

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Deanna Bouchard, Colchester

File No. 2019-139

FINDINGS AND CONCLUSIONS

The Complainant brought this matter pursuant to Connecticut General Statutes § 9-7b, alleging that Gayle Furman, the Colchester Town Clerk, unlawfully made an alteration to a Certificate of Party Endorsement after it was filed with her office.¹ After an investigation, the Commission makes the following findings and conclusions:

Law

1. General Statutes § 9-391 reads, in pertinent part:

(a) Each endorsement of a candidate to run in a primary for the nomination of candidates for municipal office to be voted upon at a municipal election, or for the election of town committee members, shall be made under the provisions of section 9-390 not earlier than the fifty-sixth day or later than the forty-ninth day preceding the day of such primary. The endorsement shall be certified to the clerk of the municipality by either the chairperson or presiding officer or the secretary of the town committee, caucus or convention, as the case may be, not later than four o'clock p.m. on the forty-eighth day preceding the day of such primary. Each such candidate, except a candidate for the election of town committee member, shall sign such certification. Each such certification shall contain the name and street address of each candidate so endorsed, the title of the office or the position as committee member and the name or number of the political subdivision or district, if any, for which each such candidate is endorsed. Such certification shall be made on a form prescribed by the Secretary of the State or on such other form as may comply with the provisions of this subsection. If such a certificate of a party's endorsement is not received by the clerk of the municipality by such time, such certificate shall be invalid and

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.

such party, for the purposes of sections 9-417, 9-418 and 9-419, shall be deemed to have neither made nor certified such endorsement of any candidate for such office.

...
(Emphasis added.)

2. As indicated in the last sentence of subsection (a), Certificates of Party Endorsement (“CPE”) received after the deadline are not valid. No new CPE may be accepted after the deadline. For purposes of the statute, modifications to endorsements in a CPE are also not valid after the deadline.

Allegation

3. Here, the Complainant alleges that the Town Clerk’s Office provided her with two almost-identical versions of the CPE filed after the July 23, 2019 Democratic Caucus held in the Town of Colchester endorsing municipal candidates for the November 2019 election.
4. In one version of the CPE lists electors Mary Bylone and Denise Turner, *inter alia*, as being endorsed for the offices of “FS” and “Selectman 1st,” respectively, along with a valid signature of the candidates.
5. The second version of the CPE is identical, but under the office for Denise Turner, “1st” is crossed out with three lines.
6. The Complainant alleges that the alteration was made after the deadline in § 9-391 and that the original, unaltered, version controlled in which she asserts the Caucus impermissibly endorsed two candidates for the office of First Selectman.

Response

7. The Respondent Town Clerk Gayle Furman responded in full and admits that she made an alteration to the form after the deadline. She asserted that she noted that the “Office” listing on the CPE did appear to be, at the very least, confusing as to which candidate had been endorsed for office of First Selectman.
8. The Respondent asserted that she first reached out to Denise Furman, who told her that she was endorsed only for Selectman and that she wrote “1st” to indicate that it was her 1st term for that office since the header on the form read “office and term.”

9. Ms. Turner submitted a statement confirming Ms. Furman's assertion and added that "I never had the intention of running for First Selectman for the Town of Colchester in the November 5, 2019 election."
10. Additionally, Ms. Furman discussed the matter with the Office of the Secretary of the State and received a written opinion from Staff Attorney Lewis Button answering the question "did the Town Clerk have the ability to allow a correction on an endorsement form, after the deadline had passed, once she determined that there was an error?" (Email from Lewis Button to Gayle Furman, October 21, 2019.)
11. The written opinion answered the question accordingly:

In determining the answer to this question, our office was influenced by the reasoning of the court in the matter of Vicki Nardello². In that case, Nardello had filed her certificate of endorsement timely, but had filed her endorsement with the wrong district number. After the deadline had passed, members of Nardello's staff came in and corrected the district number. The matter was taken to court and the judge determined that the correction of a ministerial error was not sufficient to remove a candidate from her place on the ballot. While the determination of whether or not Furman should have made the correction herself may be considered by other authorities, we believe that the clerk had the ability to determine that an error was ministerial and a correction could be made after the deadline as occurred in the Nardello matter.

Id.

² *Nardello v. Merrill*, Superior Court, judicial district of Waterbury at Waterbury, Docket No. UWYCV185022319S (July 10, 2018), 2018 Conn. Super. LEXIS 1371.

Analysis and Conclusion

12. Turning to the question here, the Commission notes that the Secretary's communication to Ms. Furman was produced pursuant to that office's authority to interpret the election administration laws in Title 9, as enumerated in General Statutes § 9-3 and as such is presumed to be correct.³ The Commission sees no reason to challenge that presumption
13. Considering the aforesaid, this matter should be dismissed.

³ General Statutes § 9-3 reads, in pertinent part:

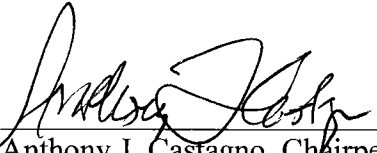
(a) The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the Secretary's regulations, declaratory rulings, instructions and opinions, if in written form, and any order issued under subsection (b) of this section, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. Any such written instruction or opinion shall be labeled as an instruction or opinion issued pursuant to this section, as applicable, and any such instruction or opinion shall cite any authority that is discussed in such instruction or opinion.

ORDER

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

Dismissed

Adopted this ~~6th~~^{20th} day of November, 2019 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission