

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Laurie M. Reynolds,
North Haven

File No. 2022-022

FINDINGS AND CONCLUSIONS

Complainant, Laurie M. Reynolds of the Town of North Haven, made this complaint pursuant to General Statutes § 9-7b. Complainant alleged that there were irregularities in the dissemination and collection of absentee ballots by the South Windsor Town Clerk and Registrars of Voters prior to the November 2, 2021 election that violated election laws. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. Complainant alleged the following violations by Respondents:

Allegation One: That Respondents as the South Windsor Town Clerk and Republican and Democratic Registrars of Voters violated election laws by mailing out absentee ballot sets too early pertaining to the November 2, 2021 election (C.G.S. § 9-140). And that by doing so, Respondents committed official fraud and neglect by these actions (C.G.S. § 9-355).

Allegation Two: That the Respondents retrieved absentee ballot sets outside the hours of the Town Hall operating hours from a drop box (C.G.S. § 9-140b (c)), in violation of election laws.

2. At all times relevant, the following individuals held these offices with the Town of South Windsor: Bonnie Armstrong, Town Clerk; Susan Larsen, Registrar of Voters; and, Susan Burnham, Registrar of Voters (hereinafter "Respondents").

3. 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. ... If the ballot is to be mailed to the applicant, the applicant shall list the bona fide personal mailing address of the applicant in the appropriate space on the application.

...

(f) Absentee voting sets shall be issued beginning on the thirty-first day before an election and the twenty-first day before a primary or, if such day is a Saturday, Sunday or legal holiday, beginning on the next preceding business day.

[Emphasis added.]

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

(a) An absentee ballot shall be cast at a primary, election or referendum only if: *(1) It is mailed by (A) the ballot applicant, (B) a designee of a person who applies for an absentee ballot because of illness or physical disability, or (C) a member of the immediate family of an applicant who is a student, so that it is received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of the polls; (2) it is returned by the applicant in person to the clerk by the day before a regular election, special election or primary or prior to the opening of the polls on the day of a referendum; (3) it is returned by a designee of an ill or physically disabled ballot applicant, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (4) it is returned by a member of the immediate family of the absentee voter, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; A person returning an absentee ballot to the municipal clerk pursuant to subdivision (3) or (4) of this subsection shall present identification and, on the outer envelope of the absentee ballot, sign his name in the presence of the municipal clerk, and indicate his address, his relationship to the voter or his position, and the date and time of such return. As used in this section, "immediate family" means a dependent relative who resides in the individual's household or any spouse, child or parent of the individual.*

...

(c) (1) For purposes of this section, "mailed" means (A) sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State, or (B) for the state election in 2020, deposited in a secure drop box designated by the municipal clerk for such purpose, in accordance with instructions prescribed by the Secretary.

(2) In the case of absentee ballots mailed under subparagraph (B) of subdivision (1) of this subsection, beginning on the twenty-ninth day before the state election in 2020 and on each weekday thereafter until the close of the polls, the municipal clerk shall (A) retrieve from the secure drop box described in said subparagraph each such ballot deposited in such drop box, and (B) if the drop box is located outside a building other than the building where the clerk's office is located, arrange for the clerk or the clerk's designee to be escorted by a police officer during such retrieval.

[Emphasis added.]

5. General Statutes § 9-355, provides:

Any person who, without reasonable cause, neglects to perform any of the duties required of him by the laws relating to elections or primaries and for which neglect no other punishment is provided, and any person who is guilty of fraud in the performance of any such duty, and any person who makes any unlawful alteration in any list required by law, shall be fined not more than three hundred dollars or be imprisoned not more than one year or be both fined and imprisoned. Any official who is convicted of fraud in the performance of any duty imposed upon him by any law relating to the registration or admission of electors or to the conduct of any election shall be disfranchised. Any public officer or any election official upon whom any duty is imposed by part I of chapter 147 and sections 9-308 to 9-311, inclusive, who wilfully omits or neglects to perform any such duty or does any act prohibited therein for which punishment is not otherwise provided shall be guilty of a class E felony.

[Emphasis added.]

6. Complainant, in support of her claims of alleged violations, asserted that:

Collectively, the absentee ballot sets were mailed to voters before October 1st, 2021. October 1st, 2021 was the earliest date absentee ballots could be mailed to voters. According to South Windsor's absentee ballot report dated November 2nd, 2021...; South Windsor town clerk and/ or democratic and Republican registrars' of voters mailed out absentee ballot sets (prior to October 1st, 2021) more than 31 days prior to 2021 South Windsor Municipal election; violation of State Statute 9-140(f).

Absentee ballots were collected from ballot drop box, located outside the town hall, outside of town hall hours.

The earliest day absentee ballots could be mailed from the town hall by town clerk or registrar of voters was October 1st, 2021. As noted on absentee ballot report dated 11/2/2021, absentee ballot sets were mailed from South Windsor Town Hall to voters on 9/24/2021, 9/29/2021, and 9/30/21, totaling 82 absentee ballot sets. ...

According to absentee ballot report dated November 2, 2021, absentee ballot sets were retrieved from drop box outside of town hall hours. Specifically, before and after Town hall operating hours and on weekends when South Windsor Town Hall is closed and closed for public business. Post office is also closed outside of town hall hours which questions the chain of custody when referring to absentee ballot log book. The weekend dates specifically in question is 10/16/2021, 10/17/2021, 10/23/2021, 10/24/2021, 10/30/2021 and 10/31/2021 for a total of 128 absentee ballots.

Allegation One – Mailing Out Early Absentee Ballots

7. By way of background and read as a whole, the statutory process of “issuing” an absentee ballot set consists of several steps, including: reviewing the application and confirming an applicant is registered to vote, (C.G.S. §9-140(c)), preparing the inner and outer envelopes and any instructions (C.G.S. §140(d)), recording the absentee ballot set sequentially with a unique serial number (C.G.S. §9-140(e)), and then finally mailing the absentee ballot set on “the first day of issuance,” which is the date set forth in C.G.S. §9-140(f).
8. Consistent with the above process, the Respondents agree that absentee ballot sets may not be mailed to voters prior to 31 days of an election, which in this circumstance, was before October 1, 2021 and deny in this instance that the Town of South Windsor mailed any absentee ballots for the November 2, 2021 election prior to the statutorily prescribed date of October 1, 2021.
9. In response to this complaint and investigation, Respondents assert:
The Complaint alleges absentee ballot sets were mailed prior to October 1, 2021 based upon a review of the Absentee Ballot Report attached to the Complaint. ... This report does not list the date that an absentee ballot set was “mailed” to the applicant; rather it uses a heading entitled “issued.”

As described in the Town Clerk's affidavit, ... the heading "issued" represents the date that the absentee ballot sets were prepared and ready for mailing.¹

10. Respondents assert that "prior preparation" of absentee ballot sets for those applications received before the October 1, 2021 "first day issuance," is necessary to promptly mail all the valid requests for absentee ballot sets on that date. In this instance, Respondents assert that they prepared the absentee ballot set packages in advance to ensure all valid requests for absentee ballots received prior to October 1, 2021 would be mailed an absentee ballot set on October 1, 2021 as required by statute.
11. Further, Respondents assert that in order to track such absentee ballot requests and the preparation of the sets, the Town Clerk records the final prepared absentee ballot set as "issued" on the Absentee Ballot Report, despite not mailing such set until after October 1, 2021. Therefore, according to Respondents "...while absentee ballot packages were prepared prior to October 1, 2021 as necessitated by a deluge of requests, none were sent out prior to the October 1, 2021 mail date mandate."
12. The Commission finds Respondents' explanation and description of their "preparation" for issuing absentee ballots to be both credible and reasonable in light of the historic volumes of absentee ballot applications processed and issued by Connecticut municipalities in the 2020 and 2021 election cycles due to the onset of the Covid 19 pandemic. Further, the Commission finds Respondents preparation consistent with statutory requirements for processing absentee ballots as detailed above.
13. Upon investigation, the Commission finds that the Town of South Windsor mailed its first batch of absentee ballot applications on or *after* the October 1, 2021 statutorily prescribed period pursuant to General Statutes § 9-140 (f).
14. The Commission finds that after investigation that there is a lack of evidence that the Town of South Windsor mailed absentee ballots for the November 2, 2021 election prior to October 1, 2021, or 31 days prior to the election, as required by General Statutes § 9-140 (f).
15. General Statutes § 9-140 (f) and the alleged violation was not supported by the facts after investigation. The Commission therefore dismisses Allegation One.

¹ The Commission notes that the assertions by Respondents were provided on their behalf with supporting documentary and testimonial evidence by South Windsor Town Counsel in a detailed response to this complaint and investigation received by the Commission on May 11, 2022.

Allegation Two – Collecting Absentee Ballots Outside of Office Hours

16. Respondents deny that they violated General Statutes § 9-140b (c) (2) by retrieving absentee ballots from drop boxes on weekends.
17. The Respondents included a detailed response with supporting documents and testimony to Allegation Two. More specifically, The Respondents asserted that:

The Office of the Secretary of State, in its interpretation of Conn. Gen. Stat § 9-140b(c)(2), ... did not determine that there were any restrictions on a town clerk in their retrieval of election mail, including absentee ballots, on a weekend day. To the contrary, the Office of the Secretary of State was well aware that most town clerks who worked on absentee ballot processing often received election mail on weekend days. Moreover, the Office of the Secretary of State was aware that many town clerks went to US Post Offices on weekend days, as well as after business hours, to receive absentee ballots and other election material.
18. Respondents note that the instructions from the Secretary of State conclude that the language of General Statutes § 9-140b(c)(2) “...serves as a “floor,” or simply put, a minimum standard for the number of times the town clerk must retrieve absentee ballots from the secure drop box.”
19. Upon review, the Commission finds that published advice of the SOTS does not in fact limit the scope of that retrieval of absentee ballots from drop boxes. Further, the Commission finds that the SOTS and its guidance, does not prohibit the town clerk from “retrieving ballots from the secure drop box multiple times per day or on a day other than a weekday.”
20. Further, the Commission finds that the town clerk followed the protocols and SOTS published advice, including having two representatives retrieving ballots from the absentee ballot drop box, both on weekend and week days.
21. After investigation, the Commission concludes that Respondents did not violate General Statutes § 9-140b(c)(2) by retrieving absentee ballots on weekend days from the secured drop box. The Commission therefore dismisses Allegation Two.
22. The Commission, for the reasons detailed herein, dismisses this complaint as the allegations were not supported by the fact or the law after investigation.