

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Ralph Arena, Hartford

File No. 2012-030

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that Respondent Jose Contreras lacked bona fide residence in the City of Hartford and misrepresented his residency on a petition page in violation of General Statutes §§ 9-410 & 9-8.

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

1. On or about November 15, 2002 the Respondent registered to vote at an address on Preston St. in Hartford and submitted in his sworn registration statement that such address was his bona fide residence.
2. Complainant alleges that Respondent circulated petition pages during the March 2012 Democratic Town Committee Primary and on such pages he declared under the penalties of false statement that he was a bona fide resident at the Hartford address.
3. Respondent cast ballots in 10 different elections or primaries using the Hartford registration from his registration until the present.
4. Complainant alleges that "From information derived from personal connections, this candidate is alleged to reside in Wethersfield at the Villages complex" not at the Preston St. address in Hartford.
5. In support of his claim, the Complainant included a short e-mail from an address search done on his behalf which appeared to indicate that the Respondent lived in Wethersfield from "1/2012 to 2/2012."
6. The Complainant also included a copy of the Respondent's Certificate of Marriage from his wedding on February 12, 2011. On such Certificate, the Respondent's address is listed as the Preston St. address in Hartford.

7. An elector is eligible to register and 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.)

8. 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.)

9. 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.

10. General Statutes § 9-171, provides in pertinent part:

In all cities, unless otherwise provided by law, any person entitled to vote at city elections who is registered on the revised registry list last completed, and any person having a legal right to vote at such elections whose name is entered on a copy of such list before voting, may vote therein in the district for which such registry list is made; 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 week day before a regular election under the provisions of section 9-17. Each person so registered shall be permitted to vote, unless he has lost his right by removal from such city since he has registered or 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 such city, 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. The names of those voting shall be checked on such copy of such list, and such copy so checked shall be kept on file in the office of the town clerk, as in the case of state elections.

11. 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.

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,

...

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.

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.

15. General Statutes § 9-410 states, inter alia, that an individual circulating a petition for a nomination to municipal office or a town committee must sign as to the authenticity of the information contained therein, including the circulator's address. It reads, in pertinent part:

(c) Each circulator of a primary petition page shall be an enrolled party member of a municipality in this state who is entitled to vote. . . . *Each separate sheet of such petition shall contain a statement as to the authenticity of the signatures thereon and the number of such signatures, and shall be signed under the penalties of false statement by the person who circulated the same, setting forth such circulator's address and the town in which such circulator is an enrolled party member* and attesting that each person whose name appears on such sheet signed the same in person in the presence of such circulator, that the circulator either knows each such signer or that the signer satisfactorily identified the signer to the circulator and that the spaces for candidates supported, offices or positions sought and the political party involved were filled in prior to the obtaining of the signatures. . . . (Emphasis added.)

16. In order to establish liability in the present case, the Respondent must not have been qualified to register and/or vote at the above address in Hartford at the time that he circulated the petition and/or at the times that he 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 Respondent was a citizen of the United States and had attained the age of eighteen years at the time he registered to vote, and/or voted. Moreover, no allegation has been made, and no evidence has been found, that the Respondent 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 Respondent was a "bona fide resident" at the Preston St. address in Hartford.
17. 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., In the Matter of a Complaint by Gary Amato, North Haven, File No. 2009-158 (2010); In the Matter of a Complaint by*

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.) *In the Matter of a Complaint by 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.)

18. 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. *In the Matter of a Complaint by 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. . . .”)
19. 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. *Cropsey*, File No. 2008-047; *see also Wit*, 306 F.3d at 1262 (quoting *People v. O’Hara*, 96 N.Y.2d 378, 385 (2001) for this principle.)
20. The Respondent here generally denies that he lacks bona fide residence in the City of Hartford. The Respondent submitted evidence that he is the owner of the property on Preston St., which he purchased from his father in 2005. He also produced multiple pieces of current mail, including current utility bills from the property. He included evidence that

he pays taxes in Hartford and is registered with the Internal Revenue Service at the Hartford address. He also pointed out that the 2011 marriage certificate included with the Complaint contains the Preston St. address in Hartford, not a Wethersfield address.

21. However, the Respondent does not deny that he maintains a residential interest to the property in Wethersfield. Rather, he asserts that he did not abandon his residential interest in Hartford.
22. After its own investigation, the Commission found multiple connections to the Preston property in Hartford. The Respondent is and has been the owner of the property since 2005, as claimed. Commission investigators were able to find at least two utilities at the property, cable television and telephone service, registered with the Respondent. The Respondent's tax returns are associated with the address. The Respondent had one vehicle registered at the Wethersfield address, but no other evidence was found linking the Respondent to any address other than the one on Preston St. in Hartford.
23. Based on the investigation in this matter, the Commission concludes that the evidence is insufficient to establish that the Respondent was not a bona fide resident at the Preston St. property in Hartford at the time that he signed the petition and at the time that he cast ballots at that address. No evidence has been presented by the Complainants or found during the instant investigation that can establish that Respondent had abandoned his claim to residence at the Hartford property. Moreover, while it is certainly relevant evidence that he does not deny an additional interest in Wethersfield, this fact alone did not extinguish his claim to bona fide residence in Hartford. Indeed, in the present matter, it serves only as evidence that the Respondent may have had a legitimate claim to bona fide residence in *both* Hartford and Wethersfield—rather than one or the other—in which case he would have had the option of choosing. In this instance, he chose to continue casting his ballot in Hartford.

ORDER

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

That the matter is dismissed.

Adopted this 19th day of June, 2013 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission