

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by the Office of the Secretary of the State, File No. 2019-020
Hartford

FINDINGS AND CONCLUSIONS

This referral of a potential election law violation was made by the Office of the Secretary of the State to the Commission pursuant to General Statutes § 9-7b. This matter pertains to the potential failure in the Town of Essex to comply with General Statutes § 9-322a regarding a recanvass of the November 6, 2018 election. After its investigation, the Commission makes the following findings and conclusions:

1. This referral was dated February 14, 2019 and received by the Commission on February 19, 2019 from the Office of the Secretary of the State of Connecticut (“SOTS”).
2. SOTS Attorney Theodore Bromley, by memorandum referencing “Allegations of Misconduct during the November 6, 2018 General Election,” included the following potential violation of elections law:

Failure to comply with the provisions of CGS §9-322a within the Town of Essex. The failure to comply with the provisions created an election irregularity that caused a Recanvass to be called outside of the Recanvass period.
3. This SOTS referral was docketed for further investigation by the Commission pursuant to General Statutes § 9-7-b.
4. General Statutes § 9-322a, provides:
 - (a) Not later than forty-eight hours following each regular election, the registrars of voters shall provide the results of the votes cast at such election to the town clerk. ***Not later than nine o’clock a.m. on the third day following each regular 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 one o’clock p.m. on the third day following each regular election, the head moderator shall correct any error identified and file an amended return with the Secretary of the State, the town clerk 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.

5. General Statutes § 9-311a, provides:

For purposes of this section, state, district and municipal offices shall be as defined in section 9-372 except that the office of presidential elector shall be deemed a state office. Forthwith after a regular or special election for municipal office, *or forthwith upon tabulation of the vote for state and district offices by the Secretary of the State*, when at any such election the plurality of an elected candidate for an office over the vote for a defeated candidate receiving the next highest number of votes was either (1) less than a vote equivalent to one-half of one per cent of the total number of votes cast for the office but not more than two thousand votes, or (2) less than twenty votes, there shall be a canvass of the returns of the voting tabulator or voting tabulators and absentee ballots used in such election for such office unless such defeated candidate or defeated candidates, as the case may be, for such office file a written statement waiving this right to such canvass with the municipal clerk in the case of a municipal office, or with the Secretary of the State in the case of a state or district office... [Emphasis added.]


6. Upon investigation, the Commission finds that Essex Town Clerk, Joel Marzi, and Essex Registrar of Voters John Heiser met after the November 6, 2018 election on the 7th to make changes as need to the election return. Moderator Jim Francis also was present at the town clerk's office on November 7th to correct the numbers so that they could be submitted to the SOTS.
7. The Commission finds, and it is not disputed, that unidentified errors were not corrected in the original returns that were prepared on November 6th and November 7th and conveyed to the SOTS.
8. More specifically, on the night of the election in reporting results through the Election Management Reporting System they "gave numbers that added in absentee ballots twice". This error was realized on November 14th and corrected.
9. Subsequently, a recanvass for the 33rd General Assembly District was ordered by the SOTS pursuant to General Statutes § 9-311a based on the corrected results after errors were discovered on November 14th. The Commission finds that the SOTS instructed a recanvass on November 15, 2018, which was conducted in Essex on November 18, 2018.
10. The Commission finds, after investigation, that the Essex Town Clerk, a Registrar of Voters, and the Moderator were at the November 6, 2018 election met on November 7, 2018 pursuant to General Statutes § 9-332a to review and correct the returns from that election. The Commission finds that despite this meeting the incorrect tally was still forwarded to the SOTS.
11. Notwithstanding their failure to accurately correct and change the returns to report the correct absentee ballot and EDR ballot totals, the Commission concludes that the meeting within 48 hours of the November 6, 2018 election was held consistent with the requirements of § 9-332a.
12. The Commission strongly urges Mr. Marzi, Mr. Heiser and Mr. Francis to review thoroughly the statutes and regulations pertaining to the post-election review and tally of returns and exercise due care in preparing the tally and reporting election results to the SOTS.
13. The Commission, for the reasons detailed herein, takes no further action pertaining to this referral by the SOTS regarding post-election meetings held by the Town Clerk and Registrars of Voters pursuant to General Statutes § 9-322a after the November 6, 2018 election in Essex.

ORDER

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

That the Commission takes no further action.

Adopted this 4 day of MARCH 2020, at Hartford, Connecticut



_____, Chairman

By Order of the Commission