

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Scott McCall  
Lebanon

File No. 2015-166

**FINDINGS & CONCLUSIONS**

Complainant Scott McCall of Lebanon filed this complaint pursuant to Connecticut General Statutes § 9-7b alleging that the Lebanon town clerk wrongly certified the election of another candidate for the Board of Education when Complainant had in fact garnered the third-highest number of votes for the office in the November election. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. Complainant McCall ran in 2015 as a Republican Party candidate for the Lebanon Board of Education. He received the third most votes in the election, trailing two other Republican Party candidates.<sup>1</sup>
2. After the election, Susan Coutu, Lebanon town clerk, certified the results naming the two Republicans and a Democrat, who had received the fourth highest number of votes, as the winners of the election.<sup>2</sup>
3. Complainant alleges that by seating a candidate who had received fewer votes than he had in the election, the town clerk had misinterpreted General Statutes § 9-204, which sets the requirements for minority party representation on boards of education.<sup>3</sup>
4. The Lebanon Board of Education includes nine members, each elected for a six-year term. In 1973, the city council determined that every two years, electors would pick three members of the school board.<sup>4</sup>

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<sup>1</sup> See ED-606 (Head Moderator's Return, Municipal) – Town of Lebanon, Date of Election: 11/3/2015 (Robert Cady, Moderator) (reflecting that Complainant received third-highest number of votes behind two other Republican candidates).

<sup>2</sup> See Letter from Susan C. Coutu to Scott McCall, Nov. 12, 2015 (notifying complainant that two Republican and one Democratic candidates would be certified as new board of education members based on results of November 2015 election).

<sup>3</sup> See Affidavit of Complaint, Scott H. McCall, Lebanon (SEEC File No. 2015-166) (State Elections Enforcement Comm'n., Rec'd Nov. 17, 2015) (alleging that town clerk wrongly named Democratic Party candidate to board of education).

<sup>4</sup> See Ordinance, Town of Lebanon (adopted May 20, 1973).

5. General Statutes § 9-167a (a) (1) establishes the maximum number of members of a board or commission that may come from a single political party. When, as here, nine members comprise the board, no more than six of those members may come from a single political party.
6. General Statutes § 9-204 states:
  - (a) Unless otherwise provided by special act or charter provision, . . . *when the number of members to be elected to the board of education for the same term at any election is odd, no elector shall vote for more than a bare majority of that number.*<sup>5</sup>
7. General Statutes § 9-414 mandates that no political party may nominate for election more candidates than the number for which an elector may vote.<sup>6</sup>
8. General Statutes § 9-204b allows municipalities to adopt local ordinance that would authorize political parties to nominate candidates equaling the number of candidates up for election. But this statutory provision applies only in those towns which provide “for four-year terms for members to be elected to the board of education.”
9. Attempting to take advantage of this statute, in 2008, the Town of Lebanon in a Special Town Meeting adopted an ordinance drawing on General Statutes § 9-204b and stating that “each political party shall have the right to nominate as many persons as there are vacancies on the Board of Education . . . .”<sup>7</sup>
10. The General Statutes § 9-204b afforded to municipalities which “provide[d] for four-year terms for members to be elected to the board of education” the ability to enact ordinances allowing allow electors to vote for as many candidates to be elected to the board of education as there are vacancies and “the persons receiving the greatest number votes shall be elected” unless that number exceeded the maximum number allowed from a single political party under General Statutes § 9-167a.<sup>8</sup>

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<sup>5</sup> See General Statutes § 9-204 (a) (1) (setting maximum number of candidates for which electors may vote in elections for boards of education).

<sup>6</sup> See General Statutes § 9-414 (stating, in relevant part, “No town committee . . . shall endorse and certify

<sup>7</sup> See An Ordinance re: Board of Education, Full Election of Membership (Effective April 12, 2008) (enacting local ordinance to allow parties to nominate as many candidates as there are vacancies on Board of Education).

<sup>8</sup> See General Statutes § 9-204b (emphasis added).

11. Town Clerk Coutu, the respondent in this matter, sought advice from the town's attorney on how to determine which candidate she should name as the successful candidate for the third seat on the Board of Education.<sup>9</sup>
12. Edward B. O'Connell, town attorney for the Town of Lebanon, advised the respondent that the town ordinance allowing parties to nominate as many candidates as there were vacancies and allowing electors to vote for as many candidates as would be seated should not have been followed because members of Lebanon's board of education served six-year terms, not the four-year terms specified in General Statutes § 9-204b.<sup>10</sup>
13. Given that the statute upon which Lebanon based its authority to allow parties to nominate as many candidates as requires that the board members serve four-year terms, O'Connell opined that a court would likely determine that the ordinance allowing parties to nominate as many candidates as there were vacancies on the board was not valid. Absent that ordinance, O'Connell said, the fallback "Restrictive Voting" laws in state statute – limiting nomination of candidates by parties to only two candidates, not three, in this case – would apply. O'Connell recommended:

Given the overriding need to both comply with the applicable election laws and to construe the election results in a manner which provides the most stability and reflects the actual results of the Election as closely as possible within the constraints of the law, it is our advice that you, as the Lebanon Town Clerk, should declare and notify the Secretary of the State that the two Republican candidates who received the most votes, and the one Democratic candidate who received the most votes, are the new members of the Board of Education. That result is as consistent as possible with the manner in which the nominations and Election should have been conducted.<sup>11</sup>

14. Citing this advice, Respondent notified Complainant that the Democratic candidate who had received the fourth-highest number of votes would be seated as a member of the Lebanon Board of Education instead of Complainant.
15. Allowing the parties to nominate three candidates for the offices and instructing electors to vote for three candidates for board of education appear to have been errors committed by Respondent in violation of state laws regarding minority representation. But, given the guidance of the state statute and local ordinance and the confusion that the interplay and

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<sup>9</sup> See Letter from Edward B. O'Connell to Susan Coutu (Nov. 11, 2015) (laying out questions that Respondent had asked of town attorney related to certifying Nov. 3 election results).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

incompatibility between the two created, the Commission will not pursue this matter against the Respondent as a violation but urge town leaders to address this problem before the next municipal election to avoid a similar challenge to the election results in the future.

16. Based on the minority representation statute, the town clerk, after seeking counsel from the Lebanon town attorney, correctly applied the law in this instance by seating the Democratic Party candidate and thus no violation of Connecticut's election laws occurred.

### **ORDER**

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

This case will be dismissed.

Adopted this 11<sup>th</sup> day of May, 2016 at Hartford, Connecticut.

  
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Anthony J. Castagno, Chairperson  
By Order of the Commission