diligence in the matter, the Respondents' inadvertent violations could have been prevented at the time that they submitted their applications.

ORDER

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

- 1) That no further action in the matter be taken.

Adopted this 22nd day of June, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission