

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Referral by Manchester Registrars of Voters, Manchester

File No. 2013-077

FINDINGS AND CONCLUSIONS

The Referring Officials referred this matter pursuant to Connecticut General Statutes § 9-7b and alleged that Respondent Benjamin Goss lacked bona fide residence in the City of Manchester when he voted in the November 6, 2012 General Election.

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

1. On Election Day, November 6, 2012, the Respondent submitted an inter-town change of registered address request at the polling place under General Statutes § 9-35 (e); the request was approved and the Respondent was permitted to move his registration from Fairfield Street in Manchester to Cottage Street and immediately vote at the new address.
2. Subsequent to Election Day, the Referring Officials mailed out a notice of address change to the new Manchester address and received a return to sender, because a mail forward had been set for the Respondent to Wethersfield Avenue in Hartford.
3. The Referring Officials allege that the above is evidence that the Respondent may not have been a bona fide resident at the Cottage Street address in Manchester at the time that he cast the ballot and asked the Commission to investigate.
4. The investigation revealed that the Respondent first registered to vote in 2008 at the address on Cottage Street in Manchester shortly after he turned 18 years old.
5. The Respondent remained registered at the Cottage Street address in Manchester until July 2012, when he changed his registration to the address on Fairfield Street in Manchester.
6. The Respondent changed his registered address back to Cottage Street on Election Day, November 6, 2012.
7. The Respondent here submitted responses to the Referral and asserted that Cottage Street was his childhood home and the only home to which he had any significant attachment until in 2011 at the age of 21, when he started leasing his own apartment on Fairfield Street.

8. However, the Respondent asserts that his lease at Fairfield Street ended in September 2012, at which point he temporarily moved back into the Cottage Street property while searching for a new dwelling. At the time the Respondent moved back into the Cottage Street home, only his mother owned the property and it was under foreclosure proceedings with multiple liens upon title. The Respondent's mother secured an apartment on Wethersfield Avenue in Hartford on October 1, 2012 in anticipation of losing the Cottage Street home in Manchester, but alternated between the properties until early 2013. The arrangement was made that the Respondent would temporarily move into the Cottage Street home in Manchester and help maintain it ahead of foreclosure and while he searched for a new living situation for himself. However, in anticipation of the impending foreclosure, the Respondent and his mother agreed that it would be best to have his mail forwarded to her apartment on Wethersfield Avenue in Hartford. In approximately January 2013, the Respondent moved out of state to his grandmother's home in North Carolina.
9. Separate interviews with the Respondent and his mother confirmed the Respondent's assertions. Moreover, the investigation confirmed that the Respondent did move out of the Fairfield Street property in Manchester at the end of September 2012. No evidence was found, other than the forwarded mail, of a residence interest in the Hartford property on Wethersfield Avenue. Finally, the records of the judicial branch confirm that the Cottage Street property in Manchester was under multiple liens in foreclosure, but that ownership of the property remained with the Respondent's mother through at least the end of 2012. The Respondent's mother changed her voter registration to the Hartford address on Wethersfield Avenue in March 2013.
10. 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.)
11. 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.)

12. General Statutes § 9-35 (e), provides in pertinent part:

(e) . . . In each municipality, any elector, upon change of residence within the municipality, may cause the elector's registration to be transferred to the elector's new address by presenting to the registrars a signed request therefor, stating the elector's present address, the date the elector moved to such address and the address at which the elector was last registered. The registrars shall thereupon enter the elector's name on the list at the elector's new residence; provided no transfer of registration shall be made on the registry list on election day without the consent of both registrars. (Emphasis added.)

13. Section 9-35-2 of the Regulation of Connecticut State Agencies reads, in pertinent part:

(a) An elector who changes his address within a municipality may, at any time, pursuant to Conn. Gen. Stats. § 9-35, request that his registration be transferred to his new address by presenting a written request therefor to either registrar of voters, by letter or upon the form prescribed by the Secretary of the State, stating his present address, the date he moved to such present address, and the address at which he was last registered, provided that a request received on election day or primary day, as hereinafter provided, shall contain a written statement by the elector, under penalties of false statement, that such elector has not voted prior to the time of such request for transfer at said election or primary either by absentee ballot or in person at any other polling

place. The request for transfer of registration must be signed by the elector and submitted either in person or by mail by either the elector or any person of the elector's choice. . . .

14. 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.

15. 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,

. . .

16. 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.

17. 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.

18. In order to establish liability in the present case, the Respondent must not have been qualified to register and/or vote at the Cottage Street address in Manchester at the time that he presented himself to vote and did vote. 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 Cottage Street address in Manchester.

19. 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.)

20. 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. . . .”)
21. The Respondent here generally denies that he lacked bona fide residence in the City of Manchester at the Cottage Street address. The Respondent submitted a statement, independently verified, that he returned to the family address, at which he had been previously been registered from October 2008 until July 2012.
22. 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 Cottage Street property in Manchester at the time that he submitted the request to change his address. The property had been his long-time childhood home and his mother continued to retain an interest at the time that he requested the address change within town. Moreover, the evidence was insufficient to show any connection, other than the forwarded mail, to the Hartford apartment on Wethersfield Avenue that his mother had been leasing.
23. Considering the aforesaid, the Commission concludes that the instant matter should be dismissed.
24. However, the Commission also concludes that Respondent is no longer a bona fide resident at the Cottage Street address in Manchester at the time of this decision. As the evidence in

this matter is sufficient to establish that Mr. Benjamin Goss does not reside at the Cottage Street address at this time nor has a present intent to return, the Commission, pursuant to its authority under General Statutes § 9-7b (a) (3) (E), shall order the Manchester Registrars of Voters to immediately remove him from the registry list.

ORDER

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

That the matter is dismissed.

Additionally, the Commission, pursuant to its authority under General Statutes § 9-7b (a) (3) (E), orders the Manchester Registrars of Voters to immediately remove the following individual from the registry list:

Benjamin David Goss, Voter ID#: 003990439

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


Anthony J. Castagno, Chairperson
By Order of the Commission