

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Christopher Komondy, Chester

File No. 2012-079

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Chester Republican Town Committee (“CRTC”) failed to notice a meeting of the CRTC to select nominees for the four-year Justice of the Peace (“JOP”) term starting January 2013. He further asserts that the CRTC untimely filed the certification of their nominees to Town Clerk Debra Germini Calamari. Finally, he asserts that the late filing of the certification resulted in the Town Clerk untimely filing notice of the certification and of the right to submit primary petitions.

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

1. The Complainant here was at all times relevant to the instant Complaint an incumbent Justice of the Peace in the Town of Chester nearing the end of his four-year term at the end of the calendar year.
2. The Complainant alleges that the CRTC failed to notice their meeting to pick JOP nominees to anyone, including sitting JOPs, registered Republicans and/or the general public via a newspaper advertisement. Attached to the complaint he includes a copy of a legal notice, contained in the June 21, 2012 edition of the Valley Courier. The notice indicates that petitioning candidates have until June 12, 2012—9 days *prior* to the date notice was published—to submit petition pages for municipal offices, including JOP. Because the notice was untimely, the Complainant alleges that he was unable to attempt to petition and force a primary for the nomination.

Count One: Failure to Publish Notice by the Chester Republican Town Committee

3. General Statutes § 9-391 reads, in pertinent part:

(a) Each endorsement of a candidate to run in a primary for the nomination of candidates for municipal office to be voted upon at a municipal election, or for the election of town committee members shall be made under the provisions of section 9-390 *not earlier than the fifty-sixth day or later than the forty-ninth day preceding the day of such primary*. The endorsement shall be certified to the clerk of the municipality by either (1) the chairman or presiding officer, or (2) the secretary of the town committee, caucus or

convention, as the case may be, not later than four o'clock p.m. on the forty-eighth day preceding the day of such primary. Such certification shall contain the name and street address of each person so endorsed, the title of the office or the position as committee member and the name or number of the political subdivision or district, if any, for which each such person is endorsed. If such a certificate of a party's endorsement is not received by the town clerk by such time, such certificate shall be invalid and such party, for purposes of sections 9-417, 9-418 and 9-419, shall be deemed to have neither made nor certified such endorsement of any candidate for such office. . . . (Emphasis added.)

4. General Statutes § 9-390 reads, in pertinent part:

(a) Except as provided in subsection (g) of this section, party-endorsed candidates of any party in any municipality for municipal office shall be selected, in accordance with the rules of such party, by: (1) The enrolled members of such party in such municipality in caucus, (2) delegates to a convention chosen in accordance with such rules by such enrolled members, or (3) the town committee of such party. The town chairman or his designee shall give notice in a newspaper having a general circulation in the town of the date, time, location and purpose of a caucus held pursuant to subdivision (1) of this subsection. Such notice shall be given not less than five days prior to the date set for the caucus; provided, if the rules of the party in any municipality require earlier notice, such party rules shall prevail. . . . (Emphasis added.)

5. Here, the Commission finds that the evidence shows that the CRTC, a town committee, chose the nominees by a vote of its members at a town committee meeting, not by a caucus of enrolled members of the Republican Party in Chester. As such, they were not required per General Statutes § 9-390 (a) to post any notice to members of the party or incumbents to the offices for which the nominations were made, or any other persons. As such, this allegation should be dismissed.
6. Moreover, the evidence here shows that the CRTC made its endorsement of Justice of the Peace candidates on May 24, 2012 and forwarded the list of candidates to the Respondent Town Clerk on June 7, 2012. Both dates were within the appropriate ranges enumerated in General Statutes § 9-391.

Count Two: Failure to Publish Notice by the Town Clerk

7. General Statutes § 9-395 reads:

(a) Forthwith upon the certification provided in section 9-391, the clerk of the municipality shall publish, in a newspaper having a general circulation in such municipality, the fact of such certification and that a list of the persons endorsed as candidates is on file in his office and copies thereof are available for public distribution. If, with respect to any office or position to be filled, the clerk of the municipality has failed to receive the certification of the name of any person as a party-endorsed candidate within the time limited in section 9-391, such fact shall be published by the clerk of the municipality. Together with such information, the clerk shall publish a notice that a primary will be held for the nomination by such political party of a candidate for the offices to be filled or for the election of members of the town committee, as the case may be, if a candidacy is filed in accordance with the provisions of sections 9-382 to 9-450, inclusive. Such notice shall specify the final date for the filing of such candidacy and the date of the primary, shall state where forms for petitions may be obtained and shall generally indicate the method of procedure in the filing of such candidacy. The Secretary of the State shall prescribe the form of such notice. The clerk shall forthwith publish any change in the party-endorsed candidates, listing such changes.

(b) In any year in which a state election is to be held, the notice described in subsection (a) of this section shall: (1) Be published not later than the seventy-sixth day preceding the day of the primary, (2) indicate that the certification provided in section 9-391 can be made, and (3) indicate that a list of persons endorsed as candidates will be on file in the clerk's office, as provided in subsection (a) of this section. The requirement contained in subsection (a) of this section to publish the fact that the clerk of the municipality has failed to receive the certification of the name of any person as a party-endorsed candidate within the time limit in section 9-391, shall not apply to the notice required by this subsection. . . . (Emphasis added).

8. General Statutes § 9-395 reads:

Except as otherwise provided, the following terms, as used in this title and sections 3-124, 7-5, 7-6, 7-7, 7-17, 7-20, 7-39, 7-157, 7-214, 7-275, 7-295, 7-343, 7-407, 8-1, 8-5, 8-19, 10-219, 11-36, 13a-11, 30-10, 30-11, 45a-18, 45a-19 and 51-95 shall have the following meanings:

...

(s) "State election" means the election held in the state on the first Tuesday after the first Monday in November in the even-numbered years in accordance with the provisions of the Constitution of Connecticut;
(Emphasis added.).

9. Here, the evidence shows that the Respondent Town Clerk did forthwith forward a notice over to the Valley Courier on the same day that it was received from the CRTC on June 7, 2012. It is the Town Clerk's assertion that it was her understanding that she was properly following General Statutes § 9-395.
10. However, since 2012 is a "state election" year, the notice requirements in General Statutes § 9-395 (b) applied. The Town Clerk here was following the prescriptions of subsection (a). Subsection (b) is different from subsection (a) insofar as it does not require that a town clerk receive any actual certification. It merely requires the clerk to publish notice that such certification *can be made* and if the certification is made, that it will be on file in such clerk's office.
11. Here, the Respondent Town Clerk had until no later than 67 days prior to the August 14th primary to publish the notice specifically enumerated in subsection (b) of the statute. She published the notice in this matter in the June 21, 2012 edition of the Valley Courier, which was approximately 22 days after the deadline. As such, the Commission concludes that Respondent Town Clerk did not meet the requirements of General Statutes § 9-395 (b).
12. However, the Commission takes notice that while the Town Clerk was not following the correct requirements, she was diligent in following the requirements that she believed to apply. Moreover, the Commission takes notice that the 2012 State Election Calendar—published by the Office of the Secretary of the State and heavily relied-upon by local election officials as a complete statement of their election administration deadlines—did not enumerate the particular notice requirements applicable here. The Secretary of the State corrected this omission by an e-mail to all town clerks on April 30, 2012 reminding them of their notice responsibilities under General Statutes § 9-395 (b). However, if the information had been in the 2012 State Election Calendar, the Commission believes that the likelihood of the Town Clerk's error would have been far less. Finally, the Commission takes notice that the Town Clerk has no previous history of a similar omission.
13. Ultimately the responsibility of knowing her duties lay with the Town Clerk, but in consideration of the aforesaid, the Commission concludes that it will take no further action on Count Two.

ORDER

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

Count One: That the Count is dismissed.

Count Two: That no further action is taken.

Adopted this 24th day of October, 2012 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