

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint of Linda Szykowitz, Middletown

File No. 2019-151

FINDINGS AND CONCLUSIONS

The Complainant alleged here separately that the Respondent Hamden Town Clerk failed to accurately track absentee ballot application distributions and failed to properly execute her responsibilities in issuing absentee ballots and under General Statutes § 9-140 (a) and (k).¹

Background and Procedural History

1. The events here concern the November 5, 2019 General Election in the Town of Hamden.
2. Vera Morrison was at all times relevant to the Instant Complaint the Town Clerk of the Town of Hamden.
3. Ms. Morrison retired from her duties during the pendency of this matter and is no longer the Town Clerk of the Town of Hamden.

COUNT ONE: Failure to Properly Maintain the § 9-140 (a) Absentee Ballot Log

Allegations

4. Specifically, the Complainant alleged that the Respondent Town Clerk failed to properly keep the log required in General Statutes § 9-140 (a) insofar as any absentee ballot applications issued to “institutions,” as that term is used in General Statutes § 9-169q through 9-169s were checked out in the name of the institution instead of the name of a particular individual person.

¹ The following are the Commission’s findings and conclusions based on those portions of the allegations which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission’s jurisdiction. Any statements 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.

Law

5. General Statutes § 9-140 provides, in pertinent part:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . . The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application.

. . . .

(k) (1) A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to a person who is the designee of an applicant. . . . (Emphasis added.)

Procedural History

6. This matter was filed concurrently with a Declaratory Judgment action filed in Connecticut Superior Court in the name of four Hamden electors.
7. The Complaint in such Declaratory Judgment action was included with the Complaint filed with the Commission and alleged, in pertinent part:

15. The Town Clerk is charged with maintaining a log of all absentee ballot applications that are issued to persons within the Town of Hamden (the "Log"). See General Statutes § 9-140(a).

16. The Log indicates that hundreds of absentee ballot applications have been issued by the Town Clerk without compliance with the requirement that they be signed out to an accountable individual. Instead, these absentee ballot applications have been identified as being distributed to non-voting institutions within the Town of Hamden, including, but not limited to, Atria Larson Place,

Benchmark Senior Living at Hamden, Congregate Housing, Genesis Healthcare—Arden House, and Hamden Health Care Center (collectively, the "institutions").

17. These institutions do not constitute "persons" to whom absentee ballot applications may be lawfully issued within the meaning of General Statutes § 9-140(a).

18. Upon information and belief, the Town Clerk has issued absentee ballots in response to applications that were obtained and/or distributed unlawfully in violation of the Connecticut General Statutes.

8. In addition to the aforementioned allegations of failing to comply with General Statutes § 9-140, the complainants in the Declaratory Judgment also alleged Equal Protection violations under 42 U.S.C. § 1983.
9. The Defendant sought, and was granted, leave to remove the matter to the United States District Court for the District of Connecticut.
10. The Commission's review of the complaint was conducted concurrent to the Superior Court and District Court actions, but any resolution of the Instant Matter was held in abeyance until such actions were resolved as such actions materially overlapped.
11. In her Memorandum in Opposition in Superior Court, before the matter was removed, the Respondent Town Clerk responded in detail in a sworn affidavit concerning her handling of absentee ballots requested by institutions, as follows, in pertinent part:

3. Throughout my 24 years as town clerk, it has been my practice, in accordance with Connecticut General Statutes Section 9-140 et seq., to mail sequentially numbered absentee ballot applications and supporting materials to a designated person at Hamden nursing home and rehabilitation facilities in advance of an upcoming election, the purpose of which is to facilitate the dissemination of the applications to elderly and disabled citizens residing there.

4. In carrying out the practice described in Paragraph 3, it has also been my practice to list the name of the Hamden nursing home or rehabilitation facility on the public log of sequentially numbered absentee ballot applications, rather than the designated person at

each facility, so that the public may know exactly where those applications are being disseminated

5. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were consecutively numbered.

6. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were provided to a specific designated person for distribution.

7. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were disseminated by the designated person to individuals at the nursing home and rehabilitation facilities.

8. In accordance with General Statutes § 9-140 et seq. the absentee ballot applications distributed to Hamden nursing home and rehabilitation facilities for the November 5, 2019 municipal election were returned by the designated person to the Town Clerk's office with a certification log as to who completed the absentee ballot applications.

9. In accordance with General Statutes § 9-140 et seq. the unused sequentially numbered absentee ballot applications were returned to the Town Clerk's office with a distributor's log certified by the designated person used for distribution.

12. Included with the Town Clerk's Affidavit was a certified copy of the Absentee Ballot Application Log form created by the Secretary of the State, which, as asserted in the Complaint and admitted in the Town Clerk's Affidavit, included only the names of the institutions.

13. Also included with the Town Clerk's Affidavit was a certified copy of a *second* document, custom designed by the Town Clerk, which kept track of every "institutional" absentee

ballot distribution displayed in the Absentee Ballot Application Log, including but not limited to the *individual person* to whom the absentee ballot applications were issued.

14. After removal to the United States District Court, the matter was ultimately settled by the parties under the following terms in a Joint Stipulation accepted by the Court in full resolution of the matter:

1. Absentee ballot applications will only be signed out via the Town Clerk's Log to an individual person and not to an institutional entity, pursuant to Conn. Gen. Stat. § 9-140(a).

2. Any person who wishes to distribute absentee ballot applications to five or more institutional residents shall sign out the applications in person at the office of the Town Clerk.

3. A person shall register with the Town Clerk before distributing five or more absentee ballot applications, pursuant to Conn. Gen. Stat. § 9-140(k)(1).

4. The parties stipulate that the procedures for voting by absentee ballot in the State of Connecticut have changed due to the COVID-19 pandemic. The parties further stipulate that any new or different procedure regarding absentee ballots in the State of Connecticut implemented by the State of Connecticut, the Governor, Secretary of State or any other State or Federal official, department or agency, shall take precedence over and preempt any requirement of this stipulation.

5. The parties agree that neither is a prevailing party and each side shall bear its attorney's fees and costs incurred up until the date of this stipulation.

6. The parties consent to the jurisdiction of this Court in an application to enforce the terms of the agreement and the U. S. District Court will be the forum for such disputes. The parties agree that, in the event that an application to enforce the terms of this agreement is filed and the Court finds a constitutional violation, the prevailing party in such an action shall be entitled to reasonable attorney's fees and costs incurred for enforcing the agreement.

Analysis and Conclusion

15. While underlying lawsuits provided the Commission with sufficient evidence here, the Court did not make a determination on the main issue raised by the Complainant's affidavit, namely whether including just the name of the institution on the "Absentee Ballot Log" is sufficient to comply with the log requirements of General Statutes § 9-140 (a).
16. Moreover, the evidence submitted raised a second question also not resolved by the Court, namely whether the secondary Clerk-designed document could be taken in combination with the official SOTS-designed form as the "absentee ballot log" enumerated in § 9-140 (a).

Absentee Ballot Log Must Include the Identity of Individual Human Beings

17. Turning to the first question, the Commission concurs with the Complainant that the word "person" as used in General Statutes § 9-140 (a) means an individual human being and not an institution or other organization.
18. The evidence of the aforesaid is found throughout the election administration statutes of Title 9 (Chapters 141 through 154), which use "person" in every instance synonymously with "individual," starting right from General Statutes § 9-1, the definitional statute.²
19. This is contrasted with the campaign finance statutes found in Chapters 155 and 157 which specifically separate "individual" from "person" and define "person" more broadly to encompass non-individual entities such as committees and organizations.³
20. However, when used in the election administration statutes in Title 9 outside of Chapters 155 and 157, "person" means an individual human being.

² Including but not limited to the Commission's own enabling statutes in Chapter 141.

³ General Statutes § 9-601 reads, in pertinent part:

As used in this chapter and chapter 157:

...

(9) "Individual" means a human being, a sole proprietorship, or a professional service corporation organized under chapter 594a and owned by a single human being.

(10) "Person" means an individual, committee, firm, partnership, organization, association, syndicate, company trust, corporation, limited liability company or any other legal entity of any kind but does not mean the state or any political or administrative subdivision of the state.

21. Accordingly, when distributing absentee ballot applications, the Town Clerk must record the name of the individual human being to whom the absentee ballot applications have been issued, not just the organization such person may represent.
22. This is also keeping in line with the public policy represented by the administrative and tracking requirements in 9-140 (a), (k), and (l), which allows the public to know who is interacting with electors seeking absentee ballot applications.
23. Moreover, such administrative and tracking requirements are crucial investigatory tools for law enforcement agencies such as the Commission.
24. Allowing individuals to mask their identity behind the cover of an organization would thwart law enforcement investigations into impermissible activity surrounding the absentee ballot process.
25. For the reasons set forth above, the Commission concludes that the absentee ballot log enumerated in § 9-140 (a) must include the name of a “person” who is an individual human being and not just an organization and/or institution such person represents.

Absentee Ballot Log in § 9-140 Need Not Be in a Particular Format

26. Turning to the second question, the evidence here showed that the Respondent Town Clerk kept accurate internal records of each individual person who checked out absentee ballot applications on behalf of “institutions,” but did so on a Clerk-designed supplement to the main log form issued by the Secretary of the State.
27. The absentee ballot log requirement of § 9-140 (a) is straightforward. Such log of all absentee ballot applications must be maintained by the Town Clerk and include the following information:
 - a. the name of each person to whom applications are provided;
 - b. the address of such person; and
 - c. the number of applications provided to each such person.
28. Nowhere in § 9-140 (a) nor in any regulation is there a requirement that such log be maintained in a particular format and/or use only a particular form such that failure to do so would constitute a material violation of the statute.
29. Moreover, nowhere in § 9-140 (a) nor in any regulation is there a requirement that every document and/or page constituting such log be in the *same* format.

30. Importantly, the investigation obtained a statement from Director of Elections Ted Bromley affirming that the Secretary of the State does not require town clerks to use the Secretary-designed log and that any form of log is acceptable so long as it meets the substantive requirements of the statute.⁴
31. Considering the aforesaid, the Commission concludes that the Respondent Hamden Town Clerk met her responsibilities under § 9-140 (a) in maintaining a “log of all absentee ballot applications” in this instance.
32. Considering the aforesaid, **COUNT ONE** should be dismissed.

COUNT TWO: Improperly Issuing Absentee Ballots on Incomplete Applications

Allegations

33. Here, the Commission reviewed 17 absentee ballot applications submitted by the Complainant in which she alleged they contained “discrepancies” that suggested that the Town Clerk should not have issued ballots as a result.
34. The “discrepancies” fell into the following categories:
 - a. 14 of the applications had a Clerk-issued stamp of “Nov 05 2019” in Section 3 “Purpose of Application” instead of an affirmative marking by the applicant
 - b. 1 of the applications did not have the above stamp but had both “Election” and “Primary” checked off
 - c. 2 of the applications were missing a signature of the applicant in Section IV

Law

35. General Statutes § 9-140 provides, in pertinent part:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . **The application shall be signed by the applicant under the penalties of false statement in absentee balloting** on (1) the form prescribed by the Secretary of the State

⁴ See also, Advisory Opinion 2014-02 and In the Matter of a Referral by the Campaign Disclosure and Audit Unit of the State Elections Enforcement Commission, File Nos. 2015-108DNF and 2015-109DNF (SEEC and Secretary of the State may require the exclusive use of certain agency-promulgated forms).