

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Tracy A. Morrissey,
West Haven

File No. 2013-151

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that there were improprieties and irregularities during a supervised absentee ballot session held at a senior center on October 31, 2013 in the City of West Haven.

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

1. Complainant alleged that she witnessed improprieties during a supervised absentee ballot session held at Harbor View, 308 Savin Avenue, a senior center, on October 31, 2013 in West Haven regarding the November 5, 2013 municipal election.
2. The endorsed Democratic mayoral candidate Ed O'Brien appeared on the absentee ballot and incumbent West Haven Mayor Jon Picard was a qualified write-in candidate for mayor at the November 2013 election.
3. Complainant was present at the Harbor View October 31, 2013 supervised absentee balloting along with Democratic Deputy Registrar Mary Tina Peckingham, Mr. Ernie Chiarelli and Assistant Registrar for absentee balloting Arthur Hubbard who was an appointed designee of the Registrars' office.
4. Specifically, Complainant alleges that:
 - (1) Ms. Peckingham was "leading" people to vote for the write-in mayoral candidate John Picard;
 - (2) Someone was passing out campaign literature for John Picard that was available at the absentee balloting;
 - (3) An Assistant Registrar allowed a person to sign an absentee ballot application and then immediately receive an absentee ballot at the time of supervised absentee balloting; and,
 - (4) Several individuals were not provided the ability to execute their absentee ballots in privacy.

5. General Statutes § 9-159q describes the procedure of supervised absentee balloting and reads, in pertinent part:

...

(d) The town clerk shall not mail or otherwise deliver an absentee ballot to an applicant who is a patient in any institution if a request for supervision of absentee balloting at that institution has been filed with the clerk during the period set forth in subsection (c) of this section. ***The clerk shall instead deliver such ballot or ballots to the registrars of voters or their designees who will supervise the voting of such ballots in accordance with this section.***

...

(f) ***On the date when the supervision of absentee balloting at any institution is to occur, the town clerk shall deliver to the registrars or their designees the absentee ballots and envelopes for all applicants who are electors of such clerk's town and patients at such institution.*** The ballot and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots.

(g) ***The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a.*** If any elector asks for assistance in voting his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope "rejected" and note the reasons for rejection. ***Nothing in this section shall limit the right of an elector to vote his ballot in secret.***

(j) Any registrar of voters who has filed a request that the absentee balloting at an institution be supervised and any registrar required to conduct a supervision of voting under this section, who neglects to perform any of the duties required of him by this section so as to cause any elector to lose his vote shall be guilty of a class A misdemeanor. Any registrar from the same town as a registrar who has filed such a request may waive his right to participate in the supervision of absentee balloting.

(k) Notwithstanding any provision of this section to the contrary, if the spouse or a child of a registrar of voters or a dependent relative residing in the registrar's household is a candidate in the election or primary for which supervised absentee voting is to occur, such registrar shall not supervise such absentee voting but may designate the deputy registrar of voters or an assistant registrar of voters, appointed by the registrar pursuant to section 9-192, to supervise the absentee voting in his place. ...
[Emphasis added.]

6. Institutions that have more than 20 registered voters must cast their ballot via the supervised absentee procedure *per* General Statutes § 9-159r, which reads:

(a) Notwithstanding any provision of the general statutes to the contrary, if twenty or more of the patients in any institution in the state are electors, absentee ballots voted by such electors shall be voted under the supervision of the registrars of voters or their designees of the town in which the institution is located, in accordance with the provisions of this section. As used in this section, the term "institution" shall be construed as defined in section 9-159q.

(b) ***Application for an absentee ballot for any such patient shall be made to the clerk of the town in which such patient is eligible to vote.*** The application procedure set forth in section 9-140 shall apply, except that the clerk shall deliver the absentee voting set for any such application to the clerk of the town in which the institution is located, who shall deliver all such voting sets he receives to the registrars of such town, on the date when the supervision of absentee balloting is to occur. The ballots and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots. The registrars of the town in which an

institution is located and the administrator of the institution shall mutually agree on a date and time for such supervision of absentee balloting, which shall be not later than the last business day before the election or primary.

(c) The supervision of absentee balloting under this section shall be carried out in accordance with the provisions of subsections (g), (h), (i) and (k) of section 9-159q.
[Emphasis added.]

