

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Sharlene A. McEvoy, Woodbury

File No. 2021-126

FINDINGS AND CONCLUSIONS

Complainant, Sharlene McEvoy, filed the instant complaint with the Commission pursuant to Connecticut General Statutes § 9-7b. Complainant alleged that that Respondents, election officials in the Town of Woodbury, failed to properly administer a referendum question put to voters. The following are the Commissions findings of fact and conclusions of law:

FACTUAL BACKGROUND

1. On or about May 4, 2021, the Town of Woodbury held a referendum vote concerning the town's budget (the "Budget Referendum").
2. The Senior Community Center in the Town of Woodbury was used as a polling location for the Budget Referendum.
3. At all times relevant hereto, Complainant owned real property in the Town of Woodbury.
4. At all times relevant hereto, the assessed value of Complainant's property in the Town of Woodbury exceeded \$1,000.
5. At all times relevant hereto, Complainant was a registered voter in a town other than the Town of Woodbury.
6. At or about 3:00 p.m., on or about May 4, 2021, Complainant traveled to the Woodbury Senior Community Center for the purpose of casting a vote concerning the Budget Referendum.
7. When Complainant reached the official checker's table, Respondent stated her name and indicated that she was not a registered voter, but was a property owner in town, and thus permitted to vote in the referendum.
8. Complainant reports that there was some confusion that ensued from this, but she was ultimately directed to the Moderator who eventually confirmed that Complainant's name was on the town's grand list.
9. Complainant further was asked to complete a form entitled "Property Owners' Right to Vote."

10. The Property Owners' Right to Vote required the Complainant to declare that she was: 1) a U.S. Citizen; 2) over the age of 18; 3) liable to the Town of Woodbury for taxes on property assessed at not less than \$1,000; and 4) not currently a registered voter in the Town of Woodbury.
11. The Property Owners' Right to Vote form was also signed by an election official that certified that Complainant's name was on the grand list for an assessment of not less than \$1000.
12. Respondent asserts that she was then handed a ballot for her to cast her vote concerning the Budget Referendum.
13. Respondent asserts that at no point in the process was she asked to preset identification.

ALLEGATIONS

14. Complainant alleges that the election officials in the Town of Woodbury did not comply with the requirements of law concerning the right of voters that are not electors to vote on local questions put to referendum.
15. Complainant further alleges that the election officials in the Town of Woodbury did not comply with the requirements of law concerning voter identification.

LAW

16. Certain owners of property may cast vote at certain town meetings, even if they are not electors. General Statutes § 7-6 provides:

At any town meeting other than a regular or special town election or at any meeting of any fire, sewer or school district or any other municipal subdivision of any town incorporated by any special act, any person who is an elector of such town may vote and any citizen of the United States of the age of eighteen years or more who, jointly or severally, is liable to the town, district or subdivision for taxes assessed against him on an assessment of not less than one thousand dollars on the last-completed grand list of such town, district or subdivision, or who would be so liable if not entitled to an exemption under subdivision (17), (19), (22), (23), (25) or (26) of section 12-81, may vote, unless restricted by the provisions of any special act relating to such town, district or subdivision.

17. General Statutes § 9-261 (a) details the voter identification requirements for electors, when casting ballots and provides:

In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the official checker or checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the official checker or checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the official checker or checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the official checker or checkers shall check the name of such elector on the official checklist, manually on paper or electronically. If the elector completes the form under subdivision (2) of this subsection, the registrar of voters or the assistant registrar of voters, as the case may be, shall examine the information on such form and either instruct the official checker or checkers to check the name of such elector on the official checklist, manually on paper or electronically, or notify the elector that the form is incomplete or inaccurate.

DISCUSSION

18. While certain non-resident property owners have a right, by statute, to vote in a town meeting other than an election, that right is more limited when it comes to voting in a municipal referendum. Whether a non-resident property owner has a right to vote in a referendum turns on issues of both the specific question at hand and applicable town charter provisions. See *Massad v. City of New London*, 43 Conn. Supp. 297, 302, 1993 Conn. Super. LEXIS 2918, *8, 652 A.2d 531, 534 aff'd *Massad v. City of New London*, 36 Conn. App. 584, 652 A.2d 529 (1995) ("Therefore, as New London's referendum is not a town meeting, General Statutes § 7-6 does not apply, and the plaintiffs' claim on this ground fails.").
19. In this case the Commission need not reach the question of whether Complainant was entitled to vote in the Budget Referendum as the Town of Woodbury permitted Complainant to cast a vote and the only question before the Commission is whether the procedures used were lawful.
20. With regard to the delay and confusion regarding the procedures for voters who are not residents to cast a ballot, the investigation did reveal that there was some delay between

when Complainant presented herself to vote at the official checker's table and when she was handed a ballot. This delay was caused by the apparent confusion as to the processes by which voters who are not electors may cast a ballot.

21. While it is incumbent on election officials to be knowledgeable on the laws and procedures by which an election or referendum is conducted to avoid mistakes and unnecessary delays, in this case the delay caused was not excessive and Complainant was ultimately permitted to cast a vote. Moreover, the procedures ultimately followed were in line with the advice given by the Secretary of the State's office concerning municipal referenda not held in conjunction with a regular or special election.¹
22. Accordingly, the Commission declines to find a violation by the election officials in the Town of Woodbury with regard to this allegation.
23. Complainant further alleges that she was not asked for any identification prior to casting a ballot.
24. General Statutes § 9-261 (a) requires that when an elector arrives at the official checkers table, he or she must announce their name in a clear voice. That statute further requires that the official checker ask for identification and, if the voter cannot or does not provide it, the elector must complete an affidavit swearing to his or her identity prior to casting a ballot.
25. If an official checker failed to request identification of an elector or allowed an elector to vote without presenting identification or completing an affidavit, such failure would be a violation over which the Commission would have jurisdiction.
26. However, the language of General Statutes § 9-261 (a) refers specifically to "electors" and makes no mention of voters that are not electors. Moreover, the procedures of General Statutes § 9-261 (a) would be impossible to enforce concerning voters that are not electors as § 9-261 (a) requires, among other things, that the official checker check the name off the official check list after verifying the identity of the voter. This would not be possible for voters that are not electors as their names do not appear on the official check list.
27. This issue has been further complicated by the determination of the Connecticut Courts that trustees of trusts that own property in a town subject to a tax assessment of not less than \$1,000 have rights to vote under the provisions of General Statutes § 7-6. *Weinstein v. Hansen*, Docket No. CV166015116S, 2017 Conn. Super. LEXIS 704, at *12-13 (Super.

¹ General Statutes § 9-369d details certain procedures that may be adopted when a vote in which voters that are not electors is held in conjunction with an election. This provision is silent, however, concerning when a vote in which voters that are not electors may cast a ballot is held separately from an election and there is no other statute that addresses that situation.

Apr. 10, 2017) (“In sum, even if the tax liability element of §7-6 is construed as requiring that potential voters be personally liable for municipal property taxes, the plaintiffs could satisfy this element despite holding title to the taxed properties only in their capacities as trustees. Thus, the defendants' motion for summary judgment cannot be granted on this ground.”). In this situation, and others permitted by Connecticut law, the names of the voters would not only be absent from the official checkers list, but may also be absent from the town’s grand list, the list most commonly used to establish the eligibility to vote of a voter that is not an elector.

28. In considering this matter, the Commission consulted with the Office of the Secretary of the State, which confirmed that the voter identification requirements of General Statutes § 9-261 (a) do not apply to voters that are not electors. Such opinion, given to the Commission in writing, is presumed to be correct pursuant to General Statutes § 9-3.
29. No other statute within the jurisdiction of the Commission, or elsewhere, identifies to what procedure local election officials must adhere in identifying voters that are not electors when administering a referendum question not held in conjunction with an election.
30. In the absence of any statute addressing voter identification of voters that are not electors, the Commission is compelled to dismiss this allegation.
31. Nevertheless, the Commission notes that the complete absence of statute or regulation in this area creates the possibility of a number of concerning outcomes. For example, without clear guidance, local elections officials are required to determine voter identity and eligibility without knowing what documentation is sufficient proof of either. The Commission strongly encourages policy makers to consider the issues raised in this case and work to provide clear rules and guidance for the public officials and voters of Connecticut.

ORDER

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

That the allegations in this matter be dismissed.

Adopted this 1st day of September, 2021 at Hartford, Connecticut.


STEPHEN T. ALVAREZ, CHAIRMAN
By Order of the Commission