

March, 21st, 2012

141 Benton Road
Morris, CT 06763

Committee on Government Administration and Elections
Connecticut General Assembly
Legislative Office Building
Hartford, CT 06106

To whom it may concern,

Thank you for considering changes to the election law related to vacancies and minority representation in House Bill 5533 An Act Concerning Vacancies in Certain Town Offices and Minority Representation. I am David Wiig of Morris CT and I support this bill as vacancies have been used as a tool to manipulate the election results in a manner contrary to the minority representation statute, section 9-167a and due to confusion over how the minority representation statute should be applied. Though, given that it is not possible to put vacancies that occur close to an election on the ballot, additional language is needed to clarify how section 9-167a is to be applied in the case of vacancies.

There is a specific case relates directly to the changes being considered today. This past November I was on the ballot as a member of a party that is and has been the minority party for the 25+ years I have lived in Morris. Therefore, going into last year's election, it was almost a given that the only way I could get a 6-year term on the Planning and Zoning Commission is to be put on the board based on the requirements set forth in section 9-167a.

The Morris Planning and Zoning Commission is a 9-member board. Therefore, based on Section 9-167a no more than 6 members of one party may sit on that board at one time. When the candidates were selected in July of last year, the board was comprised of 6 members of one party, 2 members of a second party and an unaffiliated member.

At the election in November, there were 2 majority party seats and 2 minority party seats that were up for election. The majority party ran 4 people and the minority party ran 2 people. I was one of the two minority party candidates.

The correct result of the election should have been that the 2 highest vote getters from the majority party would have won and the 2 minority party candidates would have won. What happened was that between the time when the candidates were selected and the election, one board member from the majority party resigned, which left the board with 5 majority party members. Since there was an open seat, it was not assumed to be a majority party seat so it was treated as if it was a minority party seat

and 3 of the 4 majority candidates were elected and I having finished second among the minority party candidates was left off of the board.

What was wrong with this decision was that it left the board with 6 majority party members, 2 minority party members and an open seat. This decision has repeatedly been supported by the Secretary of State's office. What makes this an issue and a way of circumventing section 9-167a is that if another majority party member had resigned, there could have been a 6-1 ratio with 2 open seats on the board. Additionally, if all 3 minority party seats were up for election, this interpretation of the statute would have resulted in a 6-0 majority party to minority party member ratio with 3 open seats.

In reviewing 9-167a(a)(1), there is a table that charts Total Membership against the Maximum from one Party. It is being implemented, looking at the total potential membership of the board. I contend that for true minority party membership, it must be implemented by looking at the total current membership of the board. It cannot be assumed that the open seat is a majority party member and conversely it is not correct to assume that the open seat is a minority party member either.

Therefore, the change to section 9-164 is a good change as it will minimize situations where there are open seats on a board or commission when an election is held. Though, the change to 9-164 and the change to 9-167a(d) do not completely address the situation where a majority party member resigns between September 1st and the election. Additionally, it leaves open the possibility that this tactic can be used to manipulate the majority party to minority party representation of the board in favor of the majority party.

Sincerely

David R. Wiig

P. S. Several supporting letters and e-mails were sent to go with this testimony.

March 2, 2011

141 Benton Road
Morris, CT 06763

Ms. Peggy Reeves
Assistant to the Secretary of State for Election, Legislative and Intergovernmental Affairs
30 Trinity Street
Hartford, CT 06106

Dear Ms. Reeves

Thank you for taking the time to review the decision that was made relative to the election for the Morris Planning and Zoning Commission this past November. Though, the conversation seemed to focus on Section 167a(d), which was not the subject of the letter dated January 30th 2012. Additionally, the only time this argument was addressed was to agree that the assertions as to how this interpretation of Section 167a could be manipulated to subjugate the minority party members of a board or commission to only being appointed to open seats with unexpired terms.

It is not clear why Section 167a(d) even applies to this issue. The situation in question was not related to filling the seat with the unexpired term, the open seat with the unexpired term wasn't even on the ballot. The other part of this section applies to appointments. Therefore, it doesn't apply to an election.

Additionally, two court cases were referenced: Chapman v. Tinker and Grodis v. Burns; however, in both cases the subject was regarding 167a(d). To compound matters, the composition of each of the boards in these cases was not at the point where the majority party had an illegal ratio of members to total membership. In Chapman v. Tinker, the court decision even enumerates the basis for 167a(d), which clearly applies to appointments, not to elections. Therefore, even if 167a(d) was thought to justify this complaint, these cases do not necessarily apply. Though, as stated previously, it does not appear that 167a(d) applies here, which renders this case law moot.