7. Allegation One

Complainant alleged that Ms. Peckingham was "leading" people to vote for the write-in mayoral candidate John Picard.

8. Upon investigation, the Commission finds that Ms. Peckingham denied instructing people how to vote. Further, the Commission finds that two additional witnesses, who were present during the absentee balloting, denied that they witnessed wrong doing by Ms. Peckingham or any other official.

9. The Commission dismisses this allegation because of insufficient evidence to substantiate the allegation upon investigation.

10. Allegation Two

Complainant alleged that someone was passing out campaign literature for John Picard that was available at the absentee balloting.

11. Upon investigation, the Commission finds a lack of evidence identifying any individual or individuals responsible for disseminating campaign literature at Harbor View that was available during supervised absentee balloting.

12. The Commission therefore dismisses this allegation for lack of evidence.

13. Allegation Three

Complainant alleged that an Assistant Registrar allowed a person to sign an absentee ballot application and then immediately receive an absentee ballot at the time of supervised absentee balloting on October 31, 2013 at Harbor View.

14. General Statutes § 9-159r (b) provides that an application for an absentee ballot by an individual who participates in supervised absentee balloting “*shall be made to the clerk of the town*” in which such individual is eligible to vote and consistent with the ordinary processes for making such applications pursuant to § 9-140. The Commission therefore concludes that any absentee ballots disseminated at Harbor View on October 31, 2013 should have been based on an application made with the West Haven Town Clerk, and *not* by the officials conducting the supervised absentee balloting.
15. After investigation, the Commission finds a lack of evidence supporting the allegation that absentee ballots distributed at Harbor View at the October 31, 2013 supervised absentee balloting were generated from applications disseminated by an Assistant Registrar at the time of supervised absentee balloting.
16. While the Commission therefore dismisses Allegation Three, it nevertheless stresses the requirements of General Statutes § 9-159r (b) that absentee ballot applications received from individuals from institutions where supervised absentee balloting occurs be processed *by the Town Clerk’s office* consistent with § 9-140, and not at the time supervised absentee balloting occurs.
17. Allegation Four
Complainant alleged that several individuals were not provided the ability to execute their absentee ballots in privacy during the October 31, 2013 supervised absentee balloting at Harbor View in West Haven.
18. The Complainant asserts that an unidentified individual was required to complete a ballot at a table where Ms. Peckingham and other individuals were present and therefore the individual had “no privacy for voting.”
19. The right to “secret voting” is identified in General Statutes § 9- 159q (g), which provides in part: *Nothing in this section shall limit the right of an elector to vote his ballot in secret.* Furthermore, such right is guaranteed by Article sixth, § 5, of the Connecticut constitution, as amended by article twenty-four of the amendments to the Connecticut constitution, which reads: *In all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed, except that voting machines or other mechanical devices for voting may be used in all elections in the state, under such regulations as may be prescribed by law. No voting machine or device used at any state or local election shall be equipped with a straight ticket device. **The right of secret voting shall be preserved.*** (Emphasis added.)

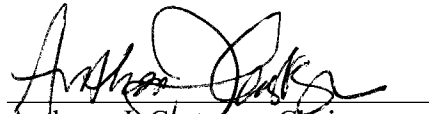
20. The Commission has previously determined that this constitutional provision allows that each elector's *selections* shall remain secret as of right, but it does not prescribe a right to execute the ballot without any other person present and/or at a voter's own convenience. *See In the Matter of a Complaint by Gail R. Simon*, East Haven, File No. 2014-006.
21. Considering the aforesaid and applying it to the facts here, the Commission concludes that it was neither unlawful nor unreasonable for the designees of the Registrars of Voters to require that an elector remain in their presence while executing a ballot.
22. Further, to the extent that there is a lack of evidence after investigation that an elector's right to secrecy in voting was compromised as a result of being required to execute a ballot in the presence of others, or that the supervised absentee balloting at Harbor View on October 31, 2013 did not fulfill the requirements of General Statutes §§ 9-159q and 9-159r, the Commission dismisses this allegation under these specific circumstances.

ORDER

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

That the matter is dismissed.

Adopted this 16th day of September, 2014 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission