

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Paul C. Giancesini, *et al.*  
Terryville (Plymouth)

File No. 2013-162

**FINDINGS AND CONCLUSIONS**

The Complainants, brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Town Clerk Barbara A. Rockwell (hereinafter "Respondent"), violated various election statutes pertaining to the withdrawal of a candidate on the ballot prior to the November 5, 2013 election in the Town of Plymouth.

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

1. Complainants Paul C. Giancesini, Julie A.G. Flammia, and Joyce A. Krinitski alleged that prior to the November 5, 2013 Plymouth municipal election Respondent failed to properly process the resignation of Tax Collector Ana M. LeGassey who appeared on the ballot and was cross-endorsed by the Democrats and Republicans for re-election.
2. Specifically, Complainants alleged that:
  - (1) Respondent, as Plymouth Town Clerk, violated General Statutes § 7-24 (c), which pertains to municipal records, by accepting a resignation from Ms. LeGassey without issuing a valid receipt in return for a resignation;
  - (2) Respondent violated § 9-460 by validating the withdrawal of a candidate on the ballot by accepting Ms. LeGassey's resignation and removing her from the November 5, 2013 ballot *after* the permissible time period for doing so had passed; and,
  - (3) Respondent removed the name of the candidate for Tax Collector from the ballot without giving the Democratic Party notice of the withdrawal of its endorsed candidate and consequently denying the party the right to make a nomination to fill a vacancy in violation of § 9-460.
3. Respondent was at all times relevant to this complaint, the Plymouth Town Clerk. Respondent has no prior case history with the Commission.
4. General Statutes § 7-24, provides in pertinent part:

...

(c) The town clerk shall, on receipt of any instrument for record, write thereon the day, month, year and time of day when the town clerk received it, and the record shall bear the same date and time of day; but the town clerk

shall not be required to receive any instrument for record unless the fee for recording it is paid to the town clerk in advance, except instruments received from the state or any political subdivision thereof. When the town clerk has received any instrument for record, the town clerk shall not deliver it up to the parties or either of them until it has been recorded. When any town clerk has, upon receiving any instrument for record, written thereon the time of day when the town clerk received it and the day and year of such receipt, and when any town clerk has noted with the record of any instrument the time of day when the town clerk received the record, such entries of the time of day shall have the same effect as other entries that are required by law to be made.

5. General Statutes § 7-103, provides:

*Unless otherwise provided by law, any elected or appointed town, city or borough officer, except the town, city or borough clerk, desiring to resign from his office shall submit his resignation in writing to the town, city or borough clerk, as the case may be; and any such clerk desiring to resign from his office shall submit his resignation in writing to the board of selectmen, the chief executive officer of the city or the chief executive officer of the borough, as the case may be. Any such resignation shall become effective upon the date specified therein or, if no date is so specified, upon the date of its submission.*

[Emphasis added.]

6. General Statutes § 9-7b, provides in pertinent part:

(1) *To make investigations* on its own initiative or with respect to statements filed with the commission by the Secretary of the State, any town clerk or any registrar of voters or upon written complaint under oath by any individual, *with respect to alleged violations of any provision of the general statutes relating to any election or referendum, any primary held pursuant to section 9-423, 9-425 or 9-464 or any primary held pursuant to a special act, and to hold hearings when the commission deems necessary to investigate violations of any provisions of the general statutes relating to any such election, primary or referendum*, and for the purpose of such hearings the commission may administer oaths, examine witnesses and receive oral and documentary evidence, and shall have the power to subpoena witnesses under procedural rules the commission shall adopt, to compel their attendance and to require the production for examination of any books and papers which the commission deems relevant to any matter under investigation or in question. ...

[Emphasis added.]

7. General Statutes § 9-460, provides in pertinent part:

If any party has nominated a candidate for office, or, on and after November 4, 1981, if a candidate has qualified to appear on any ballot by nominating petition under a reserved party designation, in accordance with the provisions of this chapter, and such nominee thereafter, ***but prior to twenty-four days before the opening of the polls on the day of the election for which such nomination has been made***, dies, ***withdraws such nominee's name*** or for any reason becomes disqualified to hold the office for which such nominee has been nominated (1) such party or, on and after November 4, 1981, ***the party designation committee may make a nomination to fill such vacancy or provide for the making of such nomination as its rules prescribe***, and (2) if another party that is qualified to nominate a candidate for such office does not have a nominee for such office, such party may also nominate a candidate for such office as its rules prescribe. ***No withdrawal, and no nomination to replace a candidate who has withdrawn, under this section shall be valid unless the candidate who has withdrawn has filed a letter of withdrawal signed by such candidate*** with the Secretary of the State in the case of a state or district office or the office of state senator or state representative from any district, or ***with the municipal clerk in the case of a municipal office*** other than state senator or state representative. A copy of such candidate's letter of withdrawal to the municipal clerk shall also be filed with the Secretary of the State. ***No nomination to fill a vacancy under this section shall be valid unless it is certified*** to the Secretary of the State in the case of a state or district office or the office of state senator or state representative from any district, or ***to the municipal clerk in the case of a municipal office*** other than state senator or state representative, ***by the organization or committee making such nomination, at least twenty-one days before the opening of the polls on the day of the election***, except as otherwise provided by this section. ...

[Emphasis added.]

8. Upon investigation, it was determined that Ms. LeGassey's resignation letter, dated October 11, 2013, included the following:

*As of Oct. 11<sup>th</sup> 2013 I will be resigning from the position of Tax Collector for the Town of Plymouth due to accepting the tax revenue position in Plainville, CT. I am asking to be removed from the ballot for the upcoming election, November 5<sup>th</sup> 2013.*

9. Allegation One

*Respondent, as Plymouth Town Clerk, violated General Statutes § 7-24 (c), which pertains to municipal records, by accepting a resignation from Ms. LeGassey without issuing a valid receipt in return for a resignation;*

10. General Statutes § 9-7b enables the Commission to “... *make investigations ... with respect to alleged violations of any provision of the general statutes relating to any election or referendum, any primary.*” This jurisdiction encompasses General Statutes Title 9 and its provisions pertaining to elections, primaries and referenda. General Statutes Title 7, pertaining municipalities, is not within the aforementioned jurisdiction.

11. The Commission notes, in the course of its investigation and in response to staff inquiries the Office of the Secretary of the State, through its legal staff indicated in writing that:

*For a municipal office a letter of resignation is valid upon filing with the town clerk. ... I believe [SOTS]... clarified this with [SEEC] on a similar issue that we read 9-460 as requiring registration by 24 days ONLY if the vacancy will be filled by 21 days before the election. However, any candidate can resign at any time up to the opening of the polls and if effective under 7-103 that would require the town clerk to automatically notify anyone of the receipt of a resignation.*

12. The Commission therefore dismisses Allegation One pertaining to an alleged violation of General Statutes § 7-24 (c) by Respondent regarding the recording of Ms. LeGassey’s resignation letter for a lack of jurisdiction.

13. Allegation Two

*Respondent violated § 9-460 by validating the withdrawal of a candidate on the ballot by accepting Ms. LeGassey’s resignation and removing her from the November 5, 2013 ballot after the permissible time period for doing so had passed.*

14. After investigation, the Commission finds conflicting accounts as to the actual date that Respondent received Ms. LeGassey’s resignation in the town clerk’s office. Specifically, the statements of Ms. LeGassey and Respondent indicate that the resignation was received either on or about the 21st-22nd of October or on October 18, 2013, respectively. Specifically, written testimony of Ms. LeGassey and Respondent agrees that the resignation was received sometime during the period of October 18 through October 22, 2013. Therefore, it is reasonable to find that the resignation letter was received *after* October 15, 2013 (or within 21 days of the November 5, 2013 election).

15. The Commission, consistent with the legal assumption that resignations are effective upon receipt, finds that the vacancy caused by Ms. LeGassey's resignation occurred *within 21 days* of the November 5, 2013 Plymouth municipal election. Section 9-460 applies to party nominations and the withdrawal of a nominee's name *prior to 24 days* of an election. Consequently, the Commission finds that the requirements of General Statutes § 9-460 pertaining to resignations *prior to 24 days* of an election were not triggered by Ms. LeGassey's resignation which did not occur during that section's statutory time period and therefore rendered it inapplicable under these circumstances.
16. The Commission finds, as detailed in paragraphs 14 and 15 above, that the vacancy for office of Tax Collector could not be filled by nomination due to the timing of the resignation. Further, the Commission concludes that Respondent was not statutorily precluded by General Statutes § 9-460 from accepting Ms. LeGassey's resignation from a municipal office within 21 days of an election nor subsequently barred by such circumstances from removing Ms. LeGassey from the ballot.
17. The Commission dismisses Allegation Two pertaining the timing of Respondent's acceptance of a resignation, as it is not supported by the facts or the law after investigation.
18. Allegation Three  
*Respondent removed the name of the candidate for Tax Collector from the ballot without giving the Democratic Party notice of the withdrawal of its endorsed candidate and consequently denying the party the right to make a nomination to fill a vacancy in violation of § 9-460.*
19. Upon investigation, it was determined that Respondent was not required to provide notice to the Complainants of Ms. LeGassey's withdrawal as candidate and that the rules for filling the vacancy pursuant to § 9-460 did *not* apply because the subsequent vacancy did not occur 24 days prior to the November 5, 2013 election. The Commission concludes that the facts pertaining to Allegation Three do not support a conclusion that § 9-460 was violated. The Commission therefore dismisses Allegation Three.
20. Considering the matter and allegations as detailed herein and the lack of violations determined after investigation, this matter should be dismissed.

**ORDER**

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

That the matter is dismissed.

Adopted this 16<sup>th</sup> day of December, 2014 at Hartford, Connecticut.

  
Anthony J. Castagno, Chairman  
By Order of the Commission