SHIPMAN & GOODWIN LLP®

COUNSELORS AT LAW

MEMORANDUM

TO: Nicholas H. Mullane, First Selectman
Norma Holliday, Town Clerk
Town of North Stonington

FROM: Matthew D. Ritter, Bruce A. Chudwick

DATE: October 30, 2015

RE: November 3, 2015 Municipal Election and Application of Minority Representation Statute to Candidates for First Selectman and Board of Selectmen

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BACKGROUND

You have asked us to prepare a memorandum explaining how the Town Clerk of North Stonington (the "Town Clerk") shall apply the minority representation requirements contained in Conn. Gen. Stat. § 9-167a to the candidates running for First Selectman and Board of Selectmen on November 3, 2015.

RELEVANT FACTS[1]

On July 30, 2015, Robert L. Testa, who is a candidate for the office of First Selectman, changed his party affiliation from the Republican Party to unaffiliated.

On July 30, 2015, Timothy O. Main II, who is a candidate for the office of Selectman, changed his party affiliation from the Republican Party to unaffiliated.

On August 4, 2015, Mr. Testa and Mr. Main submitted petitions with the Town Clerk to run as petitioning candidates in the November 3, 2015 municipal election. Both candidates listed their party designation as "None."

On August 6, 2015, the Office of the Secretary of State received the petitions submitted by Mr. Testa and Mr. Main from the Town Clerk.

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[1] These facts are based upon an email written from the Town Clerk, Norma Holliday, to Ted Bromley of the Office of the Secretary of State on October 27, 2015. See email attached as Exhibit A.

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On August 12, 2015, the Office of the Secretary of State determined that Mr. Testa and Mr. Main were qualified to appear on the ballot on November 3, 2015 as petitioning candidates with no party affiliation.

On November 3, 2015, there will be two candidates on the ballot for the office of First Selectman: Shawn P. Murphy (Republican Party) and Robert L. Testa (Petitioning Candidate).

On November 3, 2015, there will be three candidates on the ballot for the office of Selectman: Mark S. Donahue (Democratic Party), Nicholas H. Mullane II (Republican Party) and Timothy O. Main II ((Petitioning Candidate). (See sample ballot attached as Exhibit B).

RELEVANT STATUTORY PROVISIONS

Conn. Gen. Stat. § 9-188 provides that the votes cast for the unsuccessful candidate for First Selectman shall be counted as votes for that candidate as a Selectman.

Conn. Gen. Stat. § 9-167a(a)(1) provides that no more than two members of a three member board may be members of the same political party. Therefore, no more than two members of the Town's Board of Selectmen shall be of the same political party. Subsection (g) of § 9-167a then provides as follows:

> For the purposes of this section, a person shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his appointment to, or of his nomination as a candidate for election to, any office specified in subsection (a) of this section, provided any person who has applied for erasure or transfer of his name from an enrollment list shall be considered a member of the party from whose list he has so applied for erasure or transfer for a period of three months from the date of the filing of such application and provided further any person whose candidacy for election to an office is solely as the candidate of a party other than the party with which he is enrolled shall be deemed to be a member of the party of which he is such candidate.

QUESTIONS PRESENTED

1. For purposes of complying with Conn. Gen. Stat. § 9-167a(a)(1) when determining which candidates to seat on the Board of Selectmen at the conclusion of the November 3, 2015 municipal election, shall Mr. Testa and Mr. Main, as petitioning candidates, be deemed to be members of the Republican Party or as having a party designation of unaffiliated?

2. As petitioning candidates, are Mr. Testa and Mr. Main running as candidates of a political party other than the party in which they are enrolled?

DISCUSSION

1. Party Affiliation of the Petitioning Candidates

There are three distinct parts contained in Conn. Gen. Stat. § 9-167a(g). The first two parts are relevant for purposes of determining whether Mr. Testa and Mr. Main shall be deemed enrolled members of the Republican Party or as candidates having a party designation of unaffiliated.

The first part in § 9-167a(g) provides that "For the purposes of this section, a person shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his appointment to, or of his nomination as a candidate for election to, any office specified in subsection (a) of this section..." This wording clearly provides that the determination of a candidate's party affiliation is made at the time they are nominated as a candidate for election to office, not on the date they may have changed their party affiliation, or the date of the actual election. Therefore, it must be determined when Mr. Testa and Mr. Main were considered "nominated" for election to their respective offices.

The Office of the Secretary of State has advised that petitioning candidates are "not considered nominated when using a nominating petition until the petition is officially approved by our office." (See email from Ted Bromley of the Office of the Secretary of State dated October 16, 2015, attached as Exhibit C). Therefore, Mr. Testa and Mr. Main were nominated for election to their respective offices on August 12, 2015 when the Office of the Secretary of State approved their petitions and authorized them to appear on the November 3, 2015 ballot as petitioning candidates. (See attached as Exhibit D).

As of August 12, 2015, both candidates had changed their party affiliation from Republican to unaffiliated. However, in order to determine the political party of these two candidates at the time of their nomination as candidates, the next part of § 9-167a(g) governs. That provisions states "... provided, any person who has applied for erasure or transfer of his name from an enrollment list shall be considered a member of the party from whose list he has so applied for erasure or transfer for a period of three months from the date of the filing of such application..."

As noted above, Mr. Testa and Mr. Main changed their party affiliations from Republican to unaffiliated on July 30, 2015, 14 days before they were nominated for office on August 12, 2015. Since the second part of § 9-167a(g) provides that the erasure of their names from the Republican Party is not effective for a period of three months from the date they filed to change their party affiliation, as of their nomination on August 12, 2015 both Mr. Testa and Mr. Main were still deemed to be enrolled members of the Republican Party. Mr. Testa and Mr. Main would have been deemed erased from the enrollment list of the Republican Party for purposes of their nomination and compliance with § 9-167a if they had changed their party

affiliation from Republican to unaffiliated at least three months prior to their nomination to office, or in this instance, on or before May 12, 2015.

It is worth noting that the three month "waiting period" contained in § 9-167a(g) is consistent with Conn. Gen. Stat. § 9-59, which is the general statutory provision governing the erasure or transfer of any elector's name from an enrollment list. This statute provides, in part, that:

> Any elector whose name has been transferred from one enrollment list to another or who has applied for erasure or transfer of his name from an enrollment list shall not be entitled to participate or vote in a caucus or primary of any party, participate in the appointment of members to any board or commission that is political in nature, be appointed as a member of any board or commission that is political in nature or be entitled to the privileges accompanying enrollment in any party **for a period of three months from the date of the filing of his application for transfer or for erasure (emphasis added).**

Both of these statutes require a three month "waiting period" before a person can have his or her name erased from an enrollment list. This appears to reflect the intent of the Connecticut legislature in ensuring minority party representation on local boards and commissions when it adopted § 9-167a. As noted in Santaniello v. O'Connor, 30 Conn. Supp. 74 (1972), "[t]he obvious purpose of the statute is to prevent a situation wherein a simple majority of the voters of one party can elect all its candidates, leaving a substantial minority of voters without an effective voice in government." The three month "waiting period" prevents individuals from changing their party affiliation on one day and being appointed or nominated to an office under a different party affiliation on the next day.

2. Petitioning Candidate as a Member of a Separate Political Party

Notwithstanding the initial conclusion that Mr. Testa and Mr. Main are deemed to be enrolled members of the Republican Party for purposes of § 9-167a at the time of their nomination for election, the third part of § 9-167a(g) provides as follows: "... provided further any person whose candidacy for election to an office is solely as the candidate of a party other than the party with which he is enrolled shall be deemed to be a member of the party of which he is such candidate." Therefore, if Mr. Testa and Mr. Main are deemed to be candidates of a party separate and distinct from the Republican Party, they would not be considered enrolled members of the Republican Party for purposes of their election and § 9-167a. It is our understanding that Mr. Testa and Mr. Main did not designate a party for their candidacies on their petitions and therefore, they are deemed to be members of the party in which they are enrolled at the time of their nomination.

Conn. Gen. Stat. § 9-453b governs the nominating petition process and specifically requires that petitioning candidates include information on their petitions, including "the name or names

to appear on such nominating petition" and "party designation, if any." Mr. Testa and Mr. Main did not designate a party for their candidacies when they submitted their petitions. They also were not endorsed by, and therefore not eligible for election as, a member of another political party. Therefore, since they are deemed to be enrolled members of the Republican Party at the time of their nominations, as concluded previously, and they are not candidates of a party other than the party with which they enrolled, they do not overcome their status as enrolled members of the Republican Party for purposes of their election and § 9-167a.

In reaching this conclusion, we first note the case of Miner v. Marsh, 102 Conn. 600 (1925), where the Connecticut Supreme Court held that members of the regular Republican party who were dissatisfied with the result of a party caucus and ran under the party line of "Independent Republican," were members of a distinct political party and therefore, could be elected without violating the statute which required the election of registrar of voters from different political parties.

Subsequently, in a September 19, 1961 Attorney General Opinion from then Attorney General Coles (attached as Exhibit E) he wrote, in answer to a question as to what party an enrolled Republican is deemed to belong to where he is running alone on an independent ticket, that "party enrollment is the determining factor except where the fact of enrollment is overcome by the fact of candidacy." Attorney General Coles stated the actual question, and answer, as follows:

> "Is an enrolled member of one party, running alone under a party designation other than that of his party enrollment, in fact a candidate of a party? The answer to this question must be in the affirmative."

Finally, the legislative history of § 9-167a(g) supports this conclusion. On May 23, 1963, Rep. Green of Southbury, commenting on the addition of subsection (g) to § 9-167a during the House of Representatives discussion of the bill, stated that this would clarify previous confusion with the statute. She stated that: "[t]he elections committee has clarified this confusion and has defined a member of a political party as based on party enrollment except where an individual runs for the office solely as a candidate of a party other than his own." (See Exhibit F).

For the aforementioned reasons, we conclude that there is a distinction between running as a petitioning candidate and a candidate of a different political party. In this case, Mr. Testa and Mr. Main listed their party designation for their candidacies as "none." If Mr. Testa and Mr. Main had run on a separate party line, such as that of the Green Party or the Working Families Party, they would not be deemed to be Republicans for purposes of ensuring compliance with § 9-167a. Our conclusion is in concurrence with the Office of the Secretary of State, which has taken the position that "a petitioning candidate is considered a member of the party in which he is enrolled." (See Exhibit G, Section 12. a.).

CONCLUSION

For purposes of complying with § 9-167a(a)(1) and determining who shall be seated on the Board of Selectmen on November 3, 2015, Mr. Testa and Mr. Main shall be considered to be enrolled members of the Republican Party.

Therefore, in total, there are four candidates running for the office of First Selectman and/or Selectman who are enrolled members of the Republican Party. Pursuant to § 9-167a(a)(1), no more than two of them may be elected to the three member Board of Selectmen. Given that one enrolled member of the Republican Party will be elected as First Selectman, only one enrolled member of the Republican Party may be elected to the office of Selectman. That one person will be whoever receives the highest vote total amongst the following candidates: the unsuccessful candidate for First Selectman, Mr. Mullane or Mr. Main.

Furthermore, even if the Democratic candidate, Mr. Donahue, finishes with the fourth highest vote total out of the four candidates who are eligible for the office of Selectman, he shall be deemed elected to ensure compliance with § 9-167a(a)(1).

cc: Ted Bromley, Office of the Secretary of State

EXHIBIT A

Norma Holliday

From: Norma Holliday
Sent: Tuesday, October 27, 2015 11:30 AM
To: 'Bromley, Ted'
Subject: RE: Minority Party Representation

Good Morning Ted,
I know by now you are up to your ears (I have surpassed that) in this but I need some clarification cause it is my head on the chopping block!

Time Line:

- Robert L Testa (Candidate First Selectman), Timothy O Main II (Candidate Selectman)
- Testa and Main changed party affiliation on July 30, 2015 from Republican to Unaffiliated
- Testa and Main filed their petitions with the Town Clerk on August 4, 2015 with Party Designation as NONE
- Secretary of the State's Office received the petitions an August 6, 2015 and a letter from the Office of the Secretary of the State's Office dated August 12, 2015 was received by the Town Clerk on August 14, 2015 stating that Mr. Testa and Mr. Main were qualified to appear on the ballot for the foregoing office on November 3, 2015

My question is:

- Can you tell me if unaffiliated is considered a party?
- Is a unaffiliated change over immediate or is there a waiting period?

Individuals who run as candidates using a nominating petition without a party designation are considered to be members of their underlying party affiliation. You have correctly identified the statutory section. The important language within that statutory section is *"shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his...nomination."* An individual is not considered "nominated" when using a nominating petition until the petition is officially approved by our office. As such, it would be the party affiliation of the candidates on the date on which our office finally approved the petitions that would be most important provided if there was a recent party affiliation (is this only from one party to another) change you would look back three months.

Regarding Minority representation our total Membership for the Board of Selectman is three members (Maximum from one party is 2). We have 2 Republicans, 2 Unaffiliated and 1 Democrat running. Can there be 2 unaffiliated and one Republican, 2 unaffiliated and one Democrat or does there have to be 1 Republican, 1 Democrat and 1 Unaffiliated?

I would like to make a public statement ASAP but I need clarification.

Norma Holliday
North Stonington

State of Connecticut
Official Ballot

North Stonington, Connecticut	Municipal Election	November 3, 2015	District 1

TURN BALLOT OVER AND VOTE BOTH SIDES

Be sure to read instructions to vote.

PARTY ↓ / OFFICE →	1 First Selectman Vote for One	2 Selectman Vote for One	3 Town Clerk Vote for One	4 Town Treasurer Vote for One	5 Board of Finance Full Term Vote for One	6 Board of Finance To Fill Vacancy for Four Years Vote for One	7 Board of Finance Alternate Six Year Term Vote for One	8 Board of Finance Alternate Four Year Term Vote for One	9 Board of Education Full Term Vote for Any Two	10 Board of Education Full Term Vote for Any Two	11 Board of Assessment Appeals Vote for One
DEMOCRATIC PARTY	1A	2A Mark S. Donahue	3A	4A	5A Mustapha Ratib	6A Michael A. Urgo	7A	8A	9A Darren L. Robert	10A	11A Paula Lee Woodward
REPUBLICAN PARTY	1B Shawn P. Murphy	2B Nicholas H. Mullane II	3B Norma J. Holliday	4B Robin D. Roohr	5B Timothy Earl Pelland	6B Carolyn A. Howell	7B Christopher Jude Hundt	8B	9B Philip M. Mendolia	10B Alexander P. Karpinski	11B Candy Lynn Palmer
PETITIONING CANDIDATE	1C Robert L. Testa	2C Timothy O. Main II	3C	4C	5C	6C	7C	8C	9C	10C	11C
WRITE-IN VOTES	1D	2D	3D	4D	5D	6D	7D	8D	9D	10D	11D

INFORMATION ONLY

EXHIBIT B

EXHIBIT C

From: Bromley, Ted
Sent: Friday, October 16, 2015 9:14 AM

To: 'Marc Tate' <marcgtate@gmail.com>; Bronson, Kevin <Kevin.Bronson@ct.gov>
Subject: RE: Minority representation question verification

Mr. Tate:

Individuals who run as candidates using a nominating petition without a party designation are considered to be members of their underlying party affiliation. You have correctly identified the statutory section below. The important language within that statutory section is *"shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his...nomination."* An individual is not considered "nominated" when using a nominating petition until the petition is officially approved by our office. As such, it would be the party affiliation of the candidates on the date on which our office finally approved the petitions that would be most important.

Sincerely,

Ted Bromley

Staff Attorney

EXHIBIT D

Office of the Secretary of the State
State of Connecticut
P.O. Box 150470, Hartford, CT 06115-0470

DENISE W. MERRILL
Secretary of the State
JAMES FIELD SPALLONE
Deputy Secretary of the State

RECEIVED

2015 AUG 14 A 8:47

TOWN CLERKS OFFICE
NORTH STONINGTON CT

Wednesday, August 12, 2015

Mr. Timothy O. Main II
26 Main's Crossing
North Stonington CT 06359

Dear Main :

Congratulations. The nominating petition filed with this office on behalf of the following candidate for the office listed below, as a Petitioning Candidate, has been examined as required by law and is hereby approved.

OFFICE	NAME	ADDRESS
SELECTMEN	TIMOTHY O. MAIN, II	26 MAIN'S CROSSING NORTH STONINGTON CT 0635

Such candidate is therefore qualified to appear on the ballot for the foregoing office, to be contested at the municipal election to be held on Tuesday, November 3, 2015, as Petitioning Candidate.

Sincerely,

Denise W. Merrill
Secretary of the State

(Ms.) O.P. Williams
Elections Officer
Legislation and Elections Administration Division

cc : Town Clerk North Stonington

REC NO: 120

Office of the Secretary of the State
State of Connecticut
P.O. Box 150470, Hartford, CT 06115-0470

DENISE W. MERRILL
Secretary of the State
JAMES FIELD SPALLONE
Deputy Secretary of the State

RECEIVED

2015 AUG 14 A 8:47

TOWN CLERKS OFFICE
NORTH STONINGTON CT

Wednesday, August 12, 2015

Mr. Robert L. Testa
22 Pinecrest Road
North Stonington CT 06359

Dear Testa :

Congratulations. The nominating petition filed with this office on behalf of the following candidate for the office listed below, as a Petitioning Candidate, has been examined as required by law and is hereby approved.

OFFICE	NAME	ADDRESS
FIRST SELECTMAN	ROBERT L. TESTA	22 PINECREST ROAD NORTH STONINGTON CT 0635

Such candidate is therefore qualified to appear on the ballot for the foregoing office, to be contested at the municipal election to be held on Tuesday, November 3, 2015, as Petitioning Candidate.

Sincerely,

Denise W. Merrill
Secretary of the State

(Ms.) O.P. Williams
Elections Officer
Legislation and Elections Administration Division

cc : Town Clerk North Stonington

REC NO: 119

EXHIBIT E

Party enrollment is the determining factor for minority representation, except where the fact of enrollment is overcome by the fact of candidacy.

September 19, 1961

Miss Amalia M. Toro
Election Division Attorney
Secretary of State's Office
State Capitol
Hartford, Connecticut

Dear Miss Toro:

We are in receipt of your letter dated September 15, 1961, wherein you enclose a question submitted by Mr. Philip E. Kearney, Registrar, Haddam, Connecticut.

We are asked to determine to what party is an enrolled Republican deemed to belong where he is running alone on an independent ticket.

It has been our opinion that party enrollment is the determining factor except where the fact of enrollment is overcome by the fact of candidacy. Please see our opinions to your office dated July 17, 1959, August 29, 1960, and June 28, 1961.

The actual question to be resolved, then, is this: Is an enrolled member of one party, running alone under a party designation other than that of his party of enrollment, in fact a candidate of a party?

The answer to this question must be in the affirmative. Please see Miner v. Marsh, 102 Conn. 600, and Fields v. Osborne, 60 Conn. 544. And inasmuch as the person in question is in fact a candidate of a party, the candidacy overcomes the enrollment for the purpose of determining to what party that person belongs. Therefore, the person in question is not to be counted as a Republican.

Very truly yours,
Albert L. Coles
Attorney General
By: James F. Daly
Assistant Attorney General

ENGINEERING—FEES

Fee paid by an applicant for a certificate of engineer-in-training cannot be credited toward the application fee for a certificate of professional engineer.

September 21, 1961

Board of Registration for
Professional Engineers and Land Surveyors
30 Oak Street
Hartford 6, Connecticut
Att.: Mr. C. H. Coogan, Jr., Secretary

Gentlemen:

We are in receipt of your letter dated August 14, 1961, requesting our opinion whether the fee paid by an applicant for a certificate of engineer-in-training under the provisions of P.A. 568, Sec. 1, 1961 Session, can be credited toward the application fee for a certificate of professional engineer under P.A. 616 (Sec. 73), 1959 Session (Sec. 20-305, 1959 Supp.).

AYE; opposed NAY; the AYES HAVE IT, the bill is passed.

THE CLERK:

Calendar No. 659, File 842, House Bill No. 2942. An Act concerning Application of the Minority Representation Act. Favorale report, Joint Committee on Elections.

THE SPEAKER:

The Lady from Southbury.

MRS. GREEN (SOUTHBURY):

Mr. Speaker, I move acceptance of the Joint Committee's favorable report and passage of the bill.

THE SPEAKER:

The question is on acceptance and passage. Will you remark?

MRS. GREEN (SOUTHBURY):

Mr. Speaker, as you know, the minority representation act limits the number of members who may legally serve on boards of similar bodies of the State and local government. House Bill 2942 amends our present General Statutues relating to minority representation by specifying that the Act shall apply to both administrative and legislative boards, and by providing that party endorsement, except in certain instances, shall constitute the criterion for determing the status of a candidate for a political party for purposes of this minority representation act. There has been considerable confusion in this area. The elections committee has clarified this confusion and has defined a member of a political party as based on party enrollment except where an individual runs for the office solely as a

candidate of a party other than his own.

Moreover, the bill specifically states that the minority representation law, although it shall not apply to so-called non-partisan elections, shall apply to appointments to boards in municipalitie conducting such elections. This bill will be more effectively carried out; will more effectively carry out the basic principals of minority representation provided in Section 9-167A and is deserving of favorable action. There was no opposition to this bill in public hearing.

THE SPEAKER:

Will you remark further? The Gentleman from Danbury.

MR. RATCHFORD (DANBURY):

Mr. Speaker, through you, I should like to direct a question to the chairman of the joint committee on elections. In line 4 of this bill, we are limiting minority represaentation to members of any "administrative or legislative board" and I am wondering if the chairman is satisfied with this language? I am wondering if she feels that this langugage is broad enough to cover quasi-judicial boards such as zoning boards of appeals or in another area, namely, boards appointed by the executive of a community. It would seem to me that we would have been better off to have left this any board

office of the Secretary of State because there had been some confusion there and, they thought that this would clarify it from their point of view - for the questions they were getting.

THE SPEAKER:

Will you remark further? The Gentleman from Watertown.

MR. KEILTY (WATERTOWN):

Mr. Speaker, this minority representation - the Democratic party is happy to support this, even though we are the majority party in the State of Connecticut, we feel this is a must. This is a good bill and I urge its adoption.

THE SPEAKER:

Will you remark further? The question is on the adoption of the bill; will all in favor say AYE; opposed NO; the bill is passed.

THE CLERK:

Calendar No. 660, File 843, Modified House Bill No. 3484. An Act for Payment of Burial Expense of Veteran. Favorable report of the Joint Committee on Military and Veterans' Affairs.

THE SPEAKER:

The Gentleman from Hebron.

MR. LINKS (HEBRON):

I move acceptance of the Committee's joint favorable report and passage of the bill.

THE SPEAKER:

The question is on acceptance and passage. Will you remark?

EXHIBIT G

(G\forms\handouts\min-rep) (10/97)

FROM THE OFFICE OF THE SECRETARY OF THE STATE
30 Trinity Street
Hartford CT 06106

MINORITY REPRESENTATION

(Outline)

A. Two Ways to Achieve

1. §9-167a - Ceiling - use after election in declaring elected.

2. Restrictive Voting - (and nomination - §§9-414 and 9-250).

Bd. of Ed.	§9-204 (unless Charter provides otherwise or unless town has acted under §9-204a or §9-204b)
Selectmen	§9-188
Constables	§9-200
Assessors	§9-199 (vote 1, elect 1 -and- vote 1, elect 2) Legislative body can provide vote 2, elect 2
Bd. of Assessment Appeals	§9-199 (vote 1, elect 1 -and- vote 1, elect 2) Legislative body can provide vote 2, elect 2

a. Provides for greater degree of minority representation, so supersedes §9-167a. (§9-167a(e)). (§9-167a still ceiling re vacancies).

b. Does not guarantee minority representation on each term (if nominating petition or vacancies). *Lobsenz v. Davidoff*, 182 Conn. 111 (1980).

B. Rules

1. LEGISLATIVE BODY - §9-167a applies to legislative bodies

2. NONPARTISAN ELECTIONS - §9-167a does not apply to nonpartisan elections (Atty. Gen. Opn. July 17, 1959). But see *Bennet v. Glynn*, 154 Conn. 237 (1966) - "no opinion" on the above Atty. Gen. Opn.

3. REGIONAL BOARDS OF EDUCATION - §9-167a and §9-204, etc., do not apply to Regional Board of Education (§10-46(c)).

4. ALTERNATES

a. ZONING BOARD OF APPEALS & ALTERNATES] - two separate boards for purposes of minority representation (Atty. Gen. Opn., Sept. 28, 1961 and July 8, 1965).

b. PLANNING AND ZONING COMMISSION & ALTERNATES] - two separate boards for purposes of minority representation, *Dyer v. Beisiegel*, 14 CLT 5 (Superior Court, District of New London at Norwich, Docket No. 89322, Nov. 27, 1987).

5. NEW BOARD - Fill terms in order listed in ordinance establishing. *Adams v. DePaolo* (Superior Court, Hartford County at New Britain, Docket No. 185273, December 19, 1973).

6. DEFERRED TERM - Fill term that begins immediately first, then deferred term.

   The eligibility of a candidate to a deferred term is determined on election day, but is based on the composition of the board as it will be on the day that the term begins, taking into consideration who, as of election day, will be on the board when the deferred term begins. (Atty. Gen. Opn., April 17, 1961)

7. CANDIDATES win or lose for the office and term for which they receive votes, and votes cast for a candidate for a particular office and for a particular term may not be counted as votes for such candidate for other offices or terms (only exception in the General Statutes is Selectmen - loser for First Selectman gets his votes counted for Selectman). (§9-188)

8. VACANCIES - ORDER ON BALLOT - Full Term, vacancy (§9-250).

9. VACANCIES - ORDER FOR MINORITY REPRESENTATION - Fill vacancy, then full term §9-167a(d).

   a. But watch out for full terms beginning two weeks later! If vacancy begins election day and full term begins two weeks later, you must look at the party of the person left on the board, whose term ends two weeks after election.

   Example (for 11/7/89 election):
   3 Board of Finance Alternates (elect 1 each election for 6-year term)

1. R ends 11/16/93	
2. R ends 11/21/89	2. R won full term 11/21/89 - 11/21/95
3. Vacancy	3. R won vacancy term 11/7/89 - 11/19/91

   Here, R who received the most votes for the vacancy term cannot be declared elected because for two weeks there would be three R's on the Board. Consequently, the D candidate for the vacancy term is declared elected to the vacancy term. Therefore, the R who won the full term may be declared elected to the full term.

   b. If two vacancies in different terms, fill in order that vacancies occurred (Atty. Gen. Opn., June 28, 1961).

   c. TWO VACANCIES ON BOARD OF EDUCATION - When two vacancies occur on the same Board of Education term, each voter may only vote for, and each party may only nominate, one. §9-204 and *Ayres v. Grasso*, Superior Court, Litchfield County, Docket No. 18,595, Oct. 1, 1965.

10. VACANCY APPOINTMENTS - Under §9-167a(d), a vacancy filled by appointment must be filled with a member of the political party of the person who vacated only when the board has already achieved maximum majority representation, and then only when the vacating member is of the minority party. *Chapman v. Tinker*, 25 Conn. Supp. 436 (1964); *Grodis v. Burns*, 190 Conn. 39 (1983).

11. CANDIDACY OVERCOMES PARTY ENROLLMENT - §9-167a(g) - For purposes of minority representation, a candidate is deemed a member of the party in which he is enrolled at the time that he is nominated, except if he is a candidate only of a party other than the one in which he is enrolled (even if he is unaffiliated), then he is deemed a member of the party who nominated him or, if he is unaffiliated and is nominated by two parties, he is deemed a member of the party under whose name he received the most votes. *Santaniello v. O'Connor*, 30 Conn. Supp. 74 (1972)

   Note re transfer party affiliation under §9-59
   R nominates R who transfers to D = R (for purposes of minority representation)
   D nominates R who transfers to D = D (for purposes of minority representation)

   If you change party during your term, you are not removed from the board, but when the next vacancy on the board occurs and is filled, your party affiliation on the day it is filled is taken into consideration in filling the vacancy.

* 12. NOMINATING PETITIONS

   * a. A petitioning candidate is considered a member of the party in which he is enrolled.

   b. A candidate who runs under a party designation is considered a member of his "party designation" party for purposes of minority representation. With regard to the discretionary disaffiliation provisions of Sections 9-60 through 9-63, see *Marchitto v. Knapp*, 807 Fed. Sup. 916 (D. Conn. 1993); *Mandanici v. Fischer*, 10 CLT 27 (Superior Court, Judicial District of Fairfield at Bridgeport, Docket No. 213618, February 22, 1984); *Fand v. Legnard* (Superior Court, Judicial District of Danbury, Docket No. CV 94-0316063S, October 31, 1994 and February 17, 1995); and *Mazzucco v. Verderame*, 2 Conn. Ops. 425 (April 22, 1996) (Superior Court, Judicial District of New Haven, Docket No. CV 96-0382136S, March 22, 1996); Atty. Gen. Opn. September 19, 1961; *Miner v. Marsh*, 102 Conn. 600 (1925); *Fields v. Osborne*, 60 Conn. 544 (1891)

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