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NEW HAMPSHIRE
SECRETARY OF STATE

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Petition

Of

Timothy Louis

DECISION

On November 8, 1999, Timothy T. Louis of Raymond, New Hampshire, filed a complaint with the Ballot Law Commission ("the Commission") alleging that the Town of Raymond's Special State Primary Notice to Voters did not comply with the statutory requirements for the posting of a notice of a primary as required by RSA 665:12.[1]

On November 24, 1999, the Commission held a hearing on this matter.

The Commission heard statements from the Complainant Timothy Louis, three of the candidates who ran in the Special Election, one of the supervisors of the checklist and the Town Clerk.

Based on the statements of the witnesses and of a review of the Notice which was posted, it is undisputed that the notice as to the location of the voting place was inadequate. It is also undisputed that this notice was in clear violation of RSA 665:12 which states in part " . . .it shall state the offices for which candidates are to be nominated, the delegates to be elected, and any questions to be voted on, as well as the location of the central polling place and of any additional polling places." The notice posted by the Raymond town officials simply said, "The Special State Primary will be held in the voting place in Raymond."

[1] On November 12, 1999, A. L. Santilli filed an identical letter of complaint. He did not appear at the hearing so his petition was not considered.

The posting of the polling place without a specific location listed was further exacerbated by the fact that approximately three weeks prior to the special election the polling place was changed from the middle school to the Raymond Shopping Center. It was agreed by the parties that the notice of the change was not timely nor was it adequately publicized. Questions were raised during the hearing as to whether the inadequate notice, coupled with a poorly advertised change in the polling place resulted in depriving individuals of their right to vote or at the very least of discouraging them from voting. This was raised in light of the fact that there was only a two (2) vote difference in the Republican candidates and a six (6) vote difference in the Democratic vote.

The remedy requested by Complainant Louis was that the Ballot Law Commission vacate the results of the election and order that a new special primary election be held.

Although the Ballot Law Commission has the authority to declare an election void and order a new election, it can do so only if the party challenging the results proves either that there was fraudulent conduct or that there was irregular conduct which could have changed the outcome of the vote Appeal of Donna Soucy, 139 NH 110 (1994).

While it is very clear to the Commission that the Notice to voters did not comport with the statute, there was no evidence and no allegation that this was done with a fraudulent intent. Likewise, although the votes were very close in both the Democratic and Republican races, there was no substantial evidence[2] that any voters were deprived

[2] Although there was some hearsay testimony that at least three (3) voters could not find the polling place, RSA 665:9 requires the Commission's findings be supported by reliable, probative and substantial evidence.

of their right to vote by the inadequacy of the Notice. There also was no evidence showing that but for the inadequate notice there would have been a change in the election outcome result.

Therefore, the Commission hereby dismisses the Petition.

Although the Commission is not vacating the election results, the Commission remains deeply disturbed by the blatant violation of RSA 655:12 by the Town of Raymond. The inadequacy of the notice of the polling place and indifference to the election process is unacceptable conduct. If substantial evidence had been presented under oath, demonstrating that a number of voters were deprived of their right to vote because of inadequate notice, the Commission would not hesitate to set the election aside which would result in additional expense to the town and unfairness to the candidates.

Ballot Law Commission,

11/30/99

By: _____
Gary B. Richardson, Chairman

By: _____ per telephone authorization
Hugh Gregg, Commissioner

By: _____ " "
Richard Delay, Commissioner

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