STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

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DEC 5 2003

NEW HAMPSHIRE
SECRETARY OF STATE

Petition of Joseph S. Haas, Jr.

DECISION

On November 20, 2003, Joseph S. Haas, Jr. ("the Petitioner") filed a complaint with the Ballot Law Commission ("Commission") alleging that all of the candidates who declared their candidacy for President of the United States and paid the required filing fee by check did not comply with the statutory requirement of RSA 655:48.[1] Petitioner Haas alleges that the filing fee must be paid in coins and that payment by check is not actual payment.

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

The Commission has on two previous occasions, December 21, 1999 and July 12, 2002, entertained and ruled on the identical issue raised by the Petitioner in his November 20, 2003 Petition.

The Commission is not persuaded that these earlier rulings should be overruled.

Specifically, the Commission again notes 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).

[1] This statute requires that each candidate must pay a fee of one thousand dollars ($1,000) to the Secretary of State at the time the candidate files his declaration of candidacy.

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 and its Orders of December 21, 1999 and July 12, 2002, the Commission finds that all of the candidates for President of the United States who paid their filing fee by check complied with the filing requirements of RSA 655:48.

Therefore, the Commission hereby dismisses the Petition.

Ballot Law Commission,

Date: December 5, 2003

By: Gary B. Richardson, Chairman

Elizabeth W. Maiola, Alternate Commissioner

By: Elizabeth W. Maiola

Emily Gray Rice, Commissioner

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NEW HAMPSHIRE
SECRETARY OF STATE

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Petition of Joseph S. Haas, Jr.

ORDER

On December 22, 2003, although dated December 22, 2002, the Petitioner filed a Motion to Reconsider the Ballot Law Commission's Order of December 5, 2003.

The Motion to Reconsider is hereby denied.

Ballot Law Commission,

Date: 12/23/03

By: Gary B. Richardson, Chairman
Emily Gray Rice, Commissioner
Elizabeth W. Maiola, Alternate Commissioner

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STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

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NEW HAMPSHIRE
SECRETARY OF STATE

Petition of Joseph Haas

BLC 2004-3

ORDER

On January 16, 2004 the Ballot Law Commission ("the Commission"), during a scheduled hearing on other matters, was presented with a written Petition from Joseph S. Haas ("the Petitioner").

In his Petition, the Petitioner challenged the legality of John F. Kerry's Declaration of Candidacy for the New Hampshire Presidential Primary Election because the filing fee was paid by check on the final day permitted for such filings. The Petitioner's argument was that because payment was made by check, and likely the check would not be processed through a bank on that same date, in fact, Mr. Kerry had missed the filing deadline.

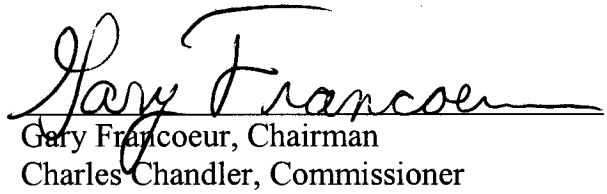
Although not required to do so without notice, the Ballot Law Commission did hear the Petitioner for the limited purpose of clarifying the issue he wished to argue in front of the Commission.

After confirming the Petitioner wished to challenge the validity of payment by check and the time period for a check to be considered legal tender, the Commission voted unanimously to dismiss the Petition. The Commission noted that the prior Ballot Law Commission had previously ruled on this issue on December 21, 1999, July 12, 2002, December 5, 2003, and December 23, 2003 and the Commission reaffirmed said rulings.

SO ORDERED.

New Hampshire Ballot Law Commission

Date: 1/30/04



Gary Francoeur, Chairman
Charles Chandler, Commissioner
Warren C. Henderson, Commissioner
Christopher H.M. Carter, Alternate Commissioner
Anne Coughlin, Alternate Commissioner

227484

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Petition of Joseph Haas

Motion For Rehearing

ORDER

On February 7, 2004 Petitioner Joseph Haas filed a Motion for Rehearing, relying on RSA 541:3, which permits parties in "certain cases" to apply for a rehearing.

Specifically, RSA 541:2 allows motions for rehearings and appeals "when so authorized by law." However, because there is no statute that authorizes rehearings or appeals of Ballot Law Commission decisions, RSA 541 does not apply. *See*, Petition of Ann Crane, 132 N.H. 293 (1989), citing Petition of Dondero, 94 N.H. 236 (1947). "Unless some reference is made to [Chapter 541] in any given statute, an appeal . . . is not 'authorized by law.'" Appeal of Lorden, 134 N.H. 594 (1991).

It is also worth noting that RSA 665:7, in part, specifically states that "the decision of the Ballot Law Commission in such cases shall be final to questions both of law and fact, and no court shall have jurisdiction to review such decision."

Even assuming, *arguendo*, that RSA 541 was available to the Petitioner, his request is not timely. RSA 541:3 requires that Motions for Rehearings must be requested within 30 days after any Order or Decision has been made by the Commission. Although the Petitioner makes reference to having filed his Motion within 30 days of the January 30, 2004 date of the Commission's written

decision, on January 16, 2004 at the end of Petitioner's Hearing, an oral Order was issued by the Commission, and as such, the Petitioner's request is not timely filed.

Additionally, since the Petitioner filed an appeal directly with the Merrimack County Superior Court on January 26, 2004, he waived any right he might have had, *arguendo*, for a rehearing under RSA 541 since RSA 541 provides a rehearing as a precursor to a court appeal.

Wherefore, the Petitioner's Motion for Rehearing is hereby denied.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Date: 3/27/04

Gary Francoeur, Commissioner
Charles Chandler, Commissioner
Warren C. Henderson, Commissioner
Christopher H.M. Carter, Alternate Commissioner
Anne Coughlin, Alternate Commissioner

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STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

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NEW HAMPSHIRE
SECRETARY OF STATE

In Re Joseph Haas

ORDER

On June 14, 2004, the Secretary of State's Office received a memo from Joseph S. Haas addressed to the Ballot Law Commission ("the Commission") entitled Notice of Claim for Admissions. In the memo, Mr. Haas requests the Commission to answer three questions which he phrases as "Do you admit . . . ."

The Commission is rejecting Mr. Haas' document as it does not fall within the jurisdiction of the Ballot Law Commission nor does it comport with the Statute or Administrative Rules on how Petitions should be filed with the Ballot Law Commission. See RSA 665 generally and BAL 204.02 (b), BAL 205.01 (a), and BAL 205.02 (e).

The Commission further notes that the issues raised by Mr. Haas have been previously ruled on by this Commission and will not be entertained again.

New Hampshire Ballot Law Commission

Date: July 22, 2004

Gary Francoeur, Chairman
Steve Duprey
Warren C. Henderson
Charles Chandler
Anne Coughlin

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