

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Patricia Fardy, Bridgeport

File No. 2014-029

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that during the March 4, 2014 Bridgeport Democratic Town Committee Primary, Respondent Maria Pereira impermissibly utilized and/or failed to attribute flyers that she passed out at the Thomas Hooker School polling place and was impermissibly electioneering within 75 feet of the outside entrance of that polling place. The Complainant separately alleges that Respondent Helen Losak, Moderator at the polling place, failed to post the 75 foot signs required by General Statutes § 9-236.¹

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

COUNT ONE: Appropriation and/or Misattribution of Mailers

1. On March 4, 2014, the Bridgeport Democratic Town Committee (“BDTC”) held a Primary.
2. The Complainant was one of 9 candidates running as a slate for the BDTC in the Primary, appearing on Row C on the ballot.
3. The Row C slate produced campaign literature, including but not limited to a flyer featuring pictures of all 9 candidates, a reproduction of Row C from the Primary ballot with the bubbles filled out, along with the motto, “Vote Row C – C the Change.”
4. There is no evidence that the flyer at issue contained any of the attributions enumerated in General Statutes § 9-621.
5. The Complainant alleges that Respondent Maria Pereira appropriated some of the flyers, drew X marks across the faces and ballot lines of candidates Anny Barney, Pat Fardy (the Complainant), and Noel Sepulveda, cut off the proper attribution, and passed these altered flyers out at the Thomas Hooker School polling place.

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.

6. The Complainant, who asserts that the Respondent's actions were "offensive," alleges further that the Respondent's actions were not that of a private citizen, but that of the Chair of the Bridgeport Working Family Party and that somehow this behavior was impermissible at law.
7. As an initial matter, the Commission finds that the Respondent's use of the Row C slate's mailers was not violative per se. There is no allegation or evidence submitted that these mailers were taken impermissibly, only that the mailers were utilized to advocate for or against certain candidates on the slate.
8. The only issue to decide here is whether the Respondent was required to include an attribution under General Statutes § 9-621 on the mailers and, if so, whether she failed to do so.
9. General Statutes § 9-621 reads, in pertinent part:

(a) No individual shall make or incur any expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, no group of two or more individuals acting together that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee shall make or incur any expenditure, and no candidate or committee shall make or incur any expenditure including an organization expenditure for a party candidate listing, as defined in subparagraph (A) of subdivision (25) of section 9-601, for any written, typed or other printed communication, or any web-based, written communication, which promotes the success or defeat of any candidate's campaign for nomination at a primary or election or promotes or opposes any political party or solicits funds to benefit any political party or committee unless such communication bears upon its face as a disclaimer (1) the words "paid for by" and the following: (A) In the case of such an individual, the name and address of such individual; (B) in the case of a committee other than a party committee, the name of the committee and its treasurer; (C) in the case of a party committee, the name of the committee; or (D) in the case of a group of two or more individuals that receives funds or makes or incurs expenditures not exceeding one thousand dollars in the aggregate and has not formed a political committee, the name of the group and the name and address of its agent, and (2) the words "approved by" and the following: (A) In the case of an individual, group or committee other than a candidate committee making or incurring an expenditure with the consent of, in coordination with or in consultation with any candidate, candidate committee or candidate's agent, the name of the candidate; or (B) in the case of a candidate committee, the name of the candidate. . . .

10. The Respondent here does not deny that she re-appropriated the mailers and defaced them and handed them out in the manner alleged by the Complainant. She generally denies any coordination and/or participation by any other individual or individuals in this effort. She asserts that it was permissible for her to repurpose and utilize the flyers in this manner.
11. The investigation revealed evidence that the Respondent wore more than one party hat; while serving as chair of the Bridgeport Working Families Party, she remained a registered Democrat who was very involved in Democratic Party politics, including but not limited to the Bridgeport Democratic Party Committee.²
12. Indeed, the investigation revealed that the Respondent and the Complainant had originally been allied and that the Respondent had been involved in recruiting the Complainant's slate of challenge candidates in the Bridgeport Democratic Town Committee Primary and creating the mailers at issue in this case.
13. However, while the reports varied on the reasons, at some point after the mailers had been designed and printed, the personal relationship soured between the Respondent and the Complainant, the Complainant's husband Andy Fardy, as well as candidates Ann Barney and Noel Sepulveda. The investigation here revealed evidence that the Respondent decided to take her personal frustrations out with the Fardys, Ms. Barney, and Mr. Sepulveda by altering and distributing some mailers in the manner alleged.
14. The Commission has consistently found in the past that repurposed mailers have value and do trigger certain requirements under the campaign finance requirements. See, e.g., *In the Matter of a Complaint by Christopher Healy, Wethersfield*, File No. 2008-123 (legislative mailers utilized to promote campaign have value).
15. Here, the Respondent took mailers initially paid for by the Row C slate and repurposed them for her own use in electioneering. These mailers had value and under certain circumstances their use would have triggered, at the very least, attribution requirements under § 9-621, and perhaps more.
16. However, as an initial matter, there is no evidence that she coordinated her efforts with any other individual or group; her status as the chair of a minor party was immaterial under these facts as she was also a registered Democrat who was (and continues to be) heavily involved in Democratic Party politics. Her status as the chair of a minor party, alone, does not support

² Ms. Pereira ran and won as the Democratic Party's nominee for the Bridgeport Board of Education in the November 3, 2015 municipal election.

a finding of coordination with any other individual involved in that minor party under these facts.

17. Here, the evidence supports a finding that this was an intra-party squabble that spilled out into the Respondent taking her *personal* frustrations out on a few mailers on behalf of no one person or group other than herself. Accordingly, the Commission concludes that the investigation revealed that it is more likely than not that this activity did not trigger the attribution requirements under § 9-621; individuals, acting alone, are not required to include attributions. As such, Count One should be dismissed.

COUNT TWO: 75' Line Violation

18. The Complainant alleges that the Respondent repeatedly violated General Statutes § 9-236 by passing out the aforementioned flyers within 75' of the outside entrance leading to the polling place.

19. General Statutes § 9-236 (a) reads, in pertinent part:

(a) On the day of any primary, referendum or election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach. . . .

20. The Respondent generally denies the Complainant's allegations and asserts that she always remained 75' or more away while electioneering at the polling place. She further asserts that the only times that she went within the 75' area was to utilize the bathrooms within the building housing the polling place and one other time when she asserts that she entered the building to seek out a police officer to address what she felt was harassment by supporters of the Complainant.

21. The Complainant here provided no additional evidence or witnesses to the incursions that she alleges the Respondent made. Moreover, the investigation in this matter did not reveal evidence supporting her allegations. Moreover, the moderator's diary is very detailed and not only does it speak to the issue at hand here, it shows that elections officials were sent out during the day to check the 75' markers, especially to check on the Respondent's activities, and never observed the Respondent within the 75' zone.

22. Considering the aforesaid, the Commission concludes that the evidence is insufficient to make a finding that it was more likely than not that the Respondent violated General Statutes § 9-236 (a). As such, Count Two should be dismissed.

COUNT THREE: Failure to Place 75' Signs

23. Finally, the Complainant alleges that Respondent Helen Losak, Moderator at the Thomas Hooker School polling place, failed to post the 75' signs required by General Statutes § 9-236.

24. General Statutes § 9-236 (b) reads, in pertinent part:

(b) (1) The selectmen shall provide suitable markers to indicate the seventy-five-foot distance from such entrance. Such markers shall consist of a board resting on an iron rod, which board shall be not less than twelve inches square and painted a bright color and shall bear the figures and letters "75 feet" and the following words: "On the day of any primary, referendum or election no person shall solicit in behalf of or in opposition to another or himself or peddle or offer any ballot, advertising matter or circular to another person or loiter within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach."

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the selectmen may provide the markers required by the provisions of this subsection in effect prior to October 1, 1983, except that in the case of a referendum which is not held in conjunction with an election or a primary, the selectmen shall provide the markers required by subdivision (1) of this subsection.

(3) The moderator and the moderator's assistants shall meet at least twenty minutes before the opening of a primary, referendum or an election in the voting district, and shall cause to be placed by a police officer or constable, or such other primary or election official as they select, a suitable number of distance markers. Such moderator or any police officer or constable shall prohibit loitering and peddling of tickets within that distance..

25. Specifically, the Complainant alleges that "there was no 75 foot mark [*sic*] sign designated on the property. The sign was available and remained inside the polling facility." The Complainant did not provide any evidence in support of this allegation.

26. The Respondent generally denies the Complainant's allegations that the 75' signs were not posted. Specifically, she asserts that initially she could not locate the marker with the iron rod, so prior to 6:00 am she utilized two cardboard 75' marker signs that were included with her materials. She had those signs affixed along the side of the building in two places at the 75' mark. She further asserts that the marker with the iron rod affixed was located shortly after the open of polls and affixed in the ground at a 3rd point at approximately 6:15am. Respondent Losak submitted the names of head moderator Ginger Fulton, tabulator mechanic Kenneth Gardner, and tabulator mechanic Ralph Bowen as witnesses. Additionally, the Respondent provided the moderator's diary, which documents that the signs were posted.
27. After investigation, the Commission finds that there is insufficient evidence in this matter supporting the Complainant's allegations. The parties disagree as to whether the signs were posted and the investigation did not reveal conclusive proof that they were or were not (such as a photograph). However, the burden is on the state to show that it was more likely than not that they were not properly placed. Not only has the Complainant provided no evidence in support of this claim, the Respondent replied in full, denying the claim and providing witnesses and documentary evidence to support her denial. Considering the aforesaid, Count Three should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 13th day of April, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission