

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of the Secretary of the State

File No. 2014-045

FINDINGS AND CONCLUSIONS

The Connecticut Secretary of the State brings this Referral pursuant to Connecticut General Statutes § 9-7b, alleging that Respondent Paolo DeFelice lacked bona fide residence at an address in the City of New Britain when he registered to vote and voted using Election Day Registration on November 5, 2013.

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

Background

1. As an initial matter, the Commission notes that on or about November 22, 2013, the Commission received a referral from Berlin Registrar of Voters Elizabeth A. Tedeschi per General Statutes § 9-19j (e)(2)(A) and asserted that Respondent Paolo DeFelice impermissibly attempted to vote twice at the November 5, 2013 municipal general election when he registered to vote and then voted in the City of New Britain using Election Day Registration under General Statutes § 9-19j and then attempted to cast a ballot in his former polling place in the Town of Berlin.
2. In a letter date December 10, 2013, Commission Attorney William B. Smith of the Law Enforcement Unit informed the Referring Official that the matter could not be docketed, as the Commission lacked jurisdiction over *attempts* to vote unlawfully.¹

Allegations

3. On or about April 25, 2014, the Secretary of the State filed the instant referral alleging that additional evidence, included with the Referral, suggested that Respondent DeFelice “may

¹ The Commission notes that at the time these allegations garnered much publicity and that Chief State’s Attorney Kevin Kane met with SEEC staff personally to consider the matter. Mr. Kane also sent the Commission a formal opinion that “[General Statutes §] 53a-49 provides for criminal liability for attempt to commit a crime. It is the position of this office that Section 53a-49 applies to the various election law crimes, such as Sec. 9-360, within your jurisdiction.” To date, the Commission is unaware of any criminal prosecution brought against Mr. DeFelice for attempting to vote twice.

not have resided at the address he used to register to vote in New Britain on November 3, 2013.”

4. The Secretary included as relevant evidence in her referral the following items:
 - a. Respondent Paolo DeFelice’s Connecticut Voter Registration System (“CVRS”) report.
 - b. Property listing for the property on Rocky Hill Ave in New Britain
 - c. Land record for the November 22, 2013 sale of the property on Rocky Hill Ave in New Britain
 - d. Copy of filing information for the Limited Liability Corporation, DeFelice, LLC listing the Norton Road property as its headquarters and “Paul DeFelice” as its only officer
 - e. Property listing for the property on Norton Road in Berlin
 - f. Property tax listings from the Town of Berlin for July 2013, including a real property payment by “Karen A. DeFelice” for the Norton Road home, as well as three vehicles associated with “Paolo DeFelice”
 - g. A copy of a November 11, 2013 Facebook comment on the page of then mayor-elect Erin Stewart from a “Paul DeFelice” stating “God there will be many landlords who won’t be sweating anymore. So relieved you won. I hope this sends a message to other crazy left wing liberal politicians with their ridiculous policies.”

Law

5. An elector is eligible to register to 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. For purposes of this section a person shall be deemed to have attained the age of eighteen years on the day of the person’s eighteenth birthday and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person’s dwelling unit is located within the geographic boundaries of such town. No mentally incompetent person shall be admitted as an elector. . . .(Emphasis added.)

6. In addition to the statutory prongs of age, citizenship and geographic location identified above, an individual's bona fide residence must qualify as 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., *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-077; *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.)
7. 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." *Referral by Manchester Registrars of Voters, Manchester*, File No. 2013-081; (quoting *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. . . .")
8. As an initial matter, the Commission notes that the Commission investigation was unable to make contact with Respondent DeFelice. He appears to have sold all of his interests in Connecticut in 2014 and moved to a property in Sarasota, Florida that he has owned since approximately 2009. Respondent established a Florida real estate broker's license in August 2014. He obtained a driver's license and registered to vote in Florida in November 2014

9. However, despite Respondent DeFelice's unavailability, the investigation into this matter was able to continue in due course, as the best evidence in such cases is generally objective evidence outside the Respondent's own claims.
10. The investigation here was able to confirm that the Respondent, Mr. DeFelice, was associated with both the Berlin and the New Britain properties.
11. State and municipal records confirmed that Mr. DeFelice was registered to vote and did vote at the Norton Road property in Berlin since at least February 2008.
12. Town of Berlin records confirm that "Paul A. DeFelice" purchased the Norton Road property in 2004, a single family home, and quitclaimed it to his wife Karen in 2006. The property was sold to Marcin and Natalia Wicik in September 2014. The DeFelices paid property taxes on the real property as well as three vehicles in 2013.
13. City of New Britain records confirm that "DeFelice, LLC" purchased the Rocky Hill Ave property, a single family home, on July 20, 2012 and sold it on or about November 22, 2013.
14. City of New Britain records also list "DeFelice, LLC" as the owner of a single-family property on Pleasant Street at the time the ballot was cast. That property was originally purchased by "Paul A. DeFelice" on February 10, 2014, quitclaimed to "DeFelice, LLC" on February 28, 2014 and later sold to a third party on July 22, 2014.
15. City of New Britain records also list "Paul DeFelice" as the owner of a multi-family property on Bassett Street at the time the ballot was cast. That property was originally purchased by "Paul A. DeFelice" on July 3, 2012, quitclaimed to "DeFelice, LLC", then quitclaimed back to Mr. DeFelice and later sold to a third party on April 15, 2014
16. The business filing records of "DeFelice, LLC" list the business address as the Norton Road property in Berlin and "Paul A. DeFelice" as the only officer/agent.²
17. However, considering the aforesaid, the Commission notes that the key facts in this case that remain undeveloped are objective facts establishing the allegation by the Secretary that Respondent DeFelice may not have met the criteria for bona fide residence at the Rocky Hill

² The investigation also revealed that the LLC, "DeFelice Realty, LLC," for which Paul A. DeFelice was also the sole officer/agent, was the selling agent on the sales of the Berlin and the New Britain properties and also listed its business address at the Norton Road property.

Ave address in New Britain. Even if Mr. DeFelice were available in this matter, it is the Commission's burden to establish that the allegations in the Referral are true.

18. Much of what the Secretary provided points towards multiple connections to the home in Berlin, but the Secretary did not provide any dispositive evidence of no reasonable claim to bona fide residence at the home in New Britain.
19. The only evidence provided here shows that Respondent DeFelice was the owner, through DeFelice, LLC, of the New Britain property. This fact favors Mr. DeFelice rather than works against him. Moreover, the Facebook posting isn't dispositive, as Mr. DeFelice owned at least three properties in New Britain, any one of which could have been one at which he was a landlord.³
20. In addition to the above, another key issue augers against the Secretary's claim that Mr. DeFelice may not have had a bona fide residence claim to the New Britain address. At the time the Secretary had filed the instant Referral, Respondent DeFelice had sold the New Britain property nearly six months prior. Any on-site evidence that Commission investigators could have developed as to Respondent DeFelice's connection to the property would have needed to be developed as close to the event of the alleged violation as possible.
21. The Commission has consistently held that an individual voter can have reasonable bona fide residence claims to more than one property provided that they only register and vote at one. See, e.g., *In re: Referral of Trumbull Republican Registrar of Voters William Holden* File No. 2015-133 (Voter owned two properties in two different towns and objective evidence supported that the voter had a reasonable claim to both).
22. In *Holden*, the voter owned properties in both Trumbull and Stratford. The Stratford home was listed as his "principal residence" under his mortgage deed. However, after investigating the matter the Commission made an objective review of the voter's claim to bona fide residence in Trumbull and determined that the objective evidence supported his claim, despite the statement in the Stratford mortgage deed.
23. Here, the Commission has objective evidence that Respondent DeFelice had a legal claim to ownership of the New Britain property and there is no evidence on the record that the property was not otherwise habitable. Whether or not he actually lived there is unknown to the Commission and the best evidence concerning this question became unavailable the day that the Respondent sold the property nearly six months prior to the filing of the Referral. Short of an admission by Mr. DeFelice, there is insufficient evidence in this matter to proceed on the Secretary's allegations. Considering the aforesaid, this matter should be dismissed.

³ Indeed, Respondent DeFelice could have been both landlord and resident at the Bassett Street property.

ORDER

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

That the matter is dismissed.

Adopted this 18th day of October, 2017 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Anthony J. Castagno", written over a horizontal line.

Anthony J. Castagno, Chairperson
By Order of the Commission