

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Susan A. Koneff, et al, Monroe

File No. 2010-141

FINDINGS AND CONCLUSIONS

The Complainants, Susan A. Koneff & Jeanette K. Benson, respectively the Democratic and Republican Registrars of Voters in the Town of Monroe, brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that Respondent, Andrew Beers was not a bona fide resident in Monroe when he cast a ballot there on Election Day November 2, 2010 in violation of General Statutes §§ 9-7b (a)(2)(C), 9-42 & 9-172.

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

1. Complainants here allege that on Election Day, November 2, 2010, the Respondent had been moved to the "inactive" voter list pursuant to General Statutes § 9-35 as of March 25, 2010 because he had failed to respond to a canvass letter sent to his registered address the month prior and he had not cast a ballot since November 4, 2008.
2. Complainants allege that on October 23, 2010 the Monroe Registrar of Voters office received a fax from Fairfield Republican Registrar of Voters Roger V. Autouri indicating that the Respondent had called inquiring about voting in Fairfield, but that Mr. Autouri "did not have him on the list." The fax indicated that Mr. Autouri looked up the Respondent and found the aforementioned inactive registration in Monroe and that the Respondent told him that he could "find some documentation for Monroe and try to vote there." The fax ended with the warning "Beware."
3. According to the Complainants, they acquired information prior to November 2, 2010 that the Monroe property at which the Respondent was still registered was owned by a woman with a last name differing from the Respondent.
4. The Complainants allege that when the Respondent presented himself to vote at his polling place in Monroe on November 2, 2010, he presented an envelope addressed to him at the Monroe address. They allege that they informed him of the information that they found regarding the property and that he told him that he lived there. After this exchange, the Respondent was restored to the active registry list and voted after swearing to and submitting a "Restoration of Voter" form pursuant to General Statutes § 9-42.
5. After the aforementioned events, the Respondents allege that they contacted the property at which Respondent was registered and asked if he lived there. They allege that they were told that the Respondent's brother lived at the property, but that the Respondent did not. Subsequently, they allege that they found evidence in the Monroe Tax Collector's office that the Respondent had moved to Fairfield prior to the November 2, 2010 general election.

6. The Respondent generally denies the Complainants' allegations as plead. He specifically asserts that the address at which he was registered in Monroe is owned by his son's mother; those two individuals live at that property full time and his son attends a school in the area. Until July 2010, and for at least five years prior to that date, the Respondent was on active duty in the armed forces, including but not limited to basic training and two tours of duty overseas. He asserts that his address of record during that time was the property in Monroe. All correspondence was received at that property while he was on active duty. He would keep personal items, including but not limited to clothing and books, and would intermittently stay overnight at the property during his time home. After his latest tour finished in July 2010, he continued to frequent the home on the weekends to spend time with his son.
7. In support of his claim of bona fide residence in Monroe the Respondent submitted a copy of his 2010 Army W-2 listing the Monroe address as his address of record. He also submitted a statement from the owner of the Monroe property, the mother of the Respondent's son, corroborating that the Monroe property was the Respondent's weekend abode and his residence of record since at least 2006 while he was in the military.
8. Finally, Respondent further asserts that it was only upon Mr. Autouri's advice that he went to vote in Monroe on November 2, 2010. In August 2010, approximately one month after he returned from active duty, he purchased a residential property for himself in Fairfield. He asserts that on or before October 23, 2010 he called the Fairfield Registrar of Voters office and asked Mr. Autouri whether there was still time to register to vote in Fairfield for the upcoming general election on November 2, 2010. Respondent asserts that Mr. Autouri told him that he missed the deadline to register to vote in Fairfield by one day, but because his name appeared as a voter in Monroe he could vote there if he could produce a piece of mail for that address. The Respondent claims that but for Mr. Autouri's advice, he would not have voted in Monroe.
9. Turning to the question of the Respondent's eligibility as a voter in Monroe, 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. . . . (Emphasis added.)[Emphasis added.]

10. 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.]

11. If a registered voter's name appears on the inactive list, such voter may be restored to active status and cast a ballot if such voter affirms that s/he is a bona fide resident of the address to which such voter seeks restoration. General Statutes § 9-42 reads, in pertinent part:

(c) The registrars of voters shall cause the inactive registry list compiled under section 9-35 to be completed and printed and deposited in the town clerk's office and shall provide a sufficient number of copies for use in the polling place on election day. If on election day the name of an elector appears on such inactive registry list, including the name of an elector who has not responded to a confirmation of voting residence notice under subsection (e) of section 9-35 and has not voted in two consecutive federal elections, such name shall be added to the active registry list upon written affirmation signed by the elector, under penalties of false statement, before an election official at the polling place, that *such elector is still a bona fide resident of such town*, and upon the consent of both registrars or assistant registrars, as the case may be, in the polls.

(d) The name of no elector shall be added to the active registry list under the provisions of this section, unless his name or some name intended for his name was on the active registry list for at least one of the four years previous or on one of the preliminary active registry lists for the year in which the registrars are in session. [Emphasis added.]

12. 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, . . . [Emphasis added.]

13. 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. [Emphasis added.]

14. 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. [Emphasis added.]

15. In order to establish liability in the present case, Respondent must not have been qualified to vote in Monroe on November 2, 2010. As noted above, General Statutes § 9-12 sets forth elector qualifications. In the present case, no one contests that the Respondent was a citizen of the United States and had attained the age of eighteen years at the time he restored his registration and voted. Moreover, no allegation has been made, and no evidence has been found, that the Respondent voted in any other place on the date in question. As such, the question to answer here is whether

Respondent was a “bona fide resident” of Monroe on the day that he restored himself to the rolls and cast a ballot in the general election.

16. 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.).
17. 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. . . .”)
18. As such, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent. *Id., see also Wit*, 306 F.3d at 1262 (quoting *People v. O’Hara*, 96 N.Y.2d 378, 385 (2001) for this principle.)
19. Thus, the initial issues in the present matter are whether 1) the Respondent truly resided at the home in Monroe when he voted in that town on November 2, 2010 and, if so, 2) whether he had legitimate, significant, and continuing attachments to that home.

20. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case. Here, the Respondent maintains that he was a bona fide resident of the town of Monroe at all times relevant to the instant complaint. The Monroe property was his residence of record during the time that he served in the military from at least 2006 until approximately July 2010. He asserts that he spends a great deal of time at the property and maintains a legitimate, significant, and continuing attachment to that home, namely his son whom he sees at the property every weekend—a schedule that he continues even after his purchase of the property in Fairfield. Further, the Respondent submitted evidence and statements corroborating his claim of bona fide residence at the Monroe property.
21. Based on the statements and evidence presented by the parties in this matter, the Commission concludes that there is insufficient evidence to support a claim that the Respondent was not a bona fide resident of the Town of Monroe at the time he presented himself to vote on November 2, 2010. The Respondent spent a significant amount of time in the Monroe home prior to that date and maintained legitimate, significant, and continuing attachments thereto. There has been no compelling evidence found to show that the Respondent had abandoned his access and attachments to the property such that he should have lost his privilege to choose to be an elector in the Town of Monroe. Accordingly, the matter should be dismissed.
22. Because the Commission finds that there is insufficient evidence to support a claim that the Respondent was not a bona fide resident of the Town of Monroe at the time he cast his ballot, it need not address the Respondent's claim that the Fairfield Republican Registrar of Voters incorrectly informed the Respondent that the deadline to register to vote in time to cast a ballot in the November 2, 2010 general election had passed on October 22, 2010. However, the Commission notes that if the Respondent had acquired a legitimate claim to bona fide residence in Fairfield, because he was a member of the armed forces he would have been eligible to vote in the general election, even if he had registered as late as 5pm on November 1, 2010. *See* General Statutes § 9-25.
23. Moreover, even if the Respondent was *not* a member of the armed forces, the deadline to register in time to vote in the November 2, 2010 general election was no earlier than October 26, 2010. *See* General Statutes § 9-17 (a). Indeed, any individual who became a bona fide resident between October 26, 2010 and November 1, 2010 could have registered to vote in person *up to November 1, 2010* and still would have been eligible to cast a ballot in the general election. General Statutes § 9-17 (b).

ORDER

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

That the matter be dismissed.

Adopted this 16th day of March, 2011 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