

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

In the Matter of a Referral by Michael B. Smart,  
City of New Haven, City Town Clerk

File No. 2016-073

**FINDINGS AND CONCLUSIONS**

This matter was referred to the Commission by a Town Clerk, pursuant to General Statutes §9-7b, alleging that Ms. Sally Brown, Deputy City Town Clerk, of the City of New Haven violated elections law by falsely claiming to act as Town Clerk and pertaining to her handling of absentee ballots and nominating petitions as if she were acting as Town Clerk. After the investigation of the referral, the Commission makes the following findings and conclusions:

1. Mr. Smart at all times relevant to this referral was the City Town Clerk of the City of New Haven and referred this matter to the Commission. Mr. Smart alleged that New Haven Deputy City Town Clerk Sally Brown violated elections law by falsely claiming to act as Town Clerk and pertaining to her handling of absentee ballots and nominating petitions as if she were acting as Town Clerk.
2. More specifically, Mr. Smart alleged that Ms. Brown:
  - (1) Violated General Statutes § 9-135b pertaining to the production and printing of absentee ballots for the April 26, 2016 presidential preference primary without the authority from Mr. Smart to do so;
  - (2) Violated § 9-139c by falsely assuming the role of Town Clerk and filing with the Office of the Secretary of the State a required certification of absentee ballots for the March 17, 2014 primary that were received, used and unused by the Town Clerk's office; and,
  - (3) Violated § 9-453k by falsely certifying nominating petitions in the capacity of Town Clerk to do so pertaining to the 2014 statewide election and the 2015 municipal election in the City of New Haven when she lacked the authority to do so.
3. Mr. Smart alleged various violations of Title 2 and Title 7, General Statutes. The Commission declines to address these allegations in the disposition of this matter as they are outside the Commission's purview pertaining to Elections Law pursuant to § 9-7b.

4. By way of background, Ms. Brown was first elected as New Haven City Town Clerk in 1986 and served in that position until she was hired by New Haven Mayor John DiStefano, Jr. as Deputy City Town Clerk in 1995. Since 1995 and at all time relevant to this complaint Ms. Brown has remained Deputy City Town Clerk.
5. Pursuant to the Job Description published by the Department of Human Resources of the City of New Haven the Deputy City Town Clerk is responsible for “discharging the function of the office of City Town Clerk,” including “the day to day operations of the Office.” On April 29, 2016, Mr. Smart placed Ms. Brown on administrative leave from her service as Deputy City Clerk, which remains in effect at the time of this disposition. At no time has Ms. Brown been dismissed by either Mr. Smart or the City of New Haven from her position of employment.
6. General Statutes § 9-135b, provides in pertinent part:
  - (a) Immediately after the deadline for certification of all candidates whose names are to appear on the ballot, and in sufficient time to begin issuing absentee ballots on the day prescribed by law, *the municipal clerk shall prepare the absentee ballots and have them printed*. Prior to printing such ballots, the registrars of voters of the municipality may provide comments concerning the content and form of such ballots to the clerk.  
[Emphasis added.]
7. General Statutes § 9-139c, provides:

Within ten days after an election or primary, the municipal clerk shall file with the Secretary of the State a statement, on a form to be prescribed and provided by the secretary, setting forth the

number of absentee voting forms received from the secretary, the number issued to applicants for absentee ballots and the number remaining unused, and an explanation of any discrepancies. The statement shall also include such information concerning presidential and overseas ballot forms. The prescribed form may also require such absentee voting information as is necessary to complete questionnaires issued by the United States Department of Defense.

8. General Statutes §9-453k, provides in pertinent part:

- (a) The town clerk or Secretary of the State shall not accept any page of a nominating petition unless the circulator thereof has signed before him or an appropriate person as provided in section 1-29, the statement as to the residency in this state and eligibility of the circulator and authenticity of the signatures thereon required by section 9-453j.
- (b) The town clerk or Secretary of the State or an appropriate person as provided in section 1-29 shall certify on each such page that the circulator thereof signed such statement in his presence and that either he knows the circulator or that the circulator satisfactorily identified himself to the individual certifying.
- (c) The town clerk or Secretary of the State shall forthwith give to each circulator submitting a page or pages of a nominating petition a receipt indicating the number of such pages so submitted and the date upon which such pages were submitted.
- (d) ***Such town clerk shall certify on each such page the date upon which it was submitted to the town clerk by the circulator or the Secretary of the State and the number of names of electors on such***

petition page, which names were on the registry list last-completed or are names of persons admitted as electors since the completion of such list.

[Emphasis added.]

9. *Allegation One: Ms. Brown Violated General Statutes § 9-135b pertaining to the preparation and printing of absentee ballots for the April 26, 2016 presidential preference primary without the authority to do so.*
10. General Statutes § 9-135b provides that “...the municipal clerk shall prepare the ballots and have them printed.”
11. The Commission finds after investigation that an email exchange regarding the preparation and printing of the April 26, 2016 presidential preference primary ballot in New Haven between Mr. Smart and Ms. Brown agreed that the latter asked whether she should continue to lay out and print the absentee ballots and the former responded in the affirmative. Further, the Commission finds no dispute that Mr. Smart also requested that Ms. Brown “forward the copies” to him.
12. Ms. Brown, in response to this referral and investigation, offered the following explanation pertaining to Allegation One:

*The ballots for the [April] Presidential Primaries were already laid by the Secretary of the State’s Office. They forward a grid and we sent it to the printer... On the form we have to verify amounts to be printed per polling district. In the case of local elections or State reps and senators, I would place the names of the person in the proper box. The Secretary of the State sent*

*emails to both Mike [Smart] and myself. In my 30 years in the City Clerk's office the Secretary of the State reviews all ballots. I have followed the same practice for 30 years unless told to do otherwise by the Secretary of [the] State... Again this information was not concealed, but placed in an elections file cabinet which is located in an office where all election matters are kept.*

13. The Commission finds after investigation that the exchange between Mr. Smart and Ms. Brown was unambiguous as to the affirmative nature of Mr. Brown's answer to Ms. Smart indicating that she should prepare and print the absentee ballots for the April 26, 2016 presidential preference primary.
14. Further, the Commission finds that other than instructing Ms. Brown to forward copies of the aforementioned ballots to him, their email exchange and testimony does *not* support the allegation that Mr. Smart additionally instructed Ms. Brown regarding his need to exercise advance approval over any final form or content of those drafts prepared by Ms. Brown.
15. Finally, the Commission finds a lack of evidence to independently verify, or otherwise corroborate, Mr. Smart's characterization of this exchange that forms the basis for Allegation One pertaining to Ms. Brown's alleged violation of General Statutes § 9-135b. The Commission therefore dismisses Allegation One as it was not supported by the facts after investigation.
16. *Allegation Two: Ms. Brown Violated § 9-139c by falsely assuming the role of Town Clerk and filing with the Office of the Secretary of the State a required certification of absentee ballots for March 17, 2014 primary that were received, used and unused by the Town Clerk's office.*

17. Mr. Smart's allegation asserts that Ms. Brown signed and approved the statement required by General Statutes § 9-139c as "municipal clerk," which was a "*blatant act of misrepresentation of authority.*"
18. General Statutes § 9-139c provides that "[w]ithin ten days after an election or primary, the municipal clerk shall file with the Secretary of the State a statement ... , setting forth the number of absentee voting forms received from the secretary, the number issued to applicants for absentee ballots and the number remaining unused."
19. The Commission finds that in fact Ms. Brown had served the New Haven City Town Clerk's office, since being elected City Town Clerk in 1986 and in the position of Deputy City Town Clerk since 1995. The Commission further finds that in the course of her service over the decades, Ms. Brown was charged with assisting in the administration of that office's duties and responsibilities pertaining to elections based on her employment with the City of New Haven.
20. The Commission finds that Mr. Smart, in writing, designated Assistant City Town Clerk Mamie Gardner Reed as acting City Clerk on November 10, 2014, and renewed such designation in 2015 and 2016 pursuant to Section 1, City of New Haven Code of Ordinance.
21. The Commission notes that the appointment of an acting Town Clerk to serve during Mr. Smart's absence from the office, where there is a lack of evidence that Ms. Brown was dismissed from her position of Deputy City Town Clerk, did not nullify Ms. Brown's duties and responsibilities in regards to her own services in the City Clerks' office during that period.

22. Upon investigation, the Commission finds that on March 18, 2014 Ms. Brown completed a *Certificate to the Secretary of the State Concerning Receipt and Disposition of Absentee Voting Forms* (Form ED-628e) pertaining to the March 17, 2014 primary as required by General Statutes § 9-139c.
23. The Commission finds that Ms. Brown was Deputy City Town Clerk at the time she completed the aforementioned form and that according to the City of New Haven she was therefore responsible for “the day by day operations of the [City Town Clerk’s] office,” and authorized “to assist in the registration of voters ... and the administration of local elections.” Significantly, the Commission stresses that such administration by town clerks as to the registration of voters and pertaining to local elections is also *statutory* and provided for throughout Title 9, Connecticut General Statutes.
24. Additionally, the Commission finds that the exercise of authority by assistant Town Clerks in place of municipal Town Clerks is contemplated by the General Statutes in various instances and is not exceptional to New Haven or to the narrow facts and circumstances of this referral and investigation.<sup>1</sup>

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<sup>1</sup> See for example General Statutes § 7-19 (appointment of assistant Town Clerks); § 7-20 (appointment of acting Town Clerk) § 7-21 (appointment of Clerk *pro tempore*); and § 7-22a (certification program for Town Clerks and assistant Town Clerks). While not necessarily definitive within the Title 9 limits of the Commission’s jurisdiction, it is plain from Title 7, Connecticut General Statutes, that there are circumstances contemplated by statute where an assistant clerk of a municipality, particularly one the size of New Haven, would almost certainly be needed to administer the various duties and responsibilities of their office.

25. Moreover, the Elections Services Division of the Office of the Secretary of the State in fact anticipates such appointments of assistant town clerks by issuing and administering *Appointment of Assistant Town Clerk, And/Or Assistant Registrar of Vital Statistics* (Form ED 636.2), which specifies that assistant town clerks "...are appointed under the provisions of the town charter or ordinances."
26. The Commission finds after investigation that Mr. Smart placed Ms. Brown on administrative leave on April 29, 2016, almost two years *after* she had signed the Form ED 6-288e that is the subject of Allegation Two.
27. The Commission concludes, for the reasons detailed herein, that the evidence after investigation does not support the allegation that Ms. Brown falsely certified the receipt and disposition of absentee ballot forms by the City of New Haven on March 18, 2014 in violation of General Statutes § 9-139c; but rather, Ms. Brown signed and certified Form ED-628e as Deputy City Town Clerk in furtherance of what she reasonably believed to be her duties and responsibilities under that section. The Commission therefore dismisses Allegation Two.
28. *Allegation Three: Ms. Brown Violated § 9-453k by falsely certifying nominating petitions in the capacity of town clerk pertaining to the 2014 statewide election and the 2015 municipal election in the City of New Haven while she lacked the authority to do so.*
29. General Statutes § 9-453k provides various responsibilities and extensive authority for the administration and processing of nominating petitions to town clerks, including the direction that they "... shall certify on each [nominating petition] page the date upon which it was submitted to the town clerk."



30. As detailed above, the Commission notes that Ms. Brown at all times relevant to this referral had served either as New Haven City Town Clerk or Deputy City Clerk since 1986. In the course of that service Ms. Brown asserted in response to this referral and investigation that she had ample opportunity to assist with administration of that office's duties and responsibilities pertaining to elections. After investigation, the Commission finds a lack of contrary facts to the aforementioned assertion.
31. Additionally, the Commission finds after investigation that Ms. Brown retained her duties and responsibilities as Deputy City Town Clerk until she was placed on administrative leave by Mr. Smart as New Haven City Town Clerk on April 29, 2016. This analysis remains unchanged by the fact that there was also an acting City Clerk for a period of this time period from November 10, 2014 through 2016, as detailed above.
32. Pertaining to Allegation Three, the Commission finds that on July 24, 2014 Ms. Brown signed the Town Clerk's certification on a nominating petition pertaining to the 2014 statewide election. Further, the Commission finds that on July 23 through August 6, 2015 Ms. Brown signed the Town Clerk's certification pertaining to nominating petitions for the 2015 municipal election in New Haven.
33. The Commission finds that Mr. Smart placed Ms. Brown on administrative leave over a year and a half *after* she certified the 2014 nominating petitions as Deputy City Town Clerk and approximately eight months *after* she had signed the 2015 nominating petitions as Deputy City Town Clerk. Therefore, Ms. Brown retained the duties and responsibilities as New Haven Deputy City Town Clerk throughout the time she certified the nominating petitions, which actions form the basis of Mr. Smart's Allegation Three.

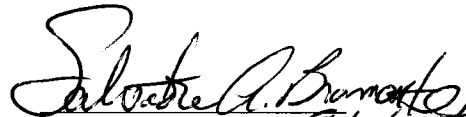

34. The Commission concludes, for the reasons detailed above, that Mr. Smart's allegation that Ms. Brown violated General Statutes § 9-453k by falsely certifying nominating petitions in 2014 and 2015 in the capacity of Town Clerk when she allegedly lacked such authority was not supported by the facts. The Commission therefore dismisses Allegation Three.
35. The Commission concludes, for the reasons detailed herein, that Ms. Brown as New Haven Deputy City Town Clerk did not violate Election Laws as alleged and therefore this matter is dismissed.

### ORDER

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

That the matter is dismissed.

Adopted this 15<sup>th</sup> day of February 2017, Hartford, Connecticut.

  
Anthony J. Castagno 

Vice Chairman

By Order of the Commission