

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by John Mannette, Broad Brook

File No. 2016-053

FINDINGS AND CONCLUSIONS

The Complainant alleged that the Town of East Windsor Board of Selectmen impermissibly violated minority representation rules when it made a vacancy appointment for the 2-member Alternates to the Board of Finance.¹

BACKGROUND

1. According to the Complainant, on or about May 26, 2016, the Board of Selectmen made a vacancy appointment of an alternate to the East Windsor Board of Finance.
2. According to Section 2-1 (4) of the East Windsor Town Charter, there are two elected alternates to the East Windsor Board of Finance, each of whom serve a four-year term.
3. The May 26, 2016 appointment resulted in having both alternates be enrollees of the same political party.

ALLEGATION

4. The Complainant here asserts that the Board of Selectmen could not appoint two members of the same political party because of minority representation rules.

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.

LAW

5. According to Section 2-2 of the East Windsor Town Charter, the Town of East Windsor must follow the minority representation rules of the Connecticut General Statutes concerning all elected and appointed boards in town.
6. General Statutes § 9-167a enumerates the rules concerning minority representation and reads:

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

COLUMN I Total Membership	COLUMN II Maximum from One Party
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.

INVESTIGATION AND ANALYSIS

7. This matter is largely a legal question for the Commission.
8. Upon review of both the materials included in Complaint, as well as consultation with the Secretary of the State's Office, the Commission found that this question regarding the position of Alternate to the East Windsor Board of Finance has been asked at least twice before.
9. However, this is the first time that this question has been put to the Commission.
10. In 1995, the East Windsor requested an opinion from the Secretary of the State about, *inter alia*, whether two members of the same party could be elected to the position of Alternate to the Board of Finance.

11. The written opinion of the Secretary of the State was as follows:

Concerning your question of party affiliation of the Alternates to the Board of Finance. *[General Statutes] § 9-167a does not address the political composition of boards and commissions of less than three members.* Since Alternates to the Board of Finance are considered a separate board under the law, if its total composition is two members, i.e. no overlap of terms, then, in the absence of a charter provision, both members could be affiliated with, and elected from, the same political party.

12. As an initial matter, we agree with the Secretary of the State insofar as § 9-167a does not address the political composition of appointed and elected bodies of less than three members.

13. In 2003, the same question was asked by the then First Selectman, to the law firm of Penny, Botticello, O'Brien, & Higgins, PC, the East Windsor Corporation Counsel at the time.

14. While not dismissing the 1995 opinion of the Secretary of the State, Corporation Counsel's written opinion was that the elected position of Alternate to the Board of Finance could not have two members of the same party, but only because § 9-167a allows for a charter to override it and at the time Section 2-2 of the East Windsor Charter enumerated its own "bare majority" minority representation rule.²

15. However, subsequent to 2003, the East Windsor Charter was revised as enumerated above, by eliminating its own "bare majority" rule and substituting the minority representation rules found in the General Statutes.

Conclusion

16. Considering the aforesaid, the Commission concludes that the minority representation rules enumerated in General Statutes § 9-167a do not apply to the elected position of Alternate to the East Windsor Board of Finance as such board contains less than 3 members.

17. Accordingly, this matter should be dismissed.

² Note: the opinion was signed by Attorney Stephen T. Penny, who is currently a member of this Commission.

ORDER

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

Dismissed.

Adopted this 14th day of September, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission