

In the Matter of a Referral by the Ledyard Town Clerk

File No. 2013-002

RESPONDENT:

Ernest Adams
1583 Route 12
Gales Ferry, CT 06335

Final Decision

This matter was heard as a contested case on September 8, 2016, pursuant to Chapter 54 of the Connecticut General Statutes, § 9-7b of the Connecticut General Statutes and § 9-7b-35 of the Regulations of Connecticut State Agencies, at which time Attorney Ryan M. Burns appeared on behalf of the State of Connecticut and the Respondent, Ernest Adams (the "Respondent"), appeared *pro se*. Both sides were given the opportunity to present evidence and testimony for inclusion in the hearing record. The State called four witnesses: Scott Branfuhr (Legal Investigator at the State Elections Enforcement Commission (hereinafter "Commission")), Sheri-Lyn Lagueux (Clerk of the Commission), and Gary Oddo and Donna Oddo. The Hearing Officer also afforded each party the opportunity to submit post-hearing briefs in this consolidated matter. The State submitted a post-hearing brief, and also submitted a brief at the hearing.

After careful consideration of the entire record, the following facts are found and conclusions of law are made:

1. Commissioner Stephen Penny was designated as Hearing Officer for the above-captioned matter.
2. In a letter to the Law Enforcement Unit of the Commission dated January 4, 2013, Michael D. Curley, the Town Clerk for the Town of Ledyard, filed a complaint against the Respondent, alleging, among other things, that the Respondent voted in several elections, including in 2008 and 2009, in the town of Ledyard during which times he was not a resident of that town.¹
3. At the hearing, the State orally corrected some technical errors in the Notice of Hearing dated July 22, 2016, and represented that the correct dates of the elections at issue in the hearing were held on November 4, 2008 and November 3, 2009. The Respondent did not object to this amended notice.

¹ The town clerk's complaint (the "complaint") contains several other allegations not addressed in this decision, because at the hearing the State prosecuted only the allegations regarding the Respondent's voting in the 2008 and 2009 elections in Ledyard. The complaint also alleges that the Respondent, who had been elected by the Republican Town Committee to serve as Justice of Peace in Ledyard, Connecticut, was not eligible to hold such position upon establishing residence in another town. At the hearing and in its post-hearing brief, the State did not seek a finding that the Respondent violated any provision of the statutes by serving as Justice of the Peace when he did not reside in Ledyard; instead, the State argued that the Justice of Peace position provided Respondent a motive to claim he lived in Ledyard during the 2008 and 2009 time periods at issue in the underlying matter.

4. The complaint, dated January 4, 2013, alleges in relevant part that the Respondent provided his address (as of the time of the complaint) to be “255 Gallup Hill Rd., Ledyard, CT, and a post office mailing address of PO Box 385, Ledyard, CT 06639-0385.” The complaint further alleges that the complainant’s review of Ledyard’s property owner documents listed the owners of 255 Gallup Hill Road to be Gary and Donna Oddo, and that Gary Oddo told the complainant that the Respondent left the 255 Gallup Hill Road address in October 2008.
5. At the hearing and in a Memorandum of Law dated September 8, 2016 and submitted at the hearing, the State alleges that the Respondent violated General Statutes §§ 9-12, 9-170, and 9-7b (a) by voting in a town in which he was not a bona fide resident. *State’s Memorandum of Law* (Sept. 8, 2016), at 1 & 2.

Background of General Law:

6. General Statutes § 9-12 (a) provides, in relevant part:

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. For purposes of this section a person shall be deemed to have attained the age of eighteen years on the day of the person’s eighteenth birthday and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person’s dwelling unit is located within the geographic boundaries of such town. No mentally incompetent person shall be admitted as an elector.

(Emphasis added).

7. General Statutes § 9-170 provides, in relevant 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..... 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....

(Emphasis added).

8. General Statutes § 9-172 provides, in relevant part:²

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; ... 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...

(Emphasis added).

9. The statute defines “state election” to mean “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.” General Statutes § 9-1 (s). The statute defines “municipal election” to mean “the regularly recurring election held in a municipality at which the electors of the municipality choose public officials of such municipality.” General Statutes § 9-1 (h).
10. General Statutes § 9-7b (a) provides, in relevant part:

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[.]

11. The term “bona fide resident” is not defined in Connecticut’s election statutes.³ The Commission has found that an individual’s bona fide residence must qualify as 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., Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-077; *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

² Although the state did cite General Statutes § 9-170 as the statute violated when the Respondent voted in the November 4, 2008 election, at the hearing the Respondent testified that he voted in Ledyard at this November 2008 election. Section 9-172 is similar to section 9-170, except that section 9-172 pertains to “any regular or special state election” whereby section 9-170 pertains to “any regular or special town election.”

³ General Statutes § 9-12 contains three requirements for an individual to be eligible as an elector in a town: the individual must be (1) a United States citizen, (2) at least eighteen years old, and (3) a bona fide resident of the town in which the individual applies for admission as an elector. General Statutes § 9-12 (a). The only one of these requirements at issue in the present case is whether the Respondent was a bona fide resident of the town of Ledyard at the time he voted in the November 2008 and 2009 elections.

with multiple dwellings.” *In the Matter of a Complaint by 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 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).

12. 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.” *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-081 (quoting *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. . . .”).
13. 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. *In the Matter of a Complaint by Ralph Arena, Hartford*, 2012-030; *In the Matter of a Complaint by Anne Cushman Schwaikert, et al, Woodbury*, File No. 2011-005; *Cropsey*, File No. 2008-047, *supra*; *see also Wit*, 306 F.3d at 1262 (quoting *People v. O'Hara*, 96 N.Y.2d 378, 385 (2001) for this principle).

Facts:

14. The State presented a document titled “Town of Ledyard – Voter Election Detail” certified on September 9, 2016 by Patricia Riley, Town Clerk of Ledyard, which contains documentation that the Respondent voted in-person in Ledyard at an election held on November 4, 2008 and on November 3, 2009. The Respondent testified that he voted in the November 2008 and November 2009 elections held in Ledyard.
15. The Respondent testified that when he went to vote at the elections in Ledyard at issue in this matter, he provided his driver’s license for identification purposes. He testified that his driver’s license contained the 255 Gallup Hill Road address, and that his understanding was that the Department of Motor Vehicles does not issue a new

driver's license for address changes. He testified that his current driver's license contains the 255 Gallup Hill Road address, and provided it to the State to make a copy to admit to the record. The driver's license lists the date issued as November 12, 2013, and the front of the license lists the 255 Gallup Hill Road address. The back of the license contains a sticker, with a handwritten address that says 1583 Route 12, Gales Ferry. The Respondent testified that he obtained the sticker from the Department of Motor Vehicles approximately a month after he moved to the Gales Ferry address (approximately one year before the date of the hearing).

16. At the hearing, several addresses were discussed by the State, the Respondent, and/or some of the witnesses: (1) 255 Gallup Hill Road, Ledyard; (2) 11 Bragaw Street, New London; (3) an undisclosed address located in approximately the northeast corner of Ledyard; and (4) 1583 Route 12, Gales Ferry. The Respondent also noted during his testimony that during some periods of 2008 and 2009 (the times at issue in this matter), he lived in his car.

255 Gallup Hill Road, Ledyard

17. The parties stipulated orally at the hearing that the Respondent has not resided at 255 Gallup Hill Road since approximately October 7, 2008.

11 Bragaw Street, New London

18. The State's witness Donna Oddo testified that she and her husband, Gary Oddo (another State's witness), moved to 255 Gallup Hill Road in Ledyard in early October, 2008, and that they currently reside at that address, and that they lived at 255 Gallup Hill Road continuously since October, 2008. Donna Oddo testified that she and her husband Gary helped physically move the Respondent's possessions to an address in New London, Connecticut during late September/early October 2008.
19. The Respondent agreed with Ms. Oddo's testimony that they helped move many of his possessions to an apartment located at 11 Bragaw Street, Apartment 1, New London ("11 Bragaw Street in New London," or the "New London apartment"), early in the month of October 2008.
20. When the Respondent asked Donna Oddo if she had first-hand knowledge whether he (the Respondent) actually resided at the New London apartment, she testified that she assisted in moving the belongings of the Respondent and his wife to 11 Bragaw Street in New London, which was the address provided by the Respondent to Donna Oddo and her husband when they were helping transport the possessions of the Respondent and his wife from the 255 Gallup Hill Road, Ledyard address. She further testified that she did not observe the boxes and possessions from the move being unpacked at the New London address.
21. The State submitted into evidence a certification dated July 21, 2016 and a statement history of a Connecticut Light & Power electricity bill from Kathryn McClintock-Griffin, a Customer Service Supervisor at Eversource Energy Service Company, in response to a subpoena to CL&P and Yankee Gas Service Company (the "CL&P

statement history”). The CL&P statement history indicated a bill in the Respondent’s name for the 11 Bragaw Street, New London address. The CL&P statement history included electricity charges to this account with a date range from December 31, 2008 through March 8, 2010.

22. The Respondent conceded that the CL&P bill was in his name, and that he paid the bill from time to time. He stated that his wife sometimes paid for at least part of the electricity bill. He testified that he paid the bill because he was responsible to provide his wife, who had various health issues, with a safe place to live. He argued that the fact that this single bill was in his name, and that he paid it from time to time, does not establish that he resided in New London.
23. The Respondent testified that he did not reside at the New London address during the time period in dispute. He conceded that some of his possessions were moved by the Oddo’s to the New London address, but denied that he resided there. He testified that while he recalls that most likely he and his wife signed a lease for the New London apartment, only his wife resided at the New London address.

Undisclosed Address Located in Approximately the Northeast Corner of Ledyard

24. The Respondent testified that when he moved out of 255 Gallup Hill Road in October 2008, he was having financial and other difficulties, and that his friend of more than thirty years, whom he identified as Nick, put him in touch with an individual who resided at a dwelling located in approximately the northeast corner of Ledyard.
25. The Respondent was unable or unwilling to provide the name of this other individual, or the address in Ledyard. He testified that the individual, to the best of his knowledge, was a veteran of the Vietnam War era, and, for ease of discussion, referred to him as the “Veteran.” He testified that the Veteran was suffering from what appeared to be various types of physical and psychological ailments, and appeared at times to exhibit “paranoid” behavior. The Respondent testified that he was provided a room in the Veteran’s dwelling, in return for his payment of three hundred dollars a month in cash, and for the Respondent’s keeping “half an eye” on the Veteran to monitor the Veteran’s medication and to be on alert if the Veteran displayed any alarming behavior. He testified that he made an oath to the Veteran that he would not disclose the Veteran’s name or the location of the dwelling.
26. The Respondent further testified that at some points during the time period that is the subject of this hearing, he did not have a dwelling and lived out of his car.
27. The Respondent was unable or unwilling to produce corroborating evidence, either testimonial or documentary, to support his testimony that he resided at a specific location in Ledyard during that time. He testified that he paid his rent in cash and that he did not have any mail sent to the house because of the Veteran’s anxious state of mind. Instead, he used a post office box in Ledyard to receive his mail. He stated that when he did reside at 255 Gallup Hill Road (prior to October 2008) he used a post office box to receive his mail because he had had issues with mail tampering.

28. The Respondent further testified that he did not believe that he could find any individual to corroborate that he lived there, in part because the Veteran did not allow visitors at the house. He stated that to the best of his knowledge, the Veteran has long-since moved out of state to be closer to his daughter so she could keep an eye on him. He stated that his friend Nick has since passed away. He testified that his wife had various health conditions, and never visited the house. He further testified that because of the oath he made to the Veteran, his wife did not even know the location of the house.
29. When the State asked him why he did not change his voter registration when he moved from 255 Gallup Hill Road, he replied that he was not aware that he was required to do so.

1583 Route 12, Gales Ferry, CT

30. The Respondent testified that he currently resides at 1583 Route 12, Gales Ferry, Connecticut, which is a part of the town of Ledyard. On the date of the hearing, he stated that he moved to this residence approximately a year ago.

Justice of the Peace

31. As noted earlier, the complaint contains allegations relating to the Respondent's serving as Justice of the Peace in the town of Ledyard. At the hearing, the State alleged that the Respondent was claiming to live in Ledyard during 2008 and 2009 at least in part for pecuniary gain, as he was appointed at that time as a Justice of the Peace in Ledyard. The Respondent testified that he supplemented his social security income by notarizing documents. The Respondent stated that he advertised his services as Justice of the Peace between October 2008 and December 2009, and that he was required to be a resident of Ledyard to be appointed as Justice of the Peace for Ledyard. He further testified that due to this ongoing complaint, he was forcibly removed from his position as Justice of the Peace, and has not pursued reinstatement while this matter is pending.

Discussion:

32. The State alleges that the Respondent violated the law when he voted in the November 4, 2008 and November 3, 2009 elections in Ledyard, because he was not a bona fide resident of Ledyard at this time.
33. Accordingly, the core issue is whether the Respondent was a bona fide resident in the town of Ledyard when he voted in Ledyard at the November 4, 2008 election and at the November 3, 2009 election, and, if not, whether he violated General Statutes § 9-12, § 9-170, and § 9-172.
34. It is undisputed that as of approximately October 7, 2008, the Respondent did not reside at 255 Gallup Hill Road. It is also undisputed that around that same date many of his possessions were moved to 11 Bragaw Street in New London.

35. There were no allegations that the Respondent voted or attempted to vote in New London or anywhere else other than Ledyard on November 4, 2008 or November 3, 2009.
36. Resolution of this hearing does not hinge on determining whether or not the Respondent actually ever did reside at 11 Bragaw Street in New London, because, even assuming *arguendo* that he did, he claims that he had a bona fide residence in Ledyard, based on his living at the undisclosed address of the Veteran in Ledyard. As stated in paragraph 13 above, the Commission has determined in previous matters that 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 such individual's bona fide residence for the purposes of election law so long as the individual possesses the requisite intent.
37. Here, a preponderance of evidence leads to the conclusion that the Respondent did not reside in the town of Ledyard during the time periods in 2008 and 2009 at issue in this matter, when he voted in the November 4, 2008 and the November 3, 2009 elections in Ledyard. It was undisputed that the Respondent did not reside at 255 Gallup Hill Road in Ledyard from October 7, 2008 and after that date. The State provided evidence that the Respondent's possessions were moved out of Ledyard to 11 Bragaw Street in New London, and an electricity bill associated with that address was in the Respondent's name from approximately December 31, 2008 through March 8, 2010.
38. The Respondent was unable or unwilling to provide any evidence to corroborate his testimony that he resided at the Veteran's residence in the northeast portion of Ledyard: e.g. he provided no lease, no copies of any utility bills or cancelled rent checks, and no witnesses to support his claim that he resided in Ledyard during this period. He failed to even provide the street address of the location he claimed to reside at, testifying that he could not and would not break his oath to the Veteran not to disclose this address, which he testified that, to the best of his knowledge, the Veteran no longer lives. The only other documentation associating him with Ledyard was (1) the post office box he kept in Ledyard (but, an individual cannot reside at a post office box); and (2) the address on his driver's license was for an address in Ledyard, but that address was the 255 Gallup Hill Road address at which he conceded he did not live after October 7, 2008.
39. Accordingly, it is concluded that the Respondent violated General Statutes § 9-12 and § 9-170 when he voted in the November 3, 2009 election in the town of Ledyard, and that he violated General Statutes § 9-12 and § 9-172 when he voted in the November 4, 2008 election in Ledyard, where he was not a bona fide resident at those times.
40. Section 9-7b-48 of the State of Connecticut Regulations provides, "In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances: (1) the gravity of the act or omission; (2) the amount necessary to insure immediate and continued compliance; (3) the previous history of similar acts or omissions; and (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes."

