

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Joseph Lazzaro, Darien

File No. 2019-158

**FINDINGS AND CONCLUSIONS**

The Complainant alleged that during the November 3, 2019 General Election in the Town of Darien, he was impermissibly turned away at his polling place due to a premature closing, in violation of General Statutes § 9-174.<sup>1</sup>

**Background**

1. At all times relevant to the instant Complaint, the Complainant was a registered elector in the Town of Darien.

**Allegation**

2. In his Complaint, the Complainant alleged that he appeared at his polling place at the Hindley School in Darien and according to his timepiece it was 7:59:15 when he appeared in the “building voting area.”
3. The Complainant further alleged that the door to the polling place was unlocked and he proceed to the checkers table and handed his drivers license to the checkers so that that he may be permitted to vote.
4. The Complainant further alleged that an unidentified woman who was not one of the checkers informed him that the polling place had been closed at 8:00pm, that he was too late, and that he would not be permitted to cast a ballot.

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<sup>1</sup> 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.

5. The Complainant further alleged that at the time he appeared and was told he could not vote, he observed one other elector in the voting area marking a ballot and inserting it into the tabulator.
6. The Complainant argued that as according to his watch, he arrived at the building prior to 8:00pm, he should have been permitted to cast a ballot. Alternatively, the Complainant asserted that as there was one other elector casting a ballot upon his arrival, there was a “line” and for that reason as well, he should have been permitted to cast a ballot.

#### Law

7. General Statutes § 9-174 prescribes the hours of voting and provides:

Notwithstanding the provisions of any general statute, special act or municipal charter to the contrary, at any regular election, or at any special election held to fill a vacancy in a state, district or municipal office, the polls shall remain open for voting from six o'clock a.m. until eight o'clock p.m. No elector shall be permitted to cast his vote after the hour prescribed for the closing of the polls in any election unless such elector is in line at eight o'clock p.m. An election official or a police official of the municipality, who is designated by the moderator, shall be placed at the end of the line at eight o'clock p.m. Such official shall not allow any electors who were not in such line at eight o'clock p.m. to enter such line. (Emphasis added.)

#### Investigation

8. SEEC investigators interviewed the relevant elections officials at the polling place, as well as the Complainant himself to determine the sequence of events.
9. Moderator Janet Offutt asserted that she declared the polling place closed at 8:00pm as required; she did not assert that she observed any electors in line at that time.
10. Moderator Offutt further asserted that after she declared the polling place closed, at approximately 8:02pm she observed the Complainant enter the room in which the tabulators were located and announce his intention of voting. She asserted that she informed him that the polling place was closed as required and that he would be unable to cast his ballot. She asserted that the Complainant informed her that it took him extra time to get from the parking lot to the polling place due to a medical condition and she informed him that she was not authorized to make an exception for that reason.

11. The SEEC investigator's conversation with the Complainant did not differ materially from the statement of Moderator Offut. He admitted that when he reached that checkers' table, the time was approximately 8:02pm according to his wristwatch.

### **Analysis**

12. As an initial matter, the Commission has long held that the question of whether a moderator has failed to either open or close a polling place at the correct time is a question of fact, not law. See *In the Matter of a Complaint by John Kisluk, Plainville*, File No. 2011-075; *In the Matter of a Complaint by Jeffrey Nield, Morris*, File No. 2000-276.
13. Further, the Commission has long held that provided the moderator uses the same timepiece to open and close a polling place and provided such timepiece is not demonstrably incorrect, such timepiece shall control as concerns compliance with General Statutes § 9-174. *Id.*
14. Turning to the question here, the investigation did not reveal any evidence that the Complainant was either inside the room in which the tabulators were located before the moderator declared the polling place closed per § 9-174 or that he was in line.<sup>2</sup>
15. The Commission recently held that “[a]s a rule, the option of last resort should be to turn an elector away.” See *In the Matter of a Complaint by Isabel Maria Vazquez, Hartford*, File No. 2019-147
16. However, in this instance, the Commission concludes that the moderator had no discretion under both the facts and the law.
17. Accordingly, this matter should be dismissed.

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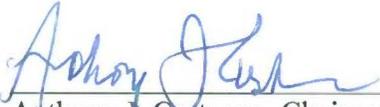
<sup>2</sup> The Complainant's assertion that he was a "line of one" is unavailing as not only does it defy the notion of a queue, it does not comport with the factual findings in this case.

ORDER

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

Dismissed.

Adopted this 3 day of FEB, 2021 at Hartford, Connecticut.

  
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Anthony J. Castagno, Chairperson  
By Order of the Commission