

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint of Kenneth Hjulstrom, Marlborough

File No. 2019-027

FINDINGS AND CONCLUSIONS

The Complainant brought this matter pursuant to Connecticut General Statutes § 9-7b, alleging that the Town of Marlborough violated the minority representation provisions in General Statutes §9-167a in the appointment of vacancies to the Town Planning Commission and Town Planning Commission Alternate.¹ After an investigation, the Commission makes the following findings and conclusions:

Law

1. General Statutes § 9-167a reads, in full:

(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

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.

(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. (Emphasis added.)

2. The pertinent facts in this matter are not in dispute.
3. The Planning Commission for the Town of Marlborough consists of five elected members.

4. The Planning Commission Alternates for the Town of Marlborough consists of three elected members.²
5. Following the November 7, 2017 General Election, the Composition of the Marlborough Planning Commission was as follows:

Member	Party Affiliation	Elected/Appointed Party Line
Mark Stankiewicz	Unaffiliated	Republican
Brendon Monstream	Unaffiliated	Republican
Eric Kelly	Unaffiliated	Republican
Larry Pryor	Green	Republican
Laura Hart	Democratic	Democratic

6. Following the November 7, 2017 General Election, the Composition of the Marlborough Planning Commission Alternates was as follows:

Member	Party Affiliation	Elected/Appointed Party Line
Carole Shea	Republican	Republican
Matthew Wilson	Democratic	Democratic
Christopher French ³	Republican	Republican

7. Turning first to the Planning Commission, the following events are relevant to the instant matter:
 - a. On or about November 13, 2017 Laura Hart resigned
 - b. On or about November 29, 2017 Brendon Monstream resigned
 - c. On or about October 8, 2018 Eric Kelly resigned
 - d. On or about February 27, 2018 the Planning Commission appointed affiliated Republican Christopher French to the vacancy of Brendon Monstream⁴
 - e. On or about October 16, 2018 the Planning Commission appointed affiliated Democrat Silvana Righenzi to the vacancy of Laura Hart
 - f. On or about October 9, 2018, the Planning Commission appointed unaffiliated voter Jannat Gil to the vacancy of Eric Kelly

² For the purposes of a General Statutes § 9-167a analysis, the Planning Commission and the Planning Commission Alternates are evaluated as two separate elected boards. See, e.g., *In the Matter of a Complaint by John Mannette, Broad Brook*, File No. 2016-053.

³ Appointed on 11/28/2017

⁴ Per the Marlborough Town Code, the Planning Commission is the appointing authority for vacancies on the Commission.

8. As concerns the Planning Commission Alternates, the following events are relevant to the instant matter:
 - a. On or about January 15, 2018, Matthew Wilson resigned.
 - b. On or about October 2, 2018 Carole Shea resigned.
 - c. On or about October 2, 2018, the Board of Selectman appointed unaffiliated voter Orus Cofield to the vacancy of Carole Shea
 - d. On or about October 2, 2018, the Board of Selectman appointed unaffiliated voter Rita McGary to the vacancy of Matthew Wilson.

Allegation

9. The Complainant here alleged that General Statutes § 9-167a (d) required that the each vacancy be filled by a person affiliated with the same party as that of the party on which the resigning member was elected or appointed.
10. As such, the Complainant alleged that the replacements of Laura Hart and Brandon Monstream were done correctly, as Ms. Hart's seat and Mr. Monstream's gained their seats as nominees of the Democratic and Republican parties, respectively, and were replaced by persons who were affiliated with those two parties, respectively.
11. However, the Complainant alleged that the replacement of Eric Kelly on the Planning Commission, and the replacements of Matthew Wilson and Carole Shea on the Planning Commission Alternates were done in violation of General Statutes § 9-167a (d) as he asserts that such replacements were required to be of the same party of the resigning members.

Analysis

12. Turning to the question here, the Complainant is correct insofar as subsection (d) requires that when the minority representation rules are applied to a vacancy, such vacancy must be replaced with a member affiliated with the party applicable to the departing member under subsection (g).
13. However, the Complainant reads out the portion of the statute that states that the vacancy need only be replaced in such a manner "[a]t such time as the minority representation provisions of this section become applicable."
14. Importantly, the minority representation provisions of § 9-167a become applicable only when the number of majority seats has been maximized and the vacancy is that of a member of the minority. See *Grodus v. Burns*, 190 Conn 39, 45 (1983) ("subsection (d) applies only to vacancies occurring in bodies that have already achieved maximum majority

representation under subsection (a) of the statute and then only when the vacating member is of the minority party”).

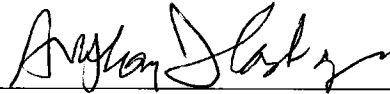
15. Applying the above to the facts here, the appointment of unaffiliated voter Jannat Gil to the vacancy of Eric Kelly on the Planning Commission on or about October 9, 2018 did not trigger subsection (d), as Mr. Kelly was associated with the majority Republican Party, which held the maximum number of the seats on the Commission per subsection (a) at the time of the appointment. The minority representation provision would only have applied in that instance had the Commission attempted to replace Ms. Hart, the Democrat.
16. Additionally, the appointment of unaffiliated voter Orus Cofield to the vacancy of Carole Shea on the Planning Commission Alternates on or about October 2, 2018 also did not trigger subsection (d) as Ms. Shea was associated with the majority Republican Party, which held the maximum number of the seats on the Planning Commission Alternates per subsection (a) at the time of the appointment. The minority representation provision would only have applied in that instance had the Selectmen first attempted to replace Mr. Wilson, the Democrat.
17. Finally, the appointment of unaffiliated voter Rita McGary to the vacancy of Matthew Wilson on the Planning Commission Alternates on or about October 2, 2018 also did not trigger subsection (d), even though Mr. Wilson had been associated with the minority party (the Democratic Party) and prior to Mr. Cofield’s appointment to replace Ms. Shea the Republican Party held the maximum number of seats under subsection (a).
18. However, once Ms. Shea was replaced with Mr. Cofield, an unaffiliated voter, the Republican Party no longer held the maximum number of the seats on the Planning Commission Alternates per subsection (a) at the time of the replacement of Mr. Wilson, a Democrat, with Ms. McGary, and unaffiliated voter.
19. Considering the aforesaid, the Commission concludes that none of the vacancy appointments enumerated in the instant Complainant created a minority representation issue under the under General Statutes § 9-167a at the time.
20. This matter should be dismissed.

ORDER

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

Dismissed

Adopted this 6th day of November, 2019 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Anthony J. Castagno", written over a horizontal line.

Anthony J. Castagno, Chairperson
By Order of the Commission