41. It was recommended that the Commission consider the following as mitigating circumstances per § 9-7b-48, Regs., Conn. State Agencies: (1) the complaint was not filed until several years after the alleged violations took place, and the hearing was not held for several years after the complaint was docketed.
42. It was recommended that the Commission consider the following as aggravating circumstances per § 9-7b-48, Regs., Conn. State Agencies: (1) the Respondent was unable or unwilling to produce a single piece of evidence, a single witness, or even a street address to corroborate his testimony that he resided somewhere in Ledyard during the time periods at issue in this matter; (2) in November 2013 (ten months after the underlying complaint was filed, and five years after October 2008 when he testified he no longer lived at 255 Gallup Hill Road, he obtained a new driver's license from the Department of Motor Vehicles containing the 255 Gallup Hill Road address; and (3) the Respondent voted in two separate elections when he was not a bona fide resident of Ledyard.
43. In consideration of the factors listed above, it was recommended that the Commission: (1) assess a civil penalty⁴ in the amount of \$200.00 for each of the two violations of General Statutes §§ 9-12, 9-170, and 9-172, as set forth above, for an aggregate civil penalty of \$400.00, and (2) issue a "henceforth order" ordering that the Respondent strictly comply with the requirements of General Statutes §§ 9-12, 9-170, and 9-172, and keep his voter registration up to date as required by the law.

⁴ There was some discussion in the hearing regarding the applicability of General Statutes § 9-360, which provides as follows:

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.

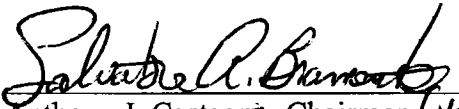
The State submitted a post-hearing brief analyzing the applicability of this provision, arguing that General Statutes § 9-7b vests the Commission with civil penalty authority, and that General Statutes § 9-360 is not a statutory area over which the Commission may exercise its civil penalty authority, but is instead a criminal statute under the Chief State's Attorney's jurisdiction. Although not discussed in the State's post-hearing brief it is important to note that the SEEC regulations provide that "[e]xcept in circumstances when its investigation reveals significant evidence of a criminal violation or violations of the state elections laws within its jurisdiction, the Commission shall attempt to resolve cases pending before it by use of its civil and administrative authority, including but not limited to, the issuance of orders necessary to secure compliance with such laws." Regs. Conn. State Agencies § 9-7b-46. In the present matter, there were no allegations that the Respondent voted or attempted to vote in two different towns in the same election, or that the Respondent otherwise engaged in substantial fraud, or that the Respondent has voted in a jurisdiction where he does not maintain a bona fide residence since 2009. The Commission considers voting in a jurisdiction other than the one where the voter maintains a bona fide residence and genuine domicile to be a very serious offense, but the facts in this matter do not warrant a criminal referral.

The following Order is adopted on the basis of these findings and conclusions:

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent shall pay a civil penalty of \$200.00 for each of the two violations, for an aggregate civil penalty of \$400.00, payable to the State Elections Enforcement Commission, within 45 days of notice of this decision, for violation of General Statutes §§ 9-12, 9-170, and 9-172; and
2. The Respondent shall henceforth strictly comply with the requirements of General Statutes §§ 9-12, 9-170, and 9-172, and keep his voter registration up to date as required by the law.


~~Anthony J. Castagnò, Chairman (Vice)~~
By Order of the Commission

Adopted this 15th day of February, 2017.

