STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Robert Kalechman, Simsbury — File No. 2008-156

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleged that elections officials at the District 17 polling place in the Town of Simsbury improperly handled completed ballots, and that one official viewed how he voted when he inserted his ballot into the tabulator.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. Complainant was a petitioning candidate for state representative in the General Assembly District 17 in Simsbury, on Election Day November 4, 2008 and voted at the District 17 polling place located at the Henry James School in the Town of Simsbury.

2. Ms. Kathryn Smyth was the Moderator, Mr. Peter Stempien an Assistant Registrar, and Mr. David Balboni a tabulator tender, at the District 17 polling place in the Town of Simsbury on November 4, 2008.

3. Complainant alleged that:

   (1) He was informed that he could not hand out his campaign literature by Kathryn Smyth and election official at the Henry James School District 1 polling place, even though he "...was outside of the 75 foot marker and not breaking any election laws." Further, that Ms. Smyth threatened to "confiscate" his materials if he continued;

   (2) During the course of casting his ballot, he noticed a woman behind a black "optical scan machine" with the bin open and ballots that had been cast "strewn" around her and with a black bag on top of the tabulator; and,

   (3) While attempting to insert his ballot into the tabulator, Mr. Balboni was "...standing in back of the machine looking down at the insertion point, wanting to read my ballot."

4. Complainant claims the above instances were violations of General Statutes §§ 9-366 and 9-363. The Commission finds that these statutes are not implicated by these facts as alleged.

5. General Statutes § 9-236, provides in pertinent part:

   (a) On the day of any primary, referendum or election, ***no person shall solicit in behalf of or in opposition to the candidacy of another or himself*** or in behalf of or in opposition to any question being submitted at the election or referendum, ***or loiter or peddle or offer any advertising matter, ballot or circular to***

> ***another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place*** or in any room opening upon any such corridor, passageway or approach, except as provided in section 9-294. ...
> [Emphasis added.]

6. The Commission finds that the moderator on two separate occasions asked individuals to stop disseminating campaign literature to those on line entering the polling place. The moderator indicated that when she spoke to the individuals on each occasion they were outside of the signs posted delineating the 75 foot rule.

7. The moderator admits that by the second time she spoke to the individuals pertaining to the dissemination of campaign materials she had learned that their activities outside the 75 foot line were not prohibited.

8. The Commission finds that there are no facts pertaining the moderator's conduct described in paragraphs 6 and 7 above that indicate that she violated General Statutes § 9-236, by her conduct.

9. General Statutes § 9-352, provides:

> ***Any election official who, with intent to cause or permit any voting machine to fail to correctly register all votes cast thereon, tampers with or disarranges such machine in any way or any part or appliance thereof***...[Emphasis added.]

10. The Secretary of the State's Moderator's Handbook for Elections and Primaries (Revised July 2008), at page 19 provides that:

> If the ballot box becomes full, two election officials shall replace the ballot box in the manner prescribed by the Secretary of the State or empty the ballot box as long as the ballots removed are placed in a secure container. (Regs. 9-242a-16)

11. Further, Regulations of Connecticut State Agencies 9-242a-16 provides in pertinent part:

> The voting tabulator tenders shall be stationed approximately three to four feet from the voting tabulator. They shall control access to the voting tabulator and shall prevent anyone from tampering with the voting tabulator. ***They shall instruct electors in the proper method for inserting the ballot. They shall ascertain that the ballot has been accepted by the voting tabulator before a voter leaves the polling place***. The voting tabulator tender shall advise the elector of any error messages displayed by the voting tabulator. If a ballot is rejected by the voting tabulator they shall advise the elector how to correct the problem. ***They shall not look at the markings on an elector's ballot***. If a new ballot is needed, the voting tabulator tender shall direct the elector to the ballot clerks. If the voting tabulator jams or malfunctions, the voting tabulator tender shall summon the

