

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Referral by Manchester Registrars of Voters, Manchester

File No. 2013-091

FINDINGS AND CONCLUSIONS

The Referring Officials referred this matter pursuant to Connecticut General Statutes § 9-7b and alleged that Respondent Erin Mack lacked bona fide residence in the City of Manchester when she 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 her registration from Highland Street in Manchester to Highwood Drive and immediately vote at the new address.
2. Subsequent to Election Day, the Referring Officials mailed out a notice of address change to the Highwood Drive address in Manchester and received a return to sender, because a mail forward had been set for the Respondent to West Road in Ellington.
3. The Referring Officials allege that the above is evidence that the Respondent may not have been a bona fide resident at the Highwood Drive address in Manchester at the time that she cast the ballot and asked the Commission to investigate.
4. The investigation revealed that the Respondent was first registered to vote and voted in the November 2008 General Election at the address on Highwood Drive in Manchester.
5. The Respondent remained registered at the Highwood Drive address in Manchester until September 2011, when she changed her registration to the address on Highland Street in Manchester.
6. The Respondent changed her registered address back to Highwood Drive on Election Day, November 6, 2012.
7. The Respondent here submitted responses to the Referral and asserted that Highwood Drive was her childhood home and the only home to which she had any significant

attachment until the end of 2008 at the age of 20, when she started leasing her own apartment on Highland Street.

8. The Respondent further asserts that her lease at Highland Street ended in approximately May 2010, at which point she moved back in with her family at Highwood Drive.
9. The investigation revealed that while the Respondent did not change her registration back from Highland Street to Highwood Drive during this period, she also did not cast any ballots during the time in which she was registered at Highland Street, but living on Highwood Drive.
10. The Respondent further asserts that she lived back at the family home on Highwood Drive from May 2010 until September 2011, at which point she rented an apartment on West Road in Ellington along with a co-tenant with whom she had a romantic relationship.
11. However, the Respondent asserts that her living situation at the home on West Road in Ellington became tenuous as the romantic relationship with her co-tenant began to falter and then eventually descend into a living situation in which she did not feel personally safe. Eventually the Respondent began staying back at the family home on Highwood Drive at first occasionally and then nearly every night. She asserts that throughout the majority of the latter half of 2012 she slept, ate, cooked, cleaned, did laundry, as well as other personal tasks at the Highwood Drive address. She eventually kept the majority of her clothing and personal items at Highwood Drive and the West Road property in Ellington was largely surrendered to the co-tenant. However, she asserts that she did not break her lease at the West Road address in Ellington, as she wished to return to living independently from her family, but would not do so until her co-tenant severed ties with the property. In or about December 2012, the co-tenant left the West Road address in Ellington permanently and the Respondent moved back in and lives there full time presently and has changed her voter registration to that address.
12. However, while the Respondent does not deny that she maintained a property interest to the West Road address in Ellington at the time that she presented herself to vote in Manchester, the Respondent strongly asserts that during the November 2012 General Election, the Highwood Drive property, her familial home, was her true and primary residence under what was very difficult personal circumstances for her.
13. Separate interviews with the Respondent and her mother, as well as written statements by both, confirmed the Respondent's assertions. The Respondent's mother was actively involved in the efforts to remove the co-tenant from the West Road address in Ellington and encouraged her daughter to return to the family home for as long as it took to resolve the situation.

14. 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.)

15. 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.)

16. 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.)

17. 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. . . .

18. 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.

19. 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,

...

20. 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.

21. 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.

22. In order to establish liability in the present case, the Respondent must not have been qualified to register and/or vote at the Highwood Drive address in Manchester at the time that she presented herself 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 date in question. As such, the question to answer here is only whether the Respondent was a “bona fide resident” at the Highwood Drive address in Manchester on November 6, 2012.

23. 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.)
24. 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. . . .”)

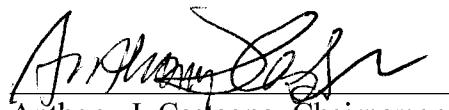
25. The Respondent here generally denies that she lacked bona fide residence in the City of Manchester at the Highwood Drive address. The Respondent submitted a statement, independently verified, that she returned to the family address, at which she had been previously been registered, because of difficult personal circumstances with her co-tenant in Ellington.
26. 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 Highwood Drive property in Manchester at the time that she submitted the request to change her address and vote. The property was her long-time childhood home and her mother continued to live at the property at the time that she requested the address change within town. Separate interviews with the Respondent and her mother confirmed that during the time that is at issue in this matter, the Respondent maintained a significant, if temporary, attachment to the Highwood Drive property. She spent most of her nights at the property, kept personal items there, cooked, showered, ate, did laundry there, as well as other personal tasks. She always intended to move back to Ellington once the personal situation had been resolved, but during the time of the November 2012 General Election, her connection to the Highwood Drive address was sufficient to qualify as a bona fide resident under General Statutes § 9-12.
27. Considering the aforesaid, the Commission concludes that the instant 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 November, 2013 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission