

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Petition

Of

Joseph S. Haas, Jr.

(RSA 655:19-c)

(Challenge as to Gubernatorial Candidates
and Candidate John Babiartz)

RECEIVED
OCT. 2 2002
NEW HAMPSHIRE
SECRETARY OF STATE

ORDER DISMISSING PETITION

On September 12, 2002, Joseph S. Haas, Jr. filed a Petition with the Ballot Law Commission ("the Commission") alleging that gubernatorial candidates Craig Benson, Bruce Keough, Gordon Humphrey, Robert Kingsbury, Mark Fernald and Beverly Hollingworth, were not properly on the ballot as candidates for Governor in the Primary Election because they did not comply with the statutory requirement of RSA 655:19-c because they paid their assessment fee by either cash or check.

The Petitioner filed a second Petition making the same claim against candidate John Babiartz.

RSA 655:19-c requires that each candidate pay an administrative assessment fee of one hundred dollars (\$100) to the Secretary of State at the time the candidate files his Declaration of Candidacy.

On September 27, 2002, a Public Hearing was held. The Petitioner was given the opportunity to supplement his written Petition and prior arguments he has made on this subject to the Commission.

The Petitioner has twice previously filed Petitions with the Ballot Law Commission on the same issue. In both instances (Orders dated 12/21/99 and 7/12/02), the Commission denied the Petitions.

In its December 21, 1999, Order, the Commission ruled that candidates who declared their candidacy for President of the United States or Vice President of the United States did comply with RSA 655:48 by paying a one thousand dollar (\$1,000) filing fee by check. The Commission ruled that tendering payment by check is recognized as payment.

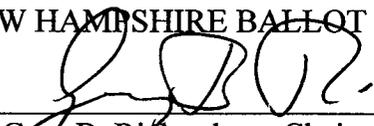
As recently as July 12, 2002, the Commission, again, ruled on this matter on a complaint filed by this Petitioner. In that Complaint it was alleged that the candidates for Governor did not comply with the statutory requirement of RSA 655:19-c by their form of payment of the Administrative Assessment Fee being by check. In its July 12, 2002 Order, the Commission ruled that no arguments were presented which would persuade the Commission to overturn its December 21, 1999, ruling on this same issue.

The Commission notes that on December 27, 1999, the Petitioner filed an Appeal of the Commission's December 21, 1999, ruling. On March 14, 2000, the New Hampshire Supreme Court, in case No. 99-808, declined to hear the Petitioner's Appeal.

Because the Petitioner has raised no new arguments which would persuade the Commission to overturn its two prior Decisions on this matter, the Petition is hereby dismissed.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Date: 10/2/02

By: 

Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Margaret-Ann Moran, Alternate Commissioner

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

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NEW HAMPSHIRE
SECRETARY OF STATE

Petition

Of

Joseph S. Haas, Jr.

ORDER ON MOTION TO DISQUALIFY

On September 12, 2002, and September 13, 2002, Joseph S. Haas, Jr. filed three Petitions with the Ballot Law Commission ("the Commission"). With all three Petitions, Petitioner Haas also filed a Motion to Disqualify.

In his written Motion to Disqualify, Petitioner Haas alleges that none of the Ballot Law Commissioners ("Commissioners") have properly taken the oath required at Part 2, Article 84, of the New Hampshire Constitution and by RSA 92:2, and therefore must be disqualified from hearing any petitions brought before the Ballot Law Commission.

As to Commissioners Gregg and Rice, the Petitioner claims they cannot hear Ballot Law Commission cases because they have not been properly sworn. Petitioner states that because the written oath which they took does not have an "s" after the word "constitution" nor an "s" after "United State", it is invalid.

Petitioner Haas further claims that Chairman Gary Richardson also cannot properly hear Ballot Law Commission cases because he has never taken an oath.

As statutorily required by RSA 665:6-a, on September 27, 2002, the Commission met in public session. Present were Chairman Richardson, Commissioner Hugh Gregg and Alternate Commissioner Margaret-Ann Moran, sitting in for Commissioner Emily Gray Rice.

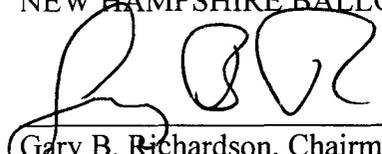
The Commission heard testimony from Petitioner Haas on his Motion to Disqualify.

The Commission finds Petitioner Haas' claim against Chairman Richardson moot. On September 23, 2002, without conceding an oath is statutorily or constitutionally required, Chairman Richardson took the oath set forth at Part 2, Article 84 of the New Hampshire Constitution. The Petitioner was presented a copy of the oath just prior to the commencement of the September 27, 2002 hearing.

Petitioner Haas' argument with respect to Commissioner Gregg and Rice's oaths also fails. To begin with, different versions of the oath contained at Part 2, Article 84, New Hampshire Constitution have been discovered. In at least one document (the New Hampshire Constitution contained in Title 1 of the NH Revised Statutes Annotated), the word constitution as referred to by Petition of Haas, is plural ("constitutions"), and in some documents ") (the New Hampshire Constitution distributed by the Secretary of State's office in 1985) it is not plural ("constitution. Copies of the different versions are attached. In any event, when reading the oath in its entirety, the reference to both Constitutions can be interpreted whether the "s" is present or not. The oaths taken by Commissioners Gregg and Rice, which reflect "constitution" as opposed to "constitutions" and United "State" as opposed to "States" remain valid oaths. The missing "s"s are not fatal to the oath taken by the Commissioners and, as such, the Petitioner's Motion to Disqualify is denied.¹

NEW HAMPSHIRE BALLOT LAW COMMISSION

10/2/02
Date



Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Margaret-Ann Moran, Alternate Commissioner

¹ The Commission also notes that the written oath taken by Alternate Commissioner Moran, contains the "s"s complained of by Petitioner Haas. The Petitioner had inquired as to the validity of her oath as well.

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Petition

Of

Joseph S. Haas, Jr.
(Disqualification of Attorney Candidates)

RECEIVED

OCT 2 2002

**NEW HAMPSHIRE
SECRETARY OF STATE**

ORDER

On September 13, 2002, Joseph S. Haas, Jr. filed a complaint with the Ballot Law Commission (“the Commission”) claiming that all candidates running for State Representative who are attorneys must be disqualified because otherwise there would be a violation of the separation of powers.

On September 27, 2002, a public hearing was held.

Petitioner Haas argued, both in his written motion and oral testimony, that attorneys are part of the Judicial Branch of government because of their title “Esquire” and, therefore, cannot run for legislative office because to do so would be a breach of the separation of powers as enumerated at Part 1, Article 37, of the New Hampshire Constitution. At the hearing Petitioner Haas stated that he believes that attorneys can run for legislative office; however, if they are elected they must “disband their Bar membership before being seated as an elected official.”

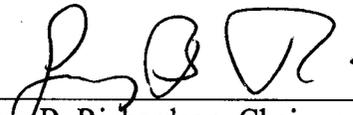
The Commission recently ruled on this same issue in the Petition of Robert Kingsbury (Order dated 9/20/02), who also claimed that attorneys and their spouses should not be allowed to run for political office because of a separation of powers violation. In its Order of September 20, 2002, the Commission found there is no Constitutional bar to attorneys holding offices in the Legislative Branch and dismissed the Petition.

In the Petition currently before the Commission, as in the Petition of Robert Kingsbury, the Commission finds that Attorney General v. Meader, 80 NH 292 (1922), is the controlling authority in this matter. In Meader, the plaintiff challenged Meader's ability to serve as a member of the legislature and a supervisor of the checklist for the city of Rochester. The plaintiff claimed as a state representative that Meader was required to exercise legislative functions and that as a supervisor of the checklist he was called upon to exercise judicial powers. In Meader, the Court ruled that it is not unconstitutional for officials to hold different offices having both judicial and executive functions. The Court ruled, and the Commission concurs, that "all that is meant by the language there (meaning Article 37 of the New Hampshire Constitution) used is that one department of the state government shall not interfere with another department, or usurp its powers and authority; that the legislative, executive and judicial departments should be separate and independent of each other so far as the efficient administration of the state government will permit." The Court further noted that Article 37 was not intended to "limit the offices officials should hold; because in articles 92, 93 and 94 of the constitution that subject is fully considered." The Court further stated, "In those articles certain officials are inhibited from holding offices. But the inhibitions in these articles do not include the offices held by Meader, and there is nothing in the constitution that prohibits him from holding the offices to which he was elected by the suffrage of the people."

In this case, as in Meader, there is no constitutional bar to attorneys holding offices in the legislative branch.

As such, the Petition is hereby dismissed.

NEW HAMPSHIRE BALLOT LAW COMMISSION



Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Margaret-Ann Moran, Alternate Commissioner

10/2/02

Date