THE STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

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OCT 7 1996
NEW HAMPSHIRE
SECRETARY OF STATE

Wayne Estes

Appeal of Recount

BCL-96-12

ORDER

This is an appeal from a recount, held on September 20, 1996, of the primary ballots cast in the Republican primary for Strafford County Sheriff held on September 10, 1996.

The original vote count at the primary disclosed that Wayne Estes defeated his principal opponent, Ron Kalway, by 17 votes (2,092 to 2,075). A third candidate trailed. Kalway called for the recount and beat Estes by one vote (2,167 to 2,166).

Estes seeks a second recount alleging that an observer for Kalway at the first recount touched ballots during the counting process and in the stacking of them thereafter. Such action would be in violation of Rule 5 and Rule 7 of the Rules of Procedure for Recounts as authorized by RSA 660.

Prior to the recount, Estes had been given a copy of the Rules of Procedure by the Secretary of State. The Secretary also advised Estes that he was entitled to provide one observer for each of the six counting tables. Estes appeared on his own behalf and supplied no additional observers. Further, he did not sit at the table where the alleged violations occurred, although he did assert that he occasionally observed the counting taking place at it.

It was not until after all the votes at the six tables had been tallied that Estes informed the Secretary about the alleged violations at the one table. Although he had every opportunity to do so, at no time during the counting procedure did Estes direct the Secretary's attention to the alleged violations, nor were any of the ballots protested. The Secretary of State testified that he did not observe anyone touching ballots other than the personnel from his office who were conducting the recount.

It is the unanimous opinion of the Commission that Wayne Estes should have made his complaint to the Secretary during the counting procedure and failed to protest any ballots, thus this appeal is denied.

New Hampshire Ballot Law Commission

By _____
Gary B. Richardson, Chairman

By _____
Emily Gray Rice

By _____
Hugh Gregg