

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral by Lori Tollmann, Coventry Town Clerk

File No. 2014-127

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Robert Chipkin, of the Town of Coventry, County of Tolland, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:¹

1. The instant Agreement concerns a Complaint in which it is alleged that the Coventry Republican Town Committee ("Coventry RTC"), sent unsolicited absentee ballot applications to Coventry property owners ahead of the November 2014 general election and failed to follow the proscriptions of General States §§ 9-140 (k) and (l) by failing to: 1) register the absentee ballot applications with the town clerk; 2) provide the town clerk with a list of all persons solicited with absentee ballot applications; and/or 3) include the warning statement required by § 9-140 (l).
2. General Statutes § 9-135 prescribes the eligibility requirements for voting by absentee ballot in Connecticut, and reads:²

(a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he is unable to appear at his polling place during the hours of voting for any of the following reasons: (1) His active service with the armed forces of the United States; (2) his absence from the town of his voting residence during all of the hours of voting; (3) his illness; (4) his physical disability; (5) the tenets of his religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his duties as a primary, election or referendum official

¹ This Agreement Containing Consent Order addresses 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 See also, Conn. Const., art. VI, § 7.

at a polling place other than his own during all of the hours of voting at such primary, election or referendum.

(b) No person shall misrepresent the eligibility requirements for voting by absentee ballot prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant.

3. General Statutes § 9-140 prescribes the procedures concerning, *inter alia*, obtaining and/or distributing absentee ballot applications for third parties. The pertinent portions of the statute read, as follows:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . . The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application.

. . .

(k) (1) A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to a person who is the designee of an applicant.

(2) Any person who distributes absentee ballot applications shall maintain a list of the names and addresses of prospective absentee ballot applicants who receive such applications, and shall file such list with the town clerk prior to the date of the primary, election or referendum for which the applications were so distributed. Any person who distributes absentee ballot applications and receives an executed application shall forthwith file the application with the town clerk.

(l) No candidate, party or political committee, or agent of such candidate or committee shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector

or applicant to potential civil and criminal penalties. As used in this subsection, "agent" means any person authorized to act on behalf of another person.

(Emphasis added.)

4. The Respondent here is Robert Chipkin, who was at all times the treasurer of the Coventry RTC.
5. Included on the November 4, 2014 Election Day ballot in the Town of Coventry was a referendum question concerning a municipal bonding issue.
6. According to the Referring Official, her office began to receive numerous unnumbered absentee ballot applications from non-electors Coventry property owners. Included with one of the absentee ballot applications was a cover letter drafted by the Coventry RTC, directed at Coventry property owners, and urging them to request an absentee ballot to vote in the referendum.
7. According to the Referring Official, she contacted Karen Post, who was at all times relevant to the instant complaint the chairperson of the Coventry RTC,³ who informed her that the Coventry RTC had sent approximately 150 applications to Coventry property owners.
8. The investigation revealed that the Coventry RTC voted to mail out information pieces to Coventry voters regarding their position on the upcoming bonding referendum.
9. In addition to voting to send this mail piece to resident electors, they also voted to send the mail pieces to non-resident property owners, who were permitted to vote in the referendum under General Statutes § 9-369d and the Code of the Town of Coventry, along with messages urging them to vote in the referendum and a blank absentee ballot application.
10. Respondent Chipkin did a search on the Internet for absentee ballot applications and came to a non-profit website called www.longdistancevoter.org, which contained what purported to be a valid Connecticut absentee ballot application. He printed that application out, made 150 copies, and sent them out with the mail piece.
11. The Respondent asserts that he was unaware of any requirements to either check out absentee ballots with the Town Clerk, submit lists of solicitations to the Town Clerk, or include a warning letter.

³ On or about May 24, 2016 Thomas V. Pope replaced Karen Post as Coventry RTC Chair.

12. The investigation revealed, and the Referring Official confirmed, that shortly after the Coventry RTC was contacted by the Town Clerk, and before Election Day, they sent her the list of 150 non-resident taxpayers whom they solicited.
13. No evidence was found of any effort to conceal the Coventry RTC's efforts from the public or from the Town Clerk, the Referring Official here. They were accommodating with the requests from the Town Clerk and Commission Law Enforcement Unit staff.
14. A Commission analysis of the www.longdistancevoter.org website confirmed the Respondent's assertions. The website is generally geared towards empowering electors to vote. It utilizes the correct version of the Connecticut absentee ballot application. However, as the Respondents assert, there is no information and/or warning about the prescriptions in General Statutes §§ 9-140 (k) and (l) concerning distributing absentee ballot applications to others.

COUNT ONE: Failure to Register Names of Recipients of Absentee Ballot Applications – General Statutes § 9-140 (k) (2)

15. As an initial matter, the Commission finds that the Coventry RTC filed the relevant list of names and addresses of individuals who received applications from the Coventry RTC prior to the date of the special election for which the applications were so distributed.
16. Accordingly, the Commission concludes that the Respondent did not violate General Statutes § 9-140 (k) (2). This allegation is dismissed.

COUNT TWO: Failure to Register with the Town Clerk – General Statutes § 9-140 (k) (1)

17. Considering the aforesaid, the Commission finds that the Coventry RTC failed to register their distribution of five or more absentee ballot applications with the Coventry Town Clerk.
18. Accordingly, the Commission concludes that the Respondent violated General Statutes § 9-140 (k) (1).

COUNT THREE: Failure to Distribute Absentee Ballot Applications with a Written Explanation and Warning – General Statutes § 9-140 (l)

19. Considering the aforesaid, the Commission concludes that the Respondent violated General Statutes § 9-140 (l) by distributing 150 unsolicited absentee ballot applications without including either the written explanation or warning required by the statute.

CONCLUSION

20. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies:

In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

- (1) the gravity of the act or omission;
- (2) the amount necessary to insure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

21. The Commission does not take lightly these types of omissions, especially where a respondent's failure to account for absentee ballot applications or include warnings could have resulted in violations of General Statutes § 9-135 by those electors who received the unsolicited absentee ballot applications without sufficient instruction and/or warning of the strict and limited eligibility criteria for voting by absentee ballot in Connecticut.
22. In past matters, the Commission has fined those respondents whose activity was egregious and widespread enough to warrant such discipline. In *In the Matter of a Complaint by Scott Veley, Berlin*, 2011-011 the Respondent Philip Apruzzese, as President of the Connecticut Education Association (CEA), sent a letter with an enclosed absentee ballot application to approximately 3,626 CEA members in 17 different towns without an enclosed written warning. A CEA employee printed the absentee ballot application from the website of the Office of the Secretary of the State and then photocopied it as needed. The Respondent paid a \$500 civil penalty in that matter.
23. However, here there does not appear to be any evidence suggesting that the Coventry RTC failed in bad faith to timely register the absentee ballot applications or include the written warning. The distribution was relatively small, limited to a single municipality, and to a

class of voter who was eligible to vote on only the referendum question. The Respondent has no prior history of violations in this area and the Respondent and former chair Karen Post were cooperative with both the Coventry Town Clerk and the Commission investigation of this matter.

24. In consideration of the aforesaid, the Commission will waive a civil penalty in exchange for the Respondent's agreement to henceforth strictly comply with the prescriptions of General Statutes § 9-140.

25. The Respondent waives:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.

26. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

ORDER

IT IS HEREBY ORDERED that Respondent Robert Chipkin shall henceforth strictly comply with the requirements of General Statutes § 9-140.

The Respondent:

Robert Chipkin
Robert Chipkin

For the State of Connecticut:

BY: Michael J. Brandi
Michael J. Brandi, Esq.
Executive Director and General Counsel
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: Sept 25, 2016

Dated: 9/29/16

Adopted this 12 day of OCT of 2016 at Hartford, Connecticut

Anthony Castagno
Anthony Castagno, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

SEP 28 2016

ENFORCEMENT COMMISSION