

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Thomas Appleby, Norwalk

File No. 2012-165

FINDINGS AND CONCLUSIONS

This Complaint was made pursuant to Connecticut General Statutes § 9-7b and alleges that members of the news media were unlawfully prevented from videotaping voters at the Saugatuck Elementary School polling place in Westport during the November 6, 2012 General Election.

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

1. The Complainant here is Thomas Appleby, who is the News Director and General Manager of News 12 Connecticut ("News 12").
2. The Complainant alleges that News 12 cameraman Ken Kienzle was removed from the Saugatuck Elementary School polling place by Respondent moderator Richard Lowenstein while attempting to shoot video of 4th District Congressional candidate Steve Obsitnik casting his ballot on Election Day.
3. He alleges that Mr. Kienzle entered the polling place, which was located in the school gym, with a video camera on his shoulder while candidate Obsitnik was going to vote. He asserts that the gym was set up in such a way that people walk into the room and down a lane to the checkers' table. On the right of the lane stood the moderator's table and to the left was a space of about 4 feet. Mr. Kienzle walked into the gym and stepped over the rope to the left of the lane so as to stay out the way of voters and capture a shot of Mr. Obsitnik walking up to the checkers' table. Complainant alleges that Mr. Kienzle was about 20-30 feet from the checkers' table and about 6 feet from the door and out of the way of anyone who would be entering the gym.
4. The Complainant alleges that the Respondent moderator approached Mr. Kienzle and told him that he was not allowed to be shooting video in a polling place. Mr. Kienzle asserted to the Respondent that he believed that he was allowed to do so as long as he did not interfere with voters attempting to enter the polling place and did not violate the secrecy of the ballot. Mr. Kienzle continued to film Mr. Obsitnik completing checking in, obtaining his ballot and entering the privacy booth. Respondent placed a call to the Westport Registrar of Voters' office and informed them that News 12 was there and that we were trying to film. Respondent asserts that after Mr. Obsitnik was done with his ballot and was moving to the tabulator Mr. Kienzle continued to film and tried to move slightly within the space to obtain

a better angle of Mr. Obsitnik inserting his ballot into the tabulator. However, the Respondent blocked his shot by intentionally standing in front of the camera. Mr. Kienzle attempted to move away from the Respondent and at that point the Respondent evicted him from the polling place.

5. The Complainant alleges that after being removed from the polling place, Mr. Kienzle returned to speak with the Respondent to determine precisely why he had been evicted from the polling place. The Respondent informed him that he was told by the Registrars of Voters that only still photography was permitted in the polling place and that he was within his right to evict Mr. Kienzle because he created disorder in the polling place by failing to follow his request to stop filming.

6. General Statutes § 9-236 (c) reads, in pertinent part:

(c) No person except those permitted or exempt under this section or section 9-236a and primary or election officials and party checkers appointed under section 9-235 shall be allowed within any polling place except for the purpose of casting his vote. *Representatives of the news media shall be allowed to enter, remain within and leave any polling place or restricted area surrounding any polling place to observe the election, provided any such representative who in any way interferes with the orderly process of voting shall be evicted by the moderator. . . . Any person who violates any provision of this section or, while the polls are open for voting, removes or injures any such distance marker, shall be fined not more than fifty dollars or imprisoned not more than three months, or both. (Emphasis added.)*

7. The Respondent does not generally dispute the Complainant's allegation that he removed Mr. Kienzle for filming in the polling place at which he was the moderator. He asserts that it was his understanding that only still photography was permitted in the polling place. He asserts that he was instructed by the registrars both before Election Day and over the telephone during the incident at issue here, that video photography was not permitted and that he was within his authority to make the eviction.

8. Both Westport Registrar of Voters Marla Cowden (D) and Robert Lasprogato (R) responded to the instant Complainant and concur with the Respondent's assertion that it was their advice about video photography that led to the Respondent's decision to prevent the Complainant's cameraman from filming and eventually evicting him.

9. However, the Registrars of Voters assert that their interpretation of news media exception in General Statutes § 9-236 (c) was developed from written advice of the Secretary of the State. Specifically, they note that their understanding was formed by the Secretary's

September 25, 2012 newsletter to registrars, Issue 66, which in a “Frequently Asked Questions” format read, as follows:

May the news media be allowed into the polls on the day of an election or primary?

Yes, the news media may be allowed to enter or leave the polling place on the day of an election or primary. *In addition, the media is allowed to take pictures inside the polling place.* However, they may be cautioned to avoid taking any picture that may display the votes cast on an elector’s ballot. Finally, anyone causing a disturbance in the polling place, including a member of the media, may be asked to leave by the moderator.

(Emphasis added.)

10. The registrars assert that they relied on this written advice when advising the Respondent. They felt that the advice very clearly demarcated a difference between still and video photography by utilizing the term “pictures.” However, they assert that on the afternoon of Election Day, but after the events in question, they received a telephone call from staff in the Secretary of the State Office informing them that it was permissible for members of the news media to capture video photography within the polling place. They assert that they subsequently reached out the Complainant here and apologized.
11. Turning to the issues in this matter, the Commission first notes that it has long interpreted General Statutes § 9-236 (c) to permit video photography within the polling place so long as such photography does not interfere with the orderly process of voting or violate the privacy of any voter’s ballot. *See e.g., Complaints of Thomas Appleby, Norwalk, File Nos. 2010-150 & 2007-414 and Complaint of S. Vigneri, Windham, File No. 1995-217.*
12. However, the Commission also recognizes the Secretary of State’s authority under General Statutes § 9-3, which reads:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54.

13. An authorized newsletter from the Secretary, like the one above, qualifies under § 9-3 as the written instructions of the Secretary. As such, it is incumbent upon an election official to presume that any interpretation therein of the laws pertaining to the administration of election laws contained therein is correct.
14. In consideration of the aforesaid, the Commission finds as an initial matter that notwithstanding any oral representations by the Secretary of the State's Office to the contrary, it would have been reasonable for an election official to presume that the Secretary's newsletter's use of the term "picture" both alone and in context meant that only still photography was permitted in the polling place.
15. Accordingly, the Commission concludes that the Respondent reasonably relied on the Secretary's September 25, 2012 newsletter in presuming that video recordings were not permitted in the polling place. This matter should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 20th day of March, 2013 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission