

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Brenda Duquette, Thompson

File No. 2015-193

FINDINGS AND CONCLUSIONS

The Complainant brought this Complaint on or about December 23, 2015 pursuant to Connecticut General Statutes § 9-7b, and alleged that the head moderator submitted a head moderator's report during the for the November 3, 2015 Municipal General Election in the Town of Thompson in which there was a 46 vote discrepancy between the reported number of votes cast and the number of electors reported as having voted.¹

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

Allegations

1. The Complainant here was a candidate for Town Clerk during the November 3, 2015 Municipal General Election in the Town of Thompson and she alleges that Head Moderator Aileen Witkowski submitted a Head Moderator's report on Election Day that reported that 46 more voters had voted in the race for Town Clerk than were checked off as having voted altogether.

Law

2. General Statutes § 9-311 reads, in pertinent part:

(a) If, within three days after an election, it appears to the moderator that there is a discrepancy in the returns of any voting district, such moderator shall forthwith within said period summon, by written notice delivered personally, the canvass officials, consisting of at least two checkers of different political parties and at least two absentee ballot counters of different political parties who served at such election, and the registrars of voters of the municipality in which the election was

¹ The following are the Commission's findings and conclusions based on 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.

held and such other officials as may be required to conduct such recanvass. Such written notice shall require the clerk or registrars of voters, as the case may be, to bring with them the depository envelopes required by section 9-150a, the package of write-in ballots provided for in section 9-310, the absentee ballot applications, the list of absentee ballot applications, the registry list and the moderators' returns and shall require such recanvass officials to meet at a specified time not later than the fifth business day after such election to recanvass the returns of a voting tabulator or voting tabulators or absentee ballots or write-in ballots used in such district in such election. If any of such recanvass officials are unavailable at the time of the recanvass, the registrar of voters of the same political party as that of the recanvass official unable to attend shall designate another elector having previous training and experience in the conduct of elections to take his place. Before such recanvass is made, such moderator shall give notice, in writing, to the chairman of the town committee of each political party which nominated candidates for the election, and, in the case of a state election, not later than twenty-four hours after a determination is made regarding the need for a recanvass to the Secretary of the State, of the time and place where such recanvass is to be made; and each such chairman may send representatives to be present at such recanvass. Such representatives may observe, but no one other than a recanvass official may take part in the recanvass. If any irregularity in the recanvass procedure is noted by such a representative, he shall be permitted to present evidence of such irregularity in any contest relating to the election. . . .

3. General Statutes § 9-312 reads:

In each municipality divided into voting districts, unless otherwise provided by law, the head moderator shall be the presiding officer for the purpose of declaring the result of the vote of the whole municipality and of making returns to the Secretary of the State, and the moderators in each of the voting districts shall be assistant presiding officers and shall make returns of their polls as required by law.

4. General Statutes § 9-314 reads, in pertinent part:

...
(b) As used in this subsection, "moderator" means the moderator of each municipal election in each town not divided into voting districts, and the

head moderator in each town divided into voting districts. *The moderator shall make a preliminary list of the votes given for each municipal office elected at such municipal election, as reported solely by the tabulator, as provided in section 9-309, in the moderator's town and shall immediately transmit such preliminary list to the Secretary of the State not later than midnight on election day.* Once the preliminary list has been transmitted to the Secretary of the State, the moderator shall make a duplicate list of the votes given in the moderator's town for each municipal office elected at such municipal election. Such duplicate list shall indicate the total number of names on the official check list of such town and the total number of names checked as having voted and shall be on a form prescribed by the Secretary of the State. The moderator shall transmit such duplicate list to the Secretary of the State by electronic means as prescribed by the Secretary of the State not later than forty-eight hours after the close of the polls on election day. The moderator shall also seal and deliver one of such duplicate lists to the Secretary of the State not later than the third day after the election. Any such moderator who fails to so transmit or deliver such duplicate list to the Secretary of the State by the time required shall pay a late filing fee of fifty dollars. The moderator shall also deliver one of such duplicate lists to the clerk of such town. (Emphasis added.)

5. General Statutes § 9-322a reads (Rev. to May 6, 2016):

(a) Not later than seven days following each regular state election, the head moderator, registrars of voters and town clerk for each town divided into voting districts shall meet to identify any error in the returns. Not later than fourteen days following each regular state election, the head moderator shall correct any error identified and file an amended return with the Secretary of the State and the registrars of voters.

(b) Not later than twenty-one days following each regular state election, the town clerk of each town divided into voting districts shall file with the Secretary of the State a consolidated listing, in tabular format, as prescribed by the Secretary of the State, of the official returns of each such voting district for all offices voted on at such election, including the total number of votes cast for each candidate, the total number of names on the registry list, and the total number of names checked as having voted, in each such district. The town clerk of such town shall certify that he or she has examined the lists transmitted under this

section to determine whether there are any discrepancies between the total number of votes cast for a candidate at such election in such town, including for any canvass conducted pursuant to section 9-311 or 9-311a, and the sum of the votes cast for the same candidate in all voting districts in such town. In the case of any such discrepancy, the town clerk shall notify the head moderator and certify that such discrepancy has been rectified. Each listing filed under this section shall be retained by the Secretary of the State not less than ten years after the date of the election for which it was filed. (Emphasis added.)

Investigation

6. As an initial matter, the investigation in this matter confirmed the alleged discrepancy here. On the Head Moderator Aileen Witkoski's November 3, 2015 report to the Secretary of the State, she reported that a total of 2,124 voters cast ballots in 2015 Municipal General Election that year, 438 in District 1, 1025 in District 2, 313 in District 3, and 348 in District 4. However, the Head Moderator's report also indicates that a total of 2,170 votes in the race for Town Clerk, 46 votes more.
7. However, the investigation also revealed that on or about November 20, 2015, the Secretary of the State's Office selected one of the Town of Thompson's polling places for an audit and pursuant to that audit, the Thompson Elections Officials discovered the discrepancy in that district, which then caused them to review the tabulator tapes for the entire town.
8. After review of the tabulator tapes, which appeared to either fail to count or miscount the number of electors who voted by absentee ballot and/or Election Day registration, Head Moderator Aileen Witkoski re-calculated and submitted an amendment of just that portion of the Head Moderator's report (Part IV) to the Secretary of the State on or about December 13, 2015.²
9. The amended portion reported that a total of 2,198 voters cast ballots in the November 3, 2015 Municipal General Election in the Town of Thompson, 455 in District 1, 1038 in District 2, 323 in District 3, and 359 in District 4.
10. Commission staff reviewed copies of the tabulator tapes for the November 3, 2015 Municipal General Election in the Town of Thompson and the amended return is an accurate report of those numbers.

² No amendments were discovered or made to the actual vote tallies.


11. Turning to the question before the Commission here, the issue is whether the failure to correct the aforementioned flawed original report was a violation. For municipal elections prior to May 6, 2016, it was not. Up until this date, General Statutes § 9-322a (a) required elections officials, including but not limited to the head moderator, to meet within 48 hours of any regular *state* election to resolve any errors in the results of the election and submit an amended return to the Secretary of the State and the registrars of voters.
12. However, this provision did not apply to *municipal* elections until the language was amended in Public Act Section 16-14 of the 2016 Public Acts to strike the word “state” in the phrase “regular state election” in subsection (a). Accordingly, as this issue occurred prior to the effective date, there is no violation of General Statutes § 9-322a.
13. Accordingly, this matter should be dismissed.

ORDER

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

That the matter is dismissed..

Adopted this 15h day of November, 2017 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission