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STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Petition of Joseph S. Haas Jr. **99-2**

DECISION

On November 30, 1999, Joseph S. Haas Jr. filed a complaint with the Ballot Law Commission ("the Commission") alleging that all of the candidates who declared their candidacy for President of the United States or Vice-President of the United States did not comply with the statutory requirement of RSA 655:48 which requires that each candidate must pay a fee of One Thousand Dollars ($1000) to the Secretary of State at the time the candidate files his declaration of candidacy. Petitioner Haas alleges that all of the candidates paid by check and that a check is only a "promise" for payment and is not actual payment at the time of filing which is what the statute requires.

The Commission has jurisdiction to hear this complaint pursuant to RSA 665:5 and/or 665:7.

On December 17, 1999 the Commission held a hearing on this matter.

The Commission first heard from Petitioner Joseph Haas. Prior to proceeding to the merits, Petitioner Haas raised the issue that under Rule 206.02(a) of the Commission's Administrative Rules, he was entitled to notice of at least fifteen (15) days. He stated that because this hearing was scheduled in less than the requisite fifteen (15) days, he was entitled to a continuance.

The Commission ruled that Rule 203.02 permits the Commission to advance the time frame for good cause and because of the fast approaching presidential primary, an advance in the hearing date was appropriate and was not prejudicial to any party.

Petitioner Haas also raised his Motion for Default because no candidates had replied. However, he conceded that the issue before the Commission was a legal one, and that there were no disputed facts. Therefore, the Motion for Default was not considered.[1]

Petitioner Haas testified that because the candidates paid by check there was, in actuality, no payment made because the tendering of a check was not immediate payment. He argued that the candidates' payments were not contemporaneous with their filing because payment by check is not immediate payment but is a promise to pay at a later date. Therefore, he claimed candidates did not in fact comply with the statute and did not pay the One Thousand Dollar ($1000) fee at the time of filing their candidacy.

State Representative Richard Marple was the only other individual who testified before the Commission. Representative Marple testified in favor of Petitioner Haas' Petition. He also argued that checks are not legal payment and that under Federal law only gold and silver coins are legal tender.

The Commission begins by noting that the Uniform Commercial Code (UCC) Article 3, as set forth at RSA 382-A:3 governs the presentment of and usage of checks as payment in the course of business. RSA 382-A:3-104 defines checks as negotiable instruments. A negotiable instrument is an unconditional promise or order to pay a fixed amount of money. See RSA 382-A:3-104 (a). A check is a draft which is payable on demand. See RSA 382-A:3-104 (f). And a draft is defined as an instrument that is an order. See RSA 382-A:3-104 (e).

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[1] The Commission also had before it a Motion to Dismiss filed on December 16, 1999 by the Attorney General's Office on behalf of the Secretary of State's Office. Both the Commission and Petitioner Haas agreed this Motion was moot.

Under the UCC, a check (or draft) is not a promise to pay as Petitioner Haas has argued but rather is an order, and RSA 382-A:3-103 (a) (6) defines an order as a written instruction to pay money signed by the person giving the instruction.

Further, RSA 382-A:3–310 (a) states that if a certified check is taken for an obligation, that obligation is discharged in the same way had actual money been given and accepted. RSA 382-A:3-310 (b) states that if an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken. The suspension of the obligation continues until the check is paid. Therefore, under both sections of the statute, the issuance of a check is recognized as payment.

Based upon the statutes cited previously, the Commission finds that all of the candidates for President of the United States and Vice-President of the United States complied with the filing requirements of RSA 655:48.

Therefore, the Commission hereby dismisses the Petition.

Ballot Law Commission,

Date: 12/21/99

By: Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Emily Rice, Commissioner

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