> moderator or another election official before any corrective action is taken. An election official shall clear any jammed ballots in accordance with instructions provided for the voting tabulator and shall avoid looking at the markings on the ballots. ***The voting tabulator shall not be opened unless one election official from an opposing political party is present. The moderator shall make a memorandum as to whether the voting tabulator indicates that it has counted the ballot.*** ...When the voting tabulator is repaired or replaced or after the close of the polls, the election officials shall (1) process the ballots from the auxiliary bin through the voting tabulator, (2) return overvoted ballots to the auxiliary bin to be processed and overridden at the end of the day, and (3) return ballots rejected as blank ballots to the auxiliary bin to be hand counted at the end of the day. The moderator shall make a memorandum of such incidents. ***If the ballot box becomes full, officials of opposing political parties shall empty or replace the ballot box in the manner prescribed by the Secretary of the State.*** ... (Adopted effective October 1, 1999; amended March 27, 2008)
> [Emphasis added.]

12. The Commission finds that the Moderator's Diary for District 17 indicates at page 2 that: "*Machine #2 jammed – we opened it – and wiped it down – K.S. P.S.*" Further, the Commission finds that the initials are those of Moderator Kathryn Smyth and Peter Stempien, Assistant Registrar.

13. The moderator claims that she shut down the machine because ballots were jamming, and that she was on the floor trying to organize the voted ballots because they were "an absolute mess," and that there is no evidence to contradict this claim.

14. The Commission finds that the Moderator and Assistant Registrar Peter Stempien worked together to remedy the voting machine in question that had become jammed. The Commission notes that Ms. Smyth is a Democrat and Mr. Stempien is a Republican.

15. The Moderator and Assistant Registrar determined upon opening the machine that they believed static electricity was causing every second or third ballot inserted to jam at the top of the optical scan box preventing them from dropping into the bin and causing the tabulator to reject additional ballots. They further discovered that by shaking the machine this problem was eliminated and instructed the machine tenders to shake the machines on occasion between votes. While the Commission takes no position on whether the above method was the appropriate remedy, the explanation does serve to explain why the machine tender was within close proximity to the machine, at times in accordance with his Moderator's instructions.

16. The Commission finds evidence that the Ms. Smyth as Moderator, and Mr. Stempien as an Assistant Registrar at the District 17 polling place in the Town of Simsbury complied with the moderator's handbook and the Secretary of the State's Regulations of Connecticut State Agencies § 9-242a-16 by opening a jammed voting tabulator and

optical scan box as individuals from opposing parties, and did not violate any laws or regulations by their conduct.

17. Connecticut General Statutes § 9-262, as amended by P.A. 07-194, provides:

> During the entire period of an election, at least one of the election officials ***shall be stationed approximately three to four feet from the voting tabulator to regulate the submission of the elector's ballot.*** The election officials shall also, at such intervals as such officials deem proper or necessary, examine the voting booth to ascertain whether it has been defaced or damaged and to detect the wrongdoer and repair the damage. After the opening of the polls, no election official shall allow any person other than the election officials to pass within the area where the voting booths and voting tabulator are situated, except for the purpose of voting or except as provided in this part. ***No election official shall remain or permit any person to remain in any position or near any position that would permit him to see or ascertain how an elector votes.***
> [Emphasis added.]

18. The tabulator tender maintains that he moved beyond the taped marker delineating a four foot zone around the voting machine during Complainant's vote, but entered within this area pursuant to his moderator's instructions thereafter to "shake" the machine to prevent ballots from jamming. He maintains that he did not look at the Complainant's ballot and another witness at the polling place supports his account.

19. Complainant maintains that the tabulator tender entered the area and attempted to view his ballot and his wife wrote a letter stating that she observed the same.

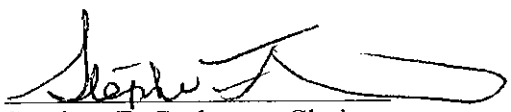
20. Because of conflicting evidence the Commission takes no further action regarding this allegation.

ORDER

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

That the case be dismissed.

Adopted this 14 th day of January, 2009 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission