

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

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Petition

DEC 19 2000

Of

**NEW HAMPSHIRE
SECRETARY OF STATE**

Carolyn Virtue,
Candidate for New Hampshire House District No. 9,
Merrimack County, New Hampshire

On December 4, 2000, pursuant to RSA 665, the Ballot Law Commission (“the Commission”) held a public hearing on allegations made by Representative Carolyn Virtue, a candidate for re-election in House District 9, that violations of New Hampshire election laws occurred in the Town of Loudon.

Ms. Virtue alleged, first, that RSA 659:95 was violated by the Town of Loudon’s Moderator because he failed to sign and endorse the seal around the boxes containing the ballots for the Town of Loudon after the polls had closed; second, that the Loudon Town Clerk violated RSA 659:101 by failing to preserve absentee envelopes and applications in the manner required under RSA 659:95; third, that RSA 657:15 was violated by the Town Clerk because she did not keep a list of voters requesting absentee ballot applications as required under the statute; fourth, that one of the candidates for office, Raymond Cummings, also a Town Selectman, signed the seal on the boxes of ballots in violation of RSA 658:24; and fifth, that a large number of uncast ballots were unaccounted for after the election.¹

¹ In her written petition, Ms. Virtue also alleged electioneering violations of RSA 659:43. Since a violation of these statutes may constitute a misdemeanor, the Secretary of State referred this issue to the Attorney General’s Office (See NH RSA 659:45). In any event, the petitioner did not present evidence on this issue to the Commission.

The Commission heard testimony from a number of witnesses, including Representative Virtue, Town Moderator Larrabee, Town Clerk Maxfield, Selectman Cummings and others.

Town Moderator David Larabee Sr. testified that he had failed to sign the seal on the two Town of Loudon ballot boxes, but that it was unintentional. He stated the boxes were picked up by a police officer before he had the opportunity to sign the seal.

Town Clerk Eileen Maxfield testified that Representative Virtue had asked her for a list of the voters who requested absentee ballot applications. Clerk Maxfield testified that she believed she no longer had to keep such a list and therefore had not done so. She testified that she offered to read the names to Ms. Virtue as an alternative. Clerk Maxfield also testified that although the absentee voting materials were not sealed in the containers supplied by the Secretary of State's Office, they were banded together and kept in a fireproof, locked file cabinet at the Town Office.

The question of where the Town of Loudon's remaining uncast ballots were, was easily answered when the two boxes from the recount were opened during a recess of the Commission hearing. As the Ballot Law Commission heard testimony about the uncast ballots, it became apparent that the ballots might in fact be in the two ballot boxes. The Commission declared a recess in order to permit the Secretary of State to publicly open the boxes. The hearing reconvened at 4:30 p.m. The Secretary of State reported that three hundred and twenty-two (322) uncast ballots were found in the boxes. The Secretary of State also announced the results from a recount of all of the ballots.

Town Selectman Roy Cummings testified that he did sign the seal on the ballot boxes in his capacity as selectman. He stated he did so in his capacity as a selectman and did not feel he was performing election duties.

At the conclusion of the hearing on December 4, 2000, the Commission declined to order a new election because the conduct complained of did not rise to the level of fraud and would not have changed the outcome of the election. (Appeal of Soucy, 139 NH 110 (1994)) However, the Commission remains concerned that a number of election laws were violated by Town of Loudon officials.

RSA 657:15 requires the Town Clerk to maintain a list of all applicants to whom official absentee ballots have been sent, and to identify those which have been returned. This list is required to be made available to any candidate. Although it appears this failure in Loudon was not intentional, it is a violation of New Hampshire election laws and must not be repeated.

RSA 659:95 requires the Town Moderator to sign the seal when the boxes containing the ballots are sealed after being tabulated. Moderator Larrabee testified that he had intended to sign the seal but did not have the opportunity prior to the boxes being removed. While the Commission accepts Mr. Larrabee's mistake as an honest and unintentional one, this must not occur in the future.

During the hearing, the Town Clerk testified that absentee ballots that were not sent to absentee voters were given to the town road crew to be destroyed on election day. RSA 659:100 states that "ballots remaining in the possession of the town or city clerk may be destroyed at the expiration of 60 days after a state election". The clerk's actions violated RSA 659:100 and must not be repeated.

The issue raised as to whether a candidate for office is disqualified from certifying the ballot results and sealing the ballot boxes after their tabulation requires close attention and evaluation. RSA 658:24 states that “any person whose name appears on a ballot for an elective position, other than a position of an election official, shall be disqualified from performing duties as an election official in that election. . .” RSA 659:95 requires the sealing and certifying of ballots by the Moderator in the presence of the Town Selectmen or their designees. RSA 659:95 requires the selectmen of the town to sign the seal, along with the Moderator. In the case before the Commission, the allegation is that since Mr. Cummings was a candidate on the ballot, he should not have signed the seal. The analysis begins with determining the definition of “an election official”. RSA 652:14 defines election officer as “any moderator, town clerk, selectman, supervisor of the checklist or inspector of the election”. It is the opinion of the Commission that Mr. Cummings, acting in his role as a Town Selectman in certifying the ballots under RSA 659:95 inadvertently violated the provisions of RSA 658:24. Since RSA 659:95 allows for this certification to be accomplished by a “designee” of the selectman, the Commission advises that the prudent course of conduct for a selectman to do in cases where they are also a candidate on the ballot, is to have the other selectmen sign the seal or appointed to fulfill their obligations under RSA 659:95.

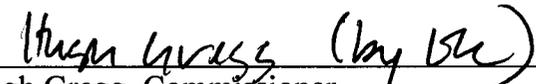
Greater care must be given by all town and election officials to strictly comply with all election laws. Officials must carefully review all election statutes and the Procedure Manuals, provided by the Secretary of State. Although the conduct discussed above did not rise to the level of requiring the Commission to order a new

election, the Commission still finds the conduct troublesome. The Commission urges the Town of Loudon and all other towns and cities in the State of New Hampshire to continue to be vigilant in complying with the statutes of the State of New Hampshire and to avoid even the appearance of impropriety.

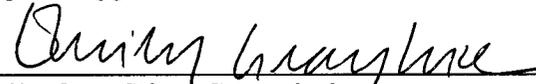
NEW HAMPSHIRE BALLOT LAW COMMISSION

By: 

Gary B. Richardson, Chairman

By: 

Hugh Gregg, Commissioner

By: 

Emily Gray Rice, Commissioner

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