

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Carole Dmytryshak, Salisbury

File No. 2012-197

FINDINGS AND CONCLUSIONS

Complainant Carole Dmytryshak brings this complaint pursuant to General Statutes § 9-7b alleging that respondent Vivian Nasiatka, candidate for the 64th General Assembly district in the 2012 election, wrongly claimed that her residence was at 10 Upland Meadow Road, Salisbury, when she did not live there. Complainant alleged that the home at 10 Upland Meadow Road was not habitable and that Respondent and her family actually live in Niantic, Connecticut.

After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. Complainant alleged that Respondent's house at 10 Upland Meadow Road has been permitted for addition and renovation in October 2009 and remained under construction as of October 2012. Complainant further alleged that electric usage for the property was very low in 2012 and that the statements were actually sent to Respondent and her husband at a Niantic address. Complainant also claimed that Respondent and her husband had been engaged in a lawsuit related to their refusal to pay for maintenance of a private road leading to the Upland Meadow Road residence and that they had claimed as part of their defense to that lawsuit that they did not live at the home.
2. Respondent filed a formal response to the complaint on February 8, 2013. In her response, she stated that she and her family had lived in Salisbury since November 18, 1996. Respondent also stated that she is registered to vote in the Town of Salisbury, an active member of the Salisbury Republican Town Committee, former Scout Master of the Salisbury Boy Scout Troop, maintains her family and business bank accounts at Salisbury Bank & Trust Company, and operates an accounting and bookkeeping business from her home at 10 Upland Meadow Road. *See* Letter from Vivian Nasiatka to James M. Talbert-Slagle, February 3, 2013.
3. Respondent was the nominated Republican candidate in the November 2012 General Election appearing on the ballot as the cross-endorsed candidate for both the Republican and Independent parties. *See* Statement of Vote, Office of the Secretary of the State (Nov. 6, 2012).

4. Connecticut General Statutes § 9-400 provides, in relevant part:

...

(b) A candidacy for nomination by a political party to a district office may be filed by or on behalf of any person whose name appears upon the last-completed enrollment of such party within any municipality or part of a municipality forming a component part of such district and who has either (1) received at least fifteen per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for such district office, whether or not the party-endorsed candidate for such office received a unanimous vote on the last ballot, or (2) circulated a petition and obtained the signatures of at least two per cent of the enrolled members of such party in the district for the district offices of state senator, state representative and judge of probate, in accordance with the provisions of sections 9-404a to 9-404c, inclusive.

5. Although this case centers on Respondent's eligibility to run for office in the 64th General Assembly district, viewing this matter through the lens of her eligibility as a voter in Salisbury will be instructive to the fundamental issues in this matter. 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).

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

At any regular or special state election any person may vote who was registered to vote 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 to vote by conviction of a disenfranchising 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).

7. 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 disenfranchised.

8. 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 disenfranchised. 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 disenfranchised.

9. Respondent is registered as a member of the Republican Party in Salisbury, part of the 64th Assembly District.

10. Complainant here alleges that Respondent actually was not a bona fide resident of the district.

11. In order to establish liability in the present case, Respondent must not have been qualified to vote in Salisbury on November 6, 2012. As noted above, General Statutes § 9-12 sets forth elector qualifications.

12. 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 located, 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. 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. *See also, Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir. 2002) (stating that under certain circumstances domicile rule for voting residency can give create administrative difficulties that might lead to its pragmatic application in New York); *Sims v. Vernon*, 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.)
13. 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 Education Com'rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (Jan. 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. . . .")
14. 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. *Complaint of James Cropsey, Tilton, New Hampshire*, 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.)
15. Thus, the initial issues in the present matter are whether: 1) the Respondent truly resided at the home in Salisbury on or before the date in question, and 2) whether she had legitimate, significant, and continuing attachments to that home. If the above two questions can be

answered in the affirmative, only the Respondent's abandonment of the residence in Salisbury will extinguish her right as an elector in that town.

16. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.
17. Respondent explained in her response to the complaint that her husband works for the Connecticut Department of Energy and Environmental Protection as a park manager and that her husband and her children live primarily at the state-owned home in Niantic provided at the park facility. They are currently renovating the kitchen at the home that her family owns in Salisbury, which she maintains as her primary residence and business. *See* Letter from Vivian Nasiatka to James M. Talbert-Slagle, Feb. 3, 2013.
18. The Commission investigated the voting records of Respondent and her husband. Both remain registered to vote in Salisbury and have consistent voting history in the district. Nothing suggests that Respondent intended to abandon her primary residence in Salisbury.
19. Based on the preceding findings, the Commission will dismiss the complaint.

ORDER

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

That the complaint be dismissed.

Adopted this 15th day of MAY of 2013 at Hartford, Connecticut.



Anthony J. Castagno

By Order of the Commission