To reiterate, the assertion is that the primary statement in Section 9-167a is the table that discusses the number of majority party members that can sit on a board relative to the total membership of that board. At the close of the election there were 4 unexpired terms that were filled, 1 unexpired term that was open and 4 seats to be filled by the election. The board at the time contained 3 members of the majority party and 1 member of the minority party and an open seat.

The question that confuses the matter and has prevented the proper determination of what should happen is what this open seat is. It was last filled by a person who was elected as a member of the majority party; however, there is no guaranteed continuity in a seat based on a party unless an appointment is being made for a minority party seat when a board has already met the threshold for majority party representation. Though, on the other hand, the seat is open, which means it is not occupied by a minority party member, which means it does not count towards minority party representation either.

Based on this, at the time of election, the board was essentially an 8-member board. As a result, the table in Section 167a(a)(1) says that the maximum from one party can be 5 members. Therefore, the appointment of the 6th majority party member was improper as it created a board with a 6-2 ratio.

The argument is rather simple. The issues discussed on our call did not properly address this aspect of the argument. It is disappointing that The Secretary of State's office can't take action here as it will force legal action, which is not how this should have to be.

Sincerely,

David R. Wiig

cc: Denise Merrill, Connecticut Secretary of State
Shannon Weegle, Chief of Staff, Connecticut Secretary of the State Denise Merrill
Arthur Champagne, Elections Officer, Connecticut Secretary of State's Office
Christopher G. Donovan, State Representative, Speaker of the House
Laura Jordan, State Representative Christopher Donovan's Office
Larry Sweeney, Chairman, Morris Democratic Town Committee

January 30th, 2012

141 Benton Road
Morris, CT 06763

Ms. Peggy Reeves
Assistant to the Secretary of State for Election, Legislative and Intergovernmental Affairs
30 Trinity Street
Hartford, CT 06106

Dear Ms. Reeves

The response provided to Larry Sweeney did not completely address the question relative to whether the minority representation statute, using the table in Section 167a(a)(1), provides direction on the order in which minority party candidates and majority party candidates are seated after the election. This is the basis of the appeal and it has not been addressed to an adequate level. Additionally, there is a contradiction with what was discussed at our meeting on January 6th, which is pertinent to the discussion as to why I as the minority party candidate should have been seated in November rather than the majority party candidate.

While the primary issue is the ratio of majority party to minority party seats after the election, there is another key discussion point in that contradicts what was discussed at the meeting. Specifically, the communication implies that the Town Clerk was not required to put the seats with unexpired terms on the ballot. In the meeting, it was said by both you and Shannon Weegle that it was a mistake for the unexpired terms not be placed on the ballot. Note that this is an important issue relative to this discussion which will be brought to light later in this letter.

The letter does state that the Minority Party section does not require that the minority party that fills the remaining seats must be of a particular party. This was understood from the start; however, this was not the basis of or the expectation when the initial question was raised. The question is whether it is correct to seat the majority party members first and address the minority party membership at a later date, which is what was done in Morris this past November.

In the example presented by the November 2011 election, the 6th majority party member was seated before the 3rd minority party member was seated. The argument is that to maintain the majority party to minority party ratio documented in Section 167a(a)(1) the 3rd minority party member must be seated before the 6th majority party member is seated. By seating the 6th majority party member, the board had a 6 to 2 ratio with an open seat, which was not a majority party seat or a minority party seat.

Based on the discussion in the letter relative to 167a(d) continuity of a party in a seat can't be assumed. This means this seat cannot be assumed to be a majority party seat. Conversely this seat cannot be assumed to be a minority party seat. Therefore, the election left the board with 8 members, 6 of the majority party and 2 of the minority party.

Section 167a(a)(1) says that an 8 member board can only have 5 members of one party. Therefore, seating the 6th member of the majority party should not have happened before a 3rd member of another party was seated. The only situation where this could not apply is if there weren't enough candidates from a minority party to elect the 3rd minority party member, which was not the case in Morris in November 2011.

To further understand the point being made, one must understand the Town of Morris. In Morris, when a person nominated by the majority party is placed on the ballot, they invariably win. Therefore based on the decision made this past November, it is realistic to assume if 3 majority party members with terms not set to expire in the current election year resigned before the election, all candidates from the majority that are on the ballot will be guaranteed to win, even if all of the minority party members were up for election. The result of this is that after every election, there will be 6 of the majority party and no minority party members on the board until minority party members were appointed.

It might seem that this isn't possible; however, the case in point proves that it is possible. The seat on the zoning board was left open purposely to prevent an individual who was on the ballot as a minority party candidate from gaining a seat on the board. I even inquired about filling it at a Zoning board meeting and was rebuffed. To make matters worse, the result of this was that the husband of the First Selectman was the person who filled the 3rd majority party seat on the board as a result of the decision made.

The decision made by the Town Clerk, which was supported in the letter means that it is legal for a party in a town like Morris to position the ballot in such a manner that at all elections, all of their candidates will be eligible to be elected to full terms, regardless of whether candidates from other parties run. This would temporarily leave the board with only majority party members. It would relegate all minority party members of the board to sit in the unexpired terms that the majority party members resigned from, after their eventual appointment to these seats.

The interpretation of the statute presented in the letter makes it possible for the majority party to maintain a stranglehold on a board. Is this the intention of the statute? It does not allow for fair minority representation if implemented in this manner, which is why the statute is being implemented in an erroneous manner.

Please review the point raised in this letter. It does not seem to be keeping with the objective or the spirit of Section 167a Minority Representation. Please let me know what the next step in rectifying this issue is.

Sincerely,

David R. Wiig

cc: Denise Merrill, Connecticut Secretary of State
Shannon Weegle, Chief of Staff, Connecticut Secretary of the State Denise Merrill
Christopher G. Donovan, State Representative, Speaker of the House
Laura Jordan, State Representative Christopher Donovan's Office
Larry Sweeney, Chairman, Morris Democratic Town Committee

December 5, 2011

141 Benton Road
Morris, CT 06763

Mrs. Barbara Bongiolatti
Town of Morris First Selectman
3 East Street
Morris, CT 06763

Dear Barbara,

There is confusion that has arisen from the recent election for the Morris Planning and Zoning Commission. At this election, it was determined that 3 majority party and 1 minority party members were to be seated; however, per Section 167a of the Connecticut State Statutes, this decision was incorrect. This is due to the results of the election producing a board with 6 majority seats, an open seat from the majority party and 2 minority seats.

To properly understand why this decision was wrong, the make-up of the board before the election needs to be understood. Before the election, there were 3 minority party seats that were filled, 5 majority party seats that were filled and one open seat that had been filled by a member of the majority party that had been elected after being nominated by the majority party 4 years ago. Of the 4 seats that were up for election, 2 were majority party seats and 2 were minority party seats. One of the minority party seats was filled by an unaffiliated voter and the person was in that minority party seat was nominated by the majority party to fill one of the 4 seats that were on the ballot, which opened a second minority party seat.

As a result, the election should have produced a board that had 5 majority seats, an open majority seat and 3 minority seats. There are several reasons why a board with all 3 minority party seats filled by the election was the correct result. These reasons are based on Section 167a of the Connecticut State Statutes.

Specifically, Section 167a contains a table that outlines the number of minority seats a board must have per the number of members on the board. For both a 9 member board and an 8 member board, there must be 3 minority seats. By only placing 1 minority seat member on the board after the election there were only 2 minority party seats on the board. Therefore, the minority requirement that could and should have been met was not met. Proper reading of Section 167a requires that the 3rd minority party seat must be filled before the 6th majority party seat.

The problem with the decision to elect the 6th majority party member was that there was no way to appoint the 3rd minority party member to the open majority party seat at that time. Since this seat was not added to the ballot, filling this seat had to be done at a later date. This left the Morris Planning and Zoning Commission with only 2 minority party seats, which failed to address the minority representation requirements of Section 167a.

If the thought was that appointing a minority party member to the open majority party seat after the election would correct the issue, the reality of meeting schedules and potential emergency situations were not considered. Specifically, the Morris Planning and Zoning Commission was scheduled to meet the following Monday. It was not until later in the following week, after the Morris Planning and Zoning Commission was scheduled to meet, that the Board of Selectmen met to potentially consider filling the majority party vacancy. Therefore, the results of the election produced a board that was scheduled to meet while not sufficiently represented by the minority party. This is why the 3rd minority seat was required to be seated before the 6th majority party seat was seated.

To further complicate the matter, there is litigation that the Morris Planning and Zoning Commission is involved in. This litigation actually required that the board meet during this period to consider a matter relative to the case that was in litigation. While this meeting was never held, if the meeting was held, the minority party would not have been properly represented. This would have happened despite the fact that it was within the power of the election to insure that the minority party was properly represented.

As a result, at that time and still today, I am not willing to accept the open majority party seat on the Morris Planning and Zoning Commission that was offered after the election. While seating a minority party member in this seat, corrects the ratio of majority party to minority party members, it does not rectify the fact that the board was improperly seated after the election. I do not want to be a party to an action that is wrong.

Sincerely,

David R. Wiig

P. S. This does not mean that I am not interested in serving on the Morris Planning and Zoning Commission. I am willing to fill Lisa Harrison's seat as a placeholder while the questions raised by the election are sorted out.

cc: Ann Carr, Morris Town Clerk
Lisa Harrison, Morris Board of Selectmen
Phil Birkett, Morris Board of Selectmen
Robert McIntosh, Chairman, Morris Planning and Zoning Commission
Larry Sweeney, Chairman, Morris Democratic Town Committee
Christopher G. Donovan, State Representative, Speaker of House
Denise Merrill, Connecticut Secretary of State

From: Larry Sweeney [mailto:lmsweeney@optonline.net]
Sent: Wednesday, January 18, 2012 6:29 PM
To: 'Laura Jordan'
Subject: FW: Planning and Zoning Commission

Hi Laura, Here it is. Larry

From: Reeves, Peggy [mailto:Peggy.Reeves@ct.gov]
Sent: Thursday, January 12, 2012 4:10 PM
To: 'LMS58@georgetown.edu'
Subject: FW: Planning and Zoning Commission

Sorry, this did not go through the first time.

Peggy Reeves
Assistant to the Secretary of the State for Election, Legislative and Intergovernmental Affairs
Telephone: 860-509-6123
Email: peggy.reeves@ct.gov

From: Reeves, Peggy
Sent: Thursday, January 12, 2012 4:08 PM
To: 'lms58@georgetwon.edu'
Cc: Wegele, Shannon
Subject: Planning and Zoning Commission

Larry-

I spoke with Arthur Champagne this week to get the background on the issue in Morris. This is my understanding:

Morris, by ordinance, has a P&Z commission of nine members, elected for 6 year terms. The terms are staggered in a 3-2-4 rotation.

In accordance with the ordinance, all vacancies are to be filled to the end of the term, and 2011 was the year to elect 4 members to replace the four members whose terms expired in 2011.

On May 10, 2011, we received the List of Offices to be Filled in the November 2011 election from the town clerk.

On June 17, 2011, we received a notice of Vacancy in Elective Office from the town clerk. Michael P. Keilty, Republican, resigned from the P&Z Commission as of June 15, 2011.

Since the commission had six republican and three democratic members just before Keilty's resignation, it was widely believed in Morris that under the provisions of CGS Sec. 9-167a(d) that vacancy would have to be filled by an enrolled republican.

However, there are two Superior Court decisions, Chapman v. Tinker, 25 Conn. Supp. 436 (1964) and Grodus v. Burns, 190 Conn. 39 (1983) that state that a vacancy must be filled by a member of the same party **only** if the commission had reached maximum majority representation (it had with six republican members) and **only** if the vacating member was of the minority party. (he wasn't - Keilty was of the majority party). The Republican party endorsed four members and the Democratic party endorsed two members to run in the elections for the four seats. There were no minor party or petitioning candidates.

The June 15 vacancy (Keilty) was not filled by the election.

The June 15 vacancy (Keilty) was not listed on the ballot since local law stated it would be filled to the end of the term (2013), and there is no requirement in the Connecticut General Statutes that a vacancy to be filled to the end of the term MUST be filled by a prior election.

After review by Ted Bromley and Arthur, it was decided that the vacancy could not be filled by a winning candidate, but would be carried forth as a vacancy yet to be filled.

This information was communicated to the town clerk and used by her in determining the winners and losers of the election. At this time there were three republicans and one democrat on the commission plus the vacancy. Accordingly, the town clerk certified the election of the three top vote getters (all republican) plus the top democrat, which equaled the four to be elected.

As I mentioned at our meeting, despite its title, CGS Sec. 9-167a is more of a majority limitation statute than a minority representation statute. It does not require the inclusion of any particular minor party/group in the makeup of a board or commission.

As for your question about the alternates, you would first turn to a town charter or ordinance regarding the filling of vacancies on the Planning and Zoning Commission. In the absence of such a provision, Sec. 9-220 is the controlling authority. I have not reviewed your town ordinances so you would have to check with your town attorney, but pursuant to Sec. 9-220, the Board of Selectmen shall fill a vacancy in an elected office until the next town election.

Please do not hesitate to contact me if you have any additional questions.

Regards,
Peggy

Peggy Reeves
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Email: peggy.reeves@ct.gov