

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

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

File No. 2013-170B

FINDINGS AND CONCLUSIONS

The Complainant alleges that during the November 5, 2013 general election held in the City of West Haven, Respondents JoAnn Callegari and Patricia Horvath, respectively the Republican and Democratic Registrars of Voters, failed to properly impound election materials ahead of a discrepancy re-canvass. The Complainant made additional allegations against Head Moderator Michael DiMassa which are addressed in a separate Findings & Conclusions.¹

1. The following facts are not in dispute.
2. On November 5, 2013 a general election was held in the City of West Haven.
3. On November 8, 2013, Head Moderator Michael DiMassa called for a discrepancy recanvass pursuant to General Statutes § 9-311 to be held on November 13, 2013 based on perceived discrepancies with how the tabulator counted and sorted write-in votes.²

Allegation

4. The Complainant here asserts that the elections materials were improperly impounded between Election Day and the November 13, 2013 recanvass. Specifically she asserts that the materials were stored in a vault in West Haven City Hall and that that vault should have been locked and “sealed.” Additionally, she asserts that an “eyewitness” saw Mr. DiMassa in the vault on November 6, 2013, but that no access was recorded for that date on the vault access log kept by the Registrars.

¹ The following are the Commission’s findings and conclusions based on those portions of the Complainant’s statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission’s jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission’s jurisdiction.

² The circumstances that led to the discrepancy recanvass are discussed in more detail in the Commission’s Findings & Conclusions in File No. 2013-170A.

Law

5. General Statutes § 9-310 calls for impoundment of elections materials subsequent to a call for a canvass:

As soon as the count is completed and the moderator's return required under the provisions of section 9-259 has been executed, the moderator shall place the sealed tabulator in the tabulator bag, and so seal the bag, and the tabulator shall remain so sealed against voting or being tampered with for a period of fourteen days, except as provided in section 9-311 or pursuant to an order issued by the State Elections Enforcement Commission. If it is determined that a canvass is required pursuant to section 9-311 or 9-311a, immediately upon such determination the tabulators, write-in ballots, absentee ballots, moderators' returns and all other notes, worksheets or written materials used at the election shall be impounded at the direction of the Secretary of the State. Such package shall be preserved for one hundred eighty days after such election and may be opened and its contents examined in accordance with section 9-311 or upon an order of a court of competent jurisdiction. At the end of one hundred eighty days, unless otherwise ordered by the court, such package and its contents may be destroyed. Any person who unlocks the voting or operating mechanism of the tabulator or the counting compartment after it has been locked as above directed or breaks or destroys or tampers with the seal after it has been affixed as above directed or changes the indication of the counters on any voting tabulator within fourteen days after the election or within any longer period during which the tabulator is kept locked as ordered by a court of competent jurisdiction or by the State Elections Enforcement Commission in any special case, except as provided in section 9-311, shall be imprisoned for not more than five years. Any tabulator may be released in less than fourteen days, for use in another election, by order of a court, if there is no disagreement as to the returns from such machine and no order directing impoundment has been issued by the State Elections Enforcement Commission. (Emphasis added.)

6. The Complaint cites for the basis of her concerns Moderator's Handbook (Revision 2.1 — July, 2013) promulgated by the Office of the Secretary of the State. Specifically, she looks to the section entitled "SECURITY OF TABULATORS, BALLOTS, FORMS, AND

REPORTS.” Subsection C “TRANSPORTATION AND STORAGE” reads as follows, in pertinent part:

2. STORE IN LOCKED LOCATION

a. The sealed ballot transfer case and the tabulator with the memory card still sealed in place should be stored under lock and key in a storage location not generally accessible. A log should be maintained of all persons having access to that storage location. The log should show the names dates times and purposes for all persons having access to that storage location.

b. Absentee ballots can be given to the Municipal Clerk 14 days following the election for storage in accordance with law.

3. STORAGE LOCATION SECURITY

The secure long-term or short-term storage location in which to store the Accu-Vote tabulators and memory cards shall have the following characteristics: (1) The location shall remain locked at all times; (2) Access to such location shall be exclusively controlled by the Registrars of Voters; (3) Access shall only be granted to such location for the purpose of tabulator programming, maintenance, testing or set-up; and (4) the secure short term storage location may only be used for storage after adjustment and programming of the tabulators has taken place pursuant to Regs. 9-242a-4 and until the close of the polls on Election Day (Regs. 9-242a-5, 9-242a-8).

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7. Section 9-242a-27 of the Regulations of Connecticut State Agencies prescribes the procedures for storage and security after the close of polls, and reads:

After all election results reports have been produced, the moderator and assistant registrars of voters shall record on the moderator’s return the number on the public counter, close down the tabulator and remove the tabulator from the ballot box according to the manufacturer’s instructions. They shall not break the seal on the tabulator and they shall record such number on the moderator’s return. They shall place the tabulator in its carrying case and seal the case and record such number on the moderator’s return. They shall seal all depository envelopes with non-reusable tape. They shall place in the ballot transfer case all

depository envelopes from the polling place and all ballots from the regular bin. The Secretary of the State may prescribe that the depository envelopes containing the empty envelopes and rejected absentee ballots, the depository envelope containing the challenged ballots and the depository envelope containing the spoiled ballots need not be placed in the ballot transfer case. If absentee ballots are counted at the polling place, the certificate of absentee ballot count shall be completed and the result of the absentee ballot count shall be entered on the moderator's returns in the manner prescribed by the Secretary of the State. The moderator shall announce the total results for each candidate and question. The moderator and assistant registrars of voters shall indicate on the moderator's returns, the number of the seal that will be used to secure the ballot transfer case. They shall place a signed copy of the election results report, which was produced by the tabulator, in the ballot transfer case and seal the ballot transfer case. The moderator shall label the keys in accordance with instructions from the Secretary of the State and return the keys, the tabulator, the ballot transfer case, the original moderator's return with the original election results report attached, and other election materials to the registrars of voters. The registrars of voters shall file the original moderator's return and official registry list with the municipal clerk by noon of the day after the election or primary. The ballot transfer case shall be sealed for the period of time prescribed for sealing absentee ballots and then shall be unsealed and the contents destroyed. The tabulator shall be sealed for the period of time prescribed for sealing voting tabulators

8. In this instance, because there was a recanvass called, General Statutes § 9-310 controlled.
9. Immediately upon Mr. DiMassa's call for a recanvass, it was incumbent on the Respondents' to ensure that "the tabulators, write-in ballots, absentee ballots, moderators' returns and all other notes, worksheets or written materials used at the election shall be impounded at the direction of the Secretary of the State."
10. The question here is whether the Respondents satisfied the requirements of § 9-310 insofar as their handling of the "tabulators, write-in ballots, absentee ballots, moderators' returns and all other notes, worksheets or written materials used at the election" between the call of the recanvass on November 8, 2013 and the holding of the recanvass on November 13, 2013.

11. The question of whether a proper recanvass impoundment was effected is one of first impression for the Commission and turns on an inquiry into what was the “direction of the Secretary of the State” and whether such direction was followed.
12. As an initial matter, the investigation did not reveal any evidence that the Office of the Secretary of the State actively gave direction to the Respondents in how to effect the impoundment.
13. However, the investigation revealed that the Office of the Secretary of the State instructs elections officials to follow its publication entitled: “RECANVASS PROCEDURE MANUAL (For Marksense Voting Machines (Accu-Vote ES-2000))” (hereinafter “The Recanvass Manual”).
14. The Recanvass Manual is a comprehensive guide that walks elections officials through the recanvass process.
15. Section IV of the Recanvass Manual, entitled “IMPOUNDMENT OF BALLOTS, MEMORY CARDS, TABULATING MACHINES AND WRITTEN MATERIALS” reads, in pertinent part, as follows:

IV. IMPOUNDMENT OF BALLOTS, MEMORY CARDS, TABULATING MACHINES AND WRITTEN MATERIALS

Immediately after it is determined that a discrepancy recanvass (§9-311) or a close or tie vote recanvass (§§9-311a, 9-311b) is to be held for an election or primary for any office, the municipal clerk must impound the official check list and the moderator’s returns and the registrar of voters must impound the sealed ballot transfer cases, the ballots, the tabulating machines with the memory card sealed in place, write-in ballot materials, absentee ballot materials, and all other notes, worksheets or written materials used in the election or primary to be recanvassed.

A. IMPOUNDMENT PROCEDURES

1. THE FOLLOWING DOCUMENTS AND WRITTEN MATERIALS, MEMORY CARDS AND TABULATORS MUST BE SECURED:

- i. the tabulating machines, with the memory card still sealed in them, for all voting districts
- ii. the sealed ballot transfer cases for each voting district, which contain:
 - all machine counted ballots;
 - the sealed depository envelopes containing the hand-counted absentee ballots; notes, worksheets and other written materials used in the absentee ballot counting procedures; and the Moderator's Record of Absentee Ballot Count for Candidates;
 - the sealed depository envelopes containing the counted ballots from the auxiliary bin; notes, worksheets and other written materials used in counting the ballots from the auxiliary bin (if any) ;
 - the sealed depository envelopes containing the counted ballots from the write-in bin; notes, worksheets and other written materials used in counting the ballots from the write-in bin;
- iii. the sealed depository envelopes containing rejected absentee ballots and discarded inner and outer envelopes, and any impounded documents not in a sealed and locked ballot transfer case must be sealed. *The sealed and locked ballot transfer cases, the tabulating machines with the memory card sealed in place must be stored in a secure location by the registrars of voters. The transfer cases and the tabulating machines may not be removed from the secure location until the time of the recanvass.*

2. MODERATOR'S RETURNS AND THE CHECK LISTS AVAILABLE FOR PUBLIC INSPECTION.

The moderator's returns and the check lists used at the polling places and central counting location, if absentee ballot counting is conducted at a central location, must be available for public inspection. The municipal clerk must secure the moderator's returns and check lists in a locked file cabinet or drawer to which the municipal clerk only has access. The municipal clerk must maintain a log of all public inspections, noting the document, the date, time and name of each person

inspecting such documents. All public inspections must be conducted in full view of the municipal clerk or his assistant.

(Emphasis added.)

16. The Complainant alleges here that the Respondents failed to follow the requirements of General Statutes § 9-310, because, as she asserts, the elections materials were not “sealed in the Vault with no access.”

Factual Findings

17. The investigation into this matter showed that on Election Day, November 5, 2013, all of the appropriate materials were returned, sealed, and stored into the vault in City Hall.
18. The investigation into the matter also showed that it was the practice of the registrars to keep the vault in City Hall locked at all times.
19. Access to the vault was limited to eight individuals, who each possessed a key to the vault: the respondents; Deputy Registrars Nettie Thomas and Tina Peckingham; administrative assistants Nancy Belous and Michael DiMassa (who was also the head moderator in this election); maintenance employee Dom Perrotti; and an unnamed emergency services agency that stored emergency equipment in the vault.
20. Any access to the vault was recorded in a log kept in the vault, including the name of the individual or individuals accessing the vault, as well as the date and time of the access vault. Approximately 75% of the entries also include a short statement of purpose for the entry into the vault.
21. Additionally, the investigation found that although not specifically required by statute, regulation, or direction of the Secretary of the State, the West Haven City Hall had an active security camera monitoring the access to the vault through Election Day.
22. Moreover, when Respondent DiMassa discovered on or about November 10, 2013 that the camera had stopped recording on or about November 6, 2013, he took the extra precaution of calling the West Haven Police Department to City Hall.
23. The police records from that day indicate that together with the Respondent registrars and Mr. DiMassa, the assigned officers reviewed all of the stored election materials against the

official election records to assure that all of the materials were still secured in the vault and that none of the seals had been compromised.

24. Finally, neither the log, nor any other evidence discovered pursuant to the instant investigation, corroborated the Complainant's unsubstantiated claim that Mr. DiMassa accessed the vault on November 6, 2013.

Conclusions

25. As an initial matter, the Commission concludes that the evidence does not support a finding that the Respondents did not meet the close-of-poll requirements. The investigation revealed that all of the materials were sealed and stored as per the requirements enumerated in General Statutes § 9-310 and § 9-242a-27 of the Regulations of Connecticut State Agencies.
26. Turning to the question of whether the Respondents properly impounded the elections materials per the recanvass provisions of General Statutes § 9-310, it is first important to establish what, at least in this instance, "impounded at the direction of the Secretary of the State" meant.
27. As discussed above, the investigation did not reveal any particular instructions regarding impoundment specifically directed at the November 11, 2013 West Haven recanvass. This leaves us to look to the Secretary's instructions found in the 2011 edition of the Recanvass Procedure Manual and the 2013 edition of the Moderator's Handbook.
28. The Recanvass Procedure Manual instructs the elections officials that they

"must impound the official check list and the moderator's returns and the registrar of voters must impound the sealed ballot transfer cases, the ballots, the tabulating machines with the memory card sealed in place, write-in ballot materials, absentee ballot materials, and all other notes, worksheets or written materials used in the election or primary to be recanvassed."

RECANVASS PROCEDURE MANUAL (For Marksense Voting Machines (Accu-Vote ES-2000)), 2011 Edition, page 6 and 7

29. The Recanvass Manual states, without more, that the materials enumerated above in ¶15 "must be secured." *Id.*

30. Fortunately, the Moderator's Handbook sheds light on what the Secretary of the State's Office means by what it means to "secure" elections materials for the purposes of a recanvass impoundment.
31. Comparing the facts found during this investigation against the Secretary's prescribed security measures in the Moderator's Handbook, as enumerated above in ¶ 6, the Commission makes the following findings:
 - a. The impounded materials were stored under lock and key in a storage location not generally accessible;
 - b. The storage location remained locked at all times;
 - c. Access to the storage location was exclusively controlled by the Office of the Registrars of Voters;
 - d. A log was maintained of all persons having access to that storage location;
 - e. The log showed the names, dates, times, and, in substantial part, the purposes for all persons having access to that storage location;
 - f. Other than for the inspection by the West Haven Police Department, no access was made into the vault between when Mr. DiMassa called the recanvass and the holding of the recanvass.
32. Considering the aforesaid, the Commission concludes that the factual investigation does not establish that the Respondents improperly impounded the elections materials, as alleged by the Complainant. Accordingly, 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 9th day of March, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission