

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Joseph E. Milardo,
Middletown

File No. 2015-151

FINDINGS AND CONCLUSIONS

Complainant brought this complaint pursuant to § 9-7b, General Statutes of Connecticut, alleging that Middletown Mayor Daniel Drew violated Election Laws by disseminating an unsolicited absentee ballot application via mail to Complainant's mother and by using the Middletown Town Clerk's return address for the mailing, in violation of campaign finance and election laws. After investigation of the matter, the Commission makes the following findings and conclusions:

1. Mr. Daniel Drew was the incumbent mayor seeking reelection at the November 3, 2015 municipal election in the City of Middletown.
2. Mr. Drew registered "Drew 2015" as his candidate committee and designated Nancy Conaway-Raczka his treasurer. The *Drew 2015* committee included absentee ballot applications along with some of its campaign communications disseminated in Middletown prior to the November 3, 2015 municipal election.
3. The Complainant alleged that Mr. Drew committed the following violations pertaining his mailing of an absentee ballot application for the November 3, 2015 Middletown election:
 - (1) Mr. Drew mailed an absentee ballot applications *as a candidate*;
 - (2) Mr. Drew mailed an absentee ballot application to Complainant's mother that was *unsolicited*; and,
 - (3) Mr. Drew *used the Town Clerk's return address* in his mailing of the absentee ballot application and campaign materials in question to imply official support for his mayoral campaign.
4. General Statutes § 9-140, provides in pertinent part:

...

(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.***

(1) ***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.]

5. Upon investigation, the Commission finds that on or about October 12, 2015, *Drew 2015* mailed a campaign cover letter soliciting support for Mr. Drew's reelection as Middletown mayor to Lucille A. Milardo. Further, the Commission finds that the aforementioned mailing contained a campaign letter, an absentee ballot application and an envelope for the return of the absentee ballot application. The campaign letter contained the attribution: *Paid for by Drew 2015, Nancy Conaway-Raczka, Treasurer, Approved by Dan Drew.*
6. The Commission finds, after investigation, that address labels were used and affixed to both the outer envelope and return envelope provided and used by *Drew 2015* to mail a campaign letter and an absentee ballot application to Mrs. Milardo pertaining to the November 3, 2015 election.

7. Allegation One: *Mr. Drew mailed absentee ballot applications as a candidate in connection with his mayoral campaign in violation of General Statutes § 9-140.*
8. General Statutes § 9-140 provides the requirements for a *candidate* that mails “unsolicited” absentee ballot applications. By providing the requirements for such mailings of absentee ballots applications *by candidates* when unsolicited, that section plainly serves as permission for a candidate for election to municipal office to undertake such specific conduct.
9. The Commission concludes that the mailing of unsolicited absentee ballots *by candidates*, as for example the *Drew 2015*’s mailing of an absentee ballot to Complainant’s mother, is specifically anticipated and prescribed by General Statutes § 9-140 (1).
10. Therefore, the Commission concludes that Complainant’s allegation that Mr. Drew was prohibited from sending out absentee ballot applications *because he was a candidate* is not supported by § 9-140 (1). Allegation One is therefore dismissed as it remains unsupported by the law after investigation.
11. Allegation Two: *Mr. Drew mailed an absentee ballot application that was unsolicited in violation of General Statutes § 9-140.*
12. The Commission finds, after investigation, that a dispute remains as to whether the absentee ballot application in question was solicited or unsolicited by the Complainant’s mother. However, the Commission notes that for purposes of addressing Allegation Two, pertaining to an alleged *per se* prohibition against mailing unsolicited absentee ballots, a resolution of this factual dispute is unnecessary.
13. The Commission concludes that General Statutes § 9-140 (1) does not prohibit such conduct but rather anticipates and prescribes the dissemination of unsolicited absentee ballot applications. This conclusion holds even assuming for purposes of argument that *Drew 2015* sent Mrs. Milardo an absentee ballot application that was *unsolicited*.
14. The Commission concludes therefore that the sending out of *unsolicited* absentee ballot applications prior to an election is not prohibited *per se* as alleged by Complainant and that Mr. Drew and *Drew 2015* did not violate General Statutes § 9-140 (1), by doing so because that section specifically permits such conduct. Allegation Two is therefore dismissed as it remains unsupported by the law after investigation.

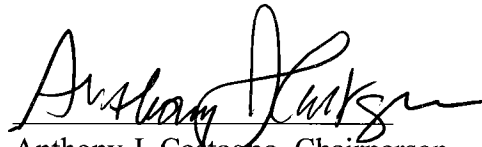
15. Allegation Three: Mr. Drew used the City Clerk's return address in his mailing of the absentee ballot to his mother Lucille Milardo to imply official support for his mayoral campaign in violation of campaign finance laws.
16. The Commission notes that Complainant does not allege, nor does the Commission find, that *Drew 2015* used the Town Clerk's address generally as its campaign or headquarters address or in lieu of the same.
17. After investigation, the Commission finds that *Drew 2015* used the Middletown Town Clerk's address as the return address on some portion of the envelopes inserted inside campaign mailings that included absentee ballot applications in connection with the November 3, 2015 election.
18. The Commission finds that a vendor, in response to this complaint and investigation, admitted that in some mailings for *Drew 2015* address labels were inadvertently misused on envelopes for the campaign itself, which the campaign originally intended for envelopes provided with absentee ballot applications to facilitate their return to the town clerk's office upon completion.
19. Further, in response to this complaint and investigation, *Drew 2015* maintains that the use of the Town Clerk's return address on the return envelopes inserted in campaign mailings along with absentee ballot applications was consistent with General Statutes § 9-140 (k) (2) that requires "[a]ny person who distributes absentee ballot applications and receives an executed application [to] forthwith file the application with the town clerk."
20. Finally, the Commission notes that the central communication in the campaign mailing was a letter soliciting support for Mr. Drew's reelection that contained the attribution *Paid for by Drew 2015, Nancy Conaway-Raczka, Treasurer, Approved by Dan Drew* and was made up of two generic white envelopes that contained no logos or seals but only address labels.
21. The Commission, under these limited facts and circumstances, as detailed in paragraphs 16 and 20 above, declines to take further action regarding the alleged misuse of the Middletown Town Clerk's office's return address by *Drew 2015* in its mailings of campaign literature that otherwise included the required attribution pursuant to General Statutes § 9-621 prior to the November 3, 2015 municipal election in Middletown and did not appear to conceal or mislead as to its true source.

ORDER

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

That the complaint is dismissed as to Allegation One and Two; and that no further action is taken as to Allegation Three.

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

A handwritten signature in black ink, appearing to read "Anthony J. Castagno". The signature is fluid and cursive, with a large initial "A" and "C".

Anthony J. Castagno, Chairperson
By Order of the Commission