

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint of Karen Jackson, Bridgeport
In the Matter of a Complaint of Karen Jackson, Bridgeport

File No. 2015-096
File No. 2016-048

FINDINGS AND CONCLUSIONS¹

The Complainant brought separate matters, both alleging that the Bridgeport Board of Education violated the minority representation provisions in General Statutes §9-167a. During the course of the investigation of File No. 2015-096, the Commission discovered an additional minority representation issue that is addressed herein.

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

COUNT ONE: Failure to Follow the Minority Representation Provisions at the Party Change of Kadisha Coates

1. The Complainant here, a Bridgeport elector, filed a sworn Complaint with the Commission alleging that Board of Education (“BOE”) member Kadisha Coates filed a new Voter Registration Application (“VRA”) in February 2015, changing party enrollement from the Working Families Party to the Democratic Party, creating an impermissible 7-2 Democratic Party majority on the BOE, pursuant to General Statutes § 9-167a.
2. General Statutes § 9-167a reads, in full:

(a)(1) Except as provided in subdivision (2) of this subsection, the maximum number of members of any board, commission, legislative body, committee or similar body of the state or any political subdivision

¹ These matters were held in abeyance by the Commission pending the resolution of matters before the Superior Court that could have had impact on the outcomes here. The first was filed by the Complainant, *Jackson v. Bridgeport Board of Education, Et. Al*, Superior Court, judicial district of Fairfield, Docket No. FBT-CV-16-5031818-S. That matter was eventually dismissed by the Court without ruling on the substantive issues in the matter, based on the Plaintiff’s failure to appear at a status conference. The second was *Pereira v. Ganim*, Superior Court, judicial district of Fairfield, Docket No. FBT-CV-16- 6059229-S. The Plaintiff challenged the mayor’s authority to make vacancy appointments when the board failed to do so. The court, Hon. Barbara Bellis, upheld the mayor’s authority and ruled against the plaintiff’s claims.

thereof, whether elective or appointive, who may be members of the same political party, shall be as specified in the following table:

COLUMN I Maximum from One Party	COLUMN II Total Membership
3.....	2
4.....	3
5.....	4
6.....	4
7.....	5
8.....	5
9.....	6
More than 9.....	Two-thirds of total membership

(2) The provisions of this section shall not apply (A) to any such board, commission, committee or body whose members are elected wholly or partially on the basis of a geographical division of the state or political subdivision, (B) to a legislative body of a municipality (i) having a town meeting as its legislative body or (ii) for which the charter or a special act, on January 1, 1987, provided otherwise or (C) to the city council of an unconsolidated city within a town and the town council of such town if the town has a town council and a representative town meeting, the town charter provides for some form of minority representation in the election of members of the representative town meeting, and the city has a city council and a body having the attributes of a town meeting or (D) to the board of directors and other officers of any district, as defined in section 7-324, having annual receipts from all sources not in excess of two hundred fifty thousand dollars.

(b) Prior to any election for or appointment to any such body, the municipal clerk, in cases of elections, and the appointing authority, in cases of appointments, shall determine the maximum number of members of any political party who may be elected or appointed to such body at such election or appointment. Such maximum number shall be determined for each political party in the following manner: From the number of members of one political party who are members of such

body at the time of the election or appointment, subtract the number of members of such political party whose terms expire prior to the commencement of the terms for which such election or appointment is being held or made and subtract the balance thus arrived at from the appropriate number specified in column II of subsection (a) of this section.

(c) In the case of any election to any such body the winner or winners shall be determined as under existing law with the following exception: The municipal clerk shall prepare a list of the candidates ranked from top to bottom according to the number of votes each receives; when the number of members of any one political party who would be elected without regard to this section exceeds the maximum number as determined under subsection (b) of this section, only the candidates of such political party with the highest number of votes up to the limit of such maximum shall be elected, and the names of the remaining candidates of such political party shall be stricken from the list. The next highest ranking candidates shall be elected up to the number of places to be filled at such election.

(d) If an unexpired portion of a term is to be filled at the same time as a full term, the unexpired term shall be deemed to be filled before the full term for purposes of applying this section. At such time as the minority representation provisions of this section become applicable to any board, commission, committee or body, any vacancy thereafter occurring which is to be filled by appointment shall be filled by the appointment of a member of the same political party as that of the vacating member.

(e) Nothing in this section shall be construed to repeal, modify or prohibit enactment of any general or special act or charter which provides for a greater degree of minority representation than is provided by this section.

(f) Nothing in this section shall deprive any person who is a member of any such body on July 1, 1960, of the right to remain as a member until the expiration of his term.

(g) For the purposes of this section, a person shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his appointment to, or of his nomination as a candidate

for election to, any office specified in subsection (a) of this section, provided any person who has applied for erasure or transfer of his name from an enrollment list shall be considered a member of the party from whose list he has so applied for erasure or transfer for a period of three months from the date of the filing of such application and provided further any person whose candidacy for election to an office is solely as the candidate of a party other than the party with which he is enrolled shall be deemed to be a member of the party of which he is such candidate.

3. The investigation here revealed that BOE member Kadisha Coates was appointed to the BOE in November 2014 and at the time was an enrolled member of the Working Families Party (“WFP”). Ms. Coates was appointed after a vacancy was created by the departure of John Bagley from the BOE, who had been elected to the BOE as the WFP candidate in the 2012 special election that reconstituted the BOE as an elected municipal body.
4. At the time of Ms. Coates’ appointment, the BOE was constituted of 6 members who were elected on the Democratic Party line and 2 members who were elected on the Republican Party line.²
5. On or about April 15, 2015, Ms. Coates applied for a new VRA, changing her party enrollment from WFP to the Democratic Party.
6. The Complainant here alleges that the aforementioned change of party enrollment from WFP to Democratic Party created an imbalance on the BOE of 7 members of the Democratic Party and only two members from a minority party, which she asserts is impermissible under General Statutes § 9-167a.
7. Turning to the question there, it is fairly straightforward: for the purposes of the minority representation rule in General Statutes § 9-167a, was Ms. Coates counted as WFP, the party she held at the time of her appointment (and the party with which Mr. Bagley had been elected), or the Democratic Party, the party to which she switched on April 15, 2015.

² The Democrats were: Jacqueline Kelleher, Hernan Illingworth, Andre Baker, Jr., and Howard Baker, and David Hennessey. The Republicans were Sauda Baraka and Joe Larcheveque.

8. The answer to this question comes directly from General Statutes § 9-167a (g):

For the purposes of this section, a person shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his appointment to, or of his nomination as a candidate for election to, any office specified in subsection (a) of this section . . .

9. Moreover, the Commission put this question to the Secretary of the State. In a written opinion from Staff Attorney Theodore Bromley, the Secretary responded:

It has long been the opinion of this office, pursuant to general statutes §§ 9-3 and 9-167a(a), (b) and (g) that if a member of an elected board applies to transfer his party enrollment during his term of office, he may remain a member of the board until the end of his term.³

10. At the time of her appointment, Ms. Coates was an enrolled member in the WFP. As such, for the purposes of the minority representation rule in General Statutes § 9-167a, she was considered a member of the WFP for the purposes of determining the party makeup of the BOE at the time of the party switch.
11. Accordingly, the Commission concludes that the BOE did not fail to follow General Statutes § 9-167a by keeping Ms. Coates on the Board after her party switch.
12. Count One should be dismissed.

COUNT TWO: Failure to Follow the Minority Representation Provisions at the Appointment of Kate Rivera for Jacqueline Kelleher

13. In the course of the investigation of File No. 2015-096, Commission staff discovered that on or about August 24, 2015, after Ms. Coates' party switch, Kate Rivera, a registered member of the Democratic Party, was appointed to fill the remaining term of a vacancy created by the resignation of Jacqueline Kelleher, a BOE member who was also a member of the Democratic Party both at the time of her election on the Democratic Party line and her resignation. Ms. Rivera served for 5 meetings of the BOE from September 28, 2015 through November 23, 2015.

14. The Commission recognized that this Democrat-for-Democrat replacement—which on its face may have seemed straightforward to the BOE, who made the appointment—might prove

³ See April 28, 2017 Opinion of Secretary of State Staff Attorney Theodore Bromley.

to be a minority representation issue in light of Ms. Coates' February 2015 party change from the WFP to the Democratic Party created a situation in which 7 members of the 9-member BOE were registered members of the Democratic Party.⁴

15. The appointment of Ms. Rivera for Ms. Kelleher maintained the level of 7 registered members of the Democratic Party on the 9-member BOE that was created by Ms. Coates' party switch.
16. The Commission again put the question to the Secretary of the State's office pursuant to its authority under General Statutes § 9-3. The Secretary of the State's Office responded, as follows:

Although the transfer of party enrollment does not affect the status of the member already on the board, it may affect the filling of future vacancies that occur more than three months after the filing of the application for transfer. In addition, we must also direct your attention to the enclosed minority representation outline which this office has distributed since 1989 in which we state: "If you change party during your term, you are not removed from the board, but when the next vacancy on the board occurs and is filled, your party affiliation on the day it is filled is taken into consideration in filling the vacancy."

When a member of a board files an application for transfer of party enrollment under general statutes § 9-59, for purposes of minority representation under general statutes § 9-167a(g), such person is counted as a member of his new party three months after filing his application for transfer of party enrollment. Consequently, under general statutes § 9-167a(b), in the facts presented, if one of the seven members of [The Democratic Party] resigns, the appointing authority may not appoint a member of [The Democratic Party] to fill the vacancy. The vacancy occurred five months after the transfer of party enrollment and therefore the elected member who switched parties would be considered a member of his new party for purposes of general statutes § 9-167a(g).

...

As such, any appoint made of a [Democratic Party] member would have violated the express provisions of general statutes § 9-167a. Therefore, it would be the opinion of this office that such an appointment would be

⁴ The membership did not change between the appointment of Ms. Coates and the appointment of Ms. Rivera.

"null and void" and any such appointee would simply have no right to hold the seat to which they were appointed.^{5 6}

17. The Commission also recognized that Chapter 15 § 1(d) of the Charter of the City of Bridgeport actually requires that replacements on City boards be made with individuals of the same party as the departing member and put this question to the Secretary, who answered accordingly:

[U]nder [G]eneral [S]tatutes § 9-167a (e) a home rule charter provision may not provide for a lesser degree of minority representation than is provided by [G]eneral [S]tatutes § 9-167a. As such, even if a home rule charter provision were to require a vacancy to be filled by a member of the same party as the vacating member, such provision could not require a board to seat members in excess of the statutorily authorized maximum number of party members allowed pursuant to general statutes §9-167a.⁷

18. The commission concurs with the above opinions of the Secretary of the State.
19. Accordingly, since more than three months had passed since Ms. Coates switched parties from the WFP to the Democratic Party, any appointments made to vacancies created by registered members of the Democratic Party occurring before the next regularly scheduled election (here, November 2015) could not be filled with a member of said party, even though Chapter 15 § 1(d) of the Charter of the City of Bridgeport required someone of the same party.
20. Considering the aforesaid, the Commission concludes that the BOE failed to follow General Statutes § 9-167a by appointing Democrat Kate Rivera to the vacancy created by the departure of Democrat Jacqueline Kelleher.
21. As the Commission's authority does not include levying civil penalties under General Statutes §§ 9-7b (a) (2) and 9-167a, and as Ms. Rivera's term was brief and has concluded⁸, we have no further action to take as to Count Two.

⁵ Id.

⁶ The Court, Judge Barbara Bellis, agreed with this interpretation in her Memorandum of Decision in the *Pereira* matter. See *Pereira v. Ganim*, Superior Court, judicial district of Fairfield, Docket No. FBT-CV-16- 6059229-S, 2016 Conn. Super. LEXIS 2751 at *14-16.

⁷ Id.

⁸ Ms. Rivera's served for only 2 months.

COUNT THREE: Failure to Follow the Minority Representation Provisions at the Resignation of David Hennessey

22. The Complainant here filed an additional Complainant on or about June 22, 2016 and stated, simply: “Former Bridgeport Board of Education member David Hennessey changed his affiliation from [D]emocrat to [R]epublican. Upon his vacancy from the [BOE] left no minority representation on the board.”
23. The investigation here revealed that former Chairman Hennessey was elected in 2013 on the Democratic Party line and was at the time an enrolled member of the Democratic Party.
24. On or about January 5, 2016, Mr. Hennessey submitted a new VRA, changing his enrollment from the Democratic Party to the Republican Party.
25. On or about May 24, 2016, more than four months after his party switch, Mr. Hennessey submitted his resignation from the BOE, leaving a vacancy.
26. At the time of Mr. Hennessey’s resignation, for the purposes of the minority representation rule in General Statutes § 9-167a, the BOE consisted of 4 members of the Democratic Party, 1 member of the Working Families Party, and 4 members of the Republican Party, including Mr. Hennessey.⁹ As discussed above, for purposes of the minority representation rule, Mr. Hennessey had been a member for more than 3 months and therefore his new party applied for the purposes of counting party affiliation when filling vacancies.
27. For the purposes of the minority representation rule, Mr. Hennessey’s departure left a BOE consisting of 4 members of the Democratic Party, 1 member of the Working Families Party, and 3 members of the Republican Party.
28. Considering the aforesaid, the Commission concludes that neither Mr. Hennessey’s party switch nor his departure from the BOE created a minority representation issue under the under General Statutes § 9-167a at the time.
29. Count Three should be dismissed.

⁹ The Republicans were: Mr. Hennessey, Joe Larcheveque, Souda Baraka, and Kevin McSpirit. The Democrats were: Dennis Bradley, Ben Walker, Andre Baker, Jr., and Howard Gardner. The Working Families Party member was Maria Pereira.

ORDER

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

Count One: Dismissed
Count Two: No Further Action
Count Three: Dismissed.

Adopted this 17th day of May, 2017 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~
By Order of the Commission
Salvatore A. Bramante, Vice Chair