

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Louis DeCilio, Stratford

File No. 2017-057

FINDINGS AND CONCLUSIONS

The Complainant brought this matter alleging that the Respondent Linda Palermo unlawfully voted by absentee ballot by wrongly claiming to be an election official during all hours of voting on her absentee ballot application.

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

Allegation and Factual Background

1. The Complainant here alleges that during the September 12, 2017 Municipal Primary in the Town of Stratford, Respondent Linda Palermo voted by absentee ballot, claiming that her status as an unofficial or “party” checker in the polling place during all hours of voting permitted her to vote by absentee ballot as an elections official.
2. The Respondent here did not deny the basic factual allegation, that she voted by absentee ballot in Stratford during the September 2017 Municipal Primary and that as an unofficial “party” checker for candidate Stephanie D. Philips.
3. The investigation confirmed that on or about September 11, 2017, Respondent Palermo submitted an Absentee Ballot Application to the Stratford Town Clerk, asserting in Section IV that she believed that she was eligible for an absentee ballot due to “My duties as a primary, election or referendum official at a polling place other than my own during all the hours of voting.”
4. The investigation also confirmed that Respondent Palermo was a paid campaign worker for the “Stephanie for Mayor” campaign committee supporting Ms. Philips’ campaign for mayor. The campaign finance disclosure statement for this committee lists Respondent Palermo’s duties as “Unofficial Poll Checker and Phone calling.”

Law

5. General Statutes § 9-135 reads, in pertinent part:

(a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he or she is unable to appear at his or her polling place during the hours of voting for any of the following reasons: (1) His or her active service with the armed forces of the United States; (2) his or her absence from the town of his or her voting residence during all of the hours of voting; (3) his or her illness; (4) his or her physical disability; (5) the tenets of his or her religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his or her duties as a **primary, election or referendum official**, including as a town clerk or registrar of voters or as staff of the clerk or registrar, at a polling place other than his or her own during all of the hours of voting at such primary, election or referendum.

(b) No person shall misrepresent the eligibility requirements for voting by absentee ballot prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant... (Emphasis added.)

6. General Statutes § 9-258 reads, in pertinent part:

(a) For municipalities with more than one voting district, the election officials of each polling place shall be electors of the state and shall consist of one moderator, at least one, but not more than two official checkers, two assistant registrars of voters of opposite political parties, each of whom shall be residents of the town, not more than two challengers if the registrars of voters have appointed challengers pursuant to section 9-232, and at least one and not more than two ballot clerks and at least one but not more than two voting tabulator tenders for each voting tabulator in use at the polling place. A known candidate for any office shall not serve as an election official on election day or serve at the polls in any capacity, except that a municipal clerk or a registrar of voters, who is a candidate for the same office, may perform his or her official duties. If, in the opinion of the registrar of voters, the public convenience of the electors in any voting district so requires, provision shall be made for an additional line or lines of electors at the polling place and, if more than one line of electors is established, at least one but not more than two additional official checkers and at least one but not more than two ballot clerks for each line of electors shall be appointed and, if more than one tabulator is used in a polling place, at least one and not more than two additional voting tabulator tenders shall

be appointed for each additional machine so used. Head moderators, central counting moderators and absentee ballot counters appointed pursuant to law shall also be deemed election officials.

(b) For municipalities with one voting district, the election officials of such polling place shall be electors of the state and shall consist of one moderator, at least one, but not more than two official checkers, not more than two challengers if the registrars of voters have appointed challengers pursuant to section 9-232, at least one and not more than two voting tabulator tenders for each voting tabulator in use at the polling place and at least one but not more than two ballot clerks. Additionally, such election officials may consist of two registrars of voters of opposite political parties, or two assistant registrars of voters of opposite political parties, as the case may be, subject to the requirements of sections 9-259 and 9-439, provided if the registrars of voters are present in the polling place, they shall appoint at least one designee to be present in their office. A known candidate for any office shall not serve as an election official on election day or serve at the polls in any capacity, except that a municipal clerk or a registrar of voters, who is a candidate for the same office, may perform his or her official duties. If, in the opinion of the registrar of voters, the public convenience of the electors in any voting district so requires, provision shall be made for an additional line or lines of electors at the polling place and, if more than one line of electors is established, at least one, but not more than two, additional official checkers for each line of electors shall be appointed and, if more than one tabulator is used in a polling place, at least one and not more than two additional voting tabulator tenders shall be appointed for each additional tabulator so used. Head moderators, central counting moderators and absentee ballot counters appointed pursuant to law shall be deemed to be election officials... (Emphasis added.)

7. General Statutes § 9-235 reads, in pertinent part:

(a) At least forty-eight hours prior to each election to be held in a municipality, each registrar of voters in such municipality may appoint for each line of electors in each voting district therein, to serve as unofficial checkers, not more than four electors enrolled in the party with which the registrar is enrolled, provided a registrar may establish two or more shifts for unofficial checkers, in which case such registrar may appoint not more than four such unofficial checkers for each line of electors in each district for each shift. The persons so appointed shall be designees of the town chairman of the party with which such registrar is enrolled, provided such

town chairman shall submit the names of such designees in writing to such registrar at least forty-eight hours before the election. A registrar of voters shall, at the request of the town chairman of the party with which such registrar is enrolled, change such appointments of designees of such town chairman, at any time before the closing of the polls on the day of an election.

...

(f) No election or referendum official shall perform the functions of an unofficial checker pursuant to this section (Emphasis added.)

8. This is an issue of first impression for the Commission. However, the law is straightforward in this instance.
9. The default rule of voting in Connecticut is that an elector must vote in person at such elector's designated polling location or such elector's Election Day registration location. Absentee voting is a limited exception to that general rule, which is not only established in General Statutes § 9-135, but also in Section 7 of Article Sixth of the Constitution of the State of Connecticut.
10. In general, exceptions to the law are narrowly construed. See *Commission on Human Rights and Opportunities v. Sullivan*, 285 Conn. 208, 222, 939 A.2nd 541 (2008).
11. Reading General Statutes §§ 9-258 and 9-235 together, the Commission concludes that an unofficial checker is not an "election official" for the purposes of the exception in General Statutes § 9-135 (a) (6).¹
12. As such, the Commission concludes that an unofficial checker may not utilize an absentee ballot, unless such person validly qualifies under another exception in General Statutes § 9-135.
13. Considering that this matter is one of first impression, the Commission will take no further action here.

¹ The written advice of the Secretary of the State, per General Statutes § 9-3, also supports this conclusion. See *Moderator's Handbook for Elections and Primaries*, Rev 2.1 – July, 2013 at Section A, pp. A-9 to A-11 (<http://www.portal.ct.gov/SOTS/Election-Services/Handbooks/Handbooks-Moderators-Absentee-Ballot-Counters-Recanvass-and-Audit>)

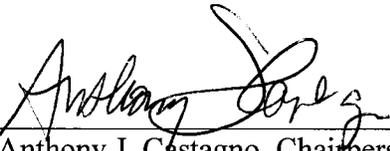
ORDER

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

That no further action is taken.

Adopted this ~~14~~²³ day of March, 2018 at Hartford, Connecticut.

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Anthony J. Castagno, Chairperson
By Order of the Commission