

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Petition of Sean Mahoney**

**BLC 2006-2**

**ORDER**

On June 9, 2006, the Secretary of State received a request for hearing from Sean Mahoney (the "Petitioner"). The Petitioner requested that the Ballot Law Commission (the "Commission") "determine that Sean Mahoney is legally qualified to be elected to or serve in the Office of the Executive Council." Petitioner alleged that he "meets the constitutional and statutory qualifications to serve as an Executive Councilor because he has maintained a domicile in New Hampshire throughout the seven-year period preceding the general election scheduled on November 7, 2006."

A hearing was held on June 28, 2006. Bradley Lown testified that he filed an objection to the Petitioner's candidacy because he did not believe the Petitioner should be on the ballot if the Petitioner was not properly domiciled in New Hampshire for the requisite seven years prior to the primary. He provided the Commission with a copy of the Petitioner's deed to property in Portsmouth, New Hampshire dated August 21, 2000. The deed lists the Petitioner's address as 3 Clinton Street, Cambridge, Massachusetts.

Diane Gilbert testified in opposition to the Petitioner's candidacy. She testified as Chairperson of the New Hampshire Center for Constitutional Studies. She noted that the Petitioner's candidacy raised constitutional questions. She testified that the rightful owners of the Constitution are the people of the State, and must be interpreted in accordance with its original meaning.

The Petitioner appeared before the Commission and testified that he never relinquished his New Hampshire domicile and has always considered the State of New Hampshire as his home. He testified that he was born in Portsmouth, New Hampshire and raised in North Hampton. He left New Hampshire to attend school, and then lived in Cambridge while working in Massachusetts. He voted in the 1996 presidential primary and general election in North Hampton. Between 1996 and 2000, the Petitioner did not register to vote in any other state, and did not vote in any election between 1996 and 2000. He maintained a membership at the Abenaki Country Club in Rye, New Hampshire and donated to New Hampshire non-profit companies. He donated to St. Theresa Church, his family's parish. He has maintained a New Hampshire driver's license since 1986. He also maintained a Massachusetts driver's license because he was required to do so under Massachusetts law. He testified he rented the apartment on Clinton Street in Cambridge and in 1997 purchased a vacation home on Nantucket. In 1998, he hired Prudential Rush Realty to help him purchase a home in Portsmouth. In 2000, the Petitioner purchased a home in Portsmouth, and has lived in there since 2000.

RSA 654:1 states:

An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

RSA 654:2 (Temporary Absence) states:

A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such

domicile is gained. Domicile for purposes of voting is a question of fact and intention. A voter can have only one domicile for these purposes. No person shall be deemed to have lost a domicile by reason of his or her presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a teacher in or student of any seminary of learning; nor while confined in any public prison or other penal institution; nor while a patient or confined for any reason in any nursing, convalescent home or hospital, old folks or old age home, or like institution or private facility.

In determining one's domicile, there are many factors which are relevant and which must be considered. *Lundquist v. Precision Valley Aviation, Inc.*, 946 F.2d 8 (1<sup>st</sup> Cir. 1991). Thus, a balancing test is required. The factors include a person's physical location, where they have voted, where they have obtained a driver's license, where they purchase property and pay taxes. Also to be factored into this balancing test is the intent of that individual. The Petitioner made it clear that his intent has always been to return to the State of New Hampshire and he has always regarded his domicile as being the State of New Hampshire.

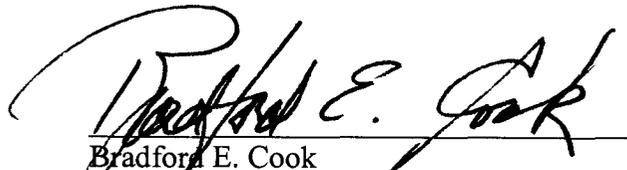
In applying the balancing test to the specific facts presented in this case, the Commission finds that the Petitioner has maintained his domicile in the State of New Hampshire. Therefore, he is a qualified candidate for the office of Executive Councilor, District 3. Accordingly, the Commission authorizes the retention of the Petitioner's name on the ballot as the Republican candidate for Executive Councilor, District 3.

SO ORDERED.

New Hampshire Ballot Law Commission

Date:

July 6, 2006



Bradford E. Cook  
Charles Chandler  
Stephen M. Duprey

## DISSENTING OPINION

We respectfully dissent from the Commission's Order. RSA 655:2 was passed following the Commission's decision in *Petition of New Hampshire Republican State Committee (State Senate Seat, District 14)*, a challenge to the qualification of candidate Leonard William Foy, III (the "Foy Decision"). In the Foy Decision, the Commission authorized the retention of Mr. Foy's name on the ballot notwithstanding the fact that he had resided outside of New Hampshire for ten years between 1986 and 1996. Mr. Foy was registered to vote in California and was admitted to the California Bar in 1995.

When RSA 655:2 was argued before the legislature, it was done with the purpose of enhancing the statute, not to remove the requirements that candidates must reside in the State of New Hampshire. The requirement under the constitution is simple. Part II, Article 61 states the "qualifications for councilors shall be the same as for senator." Part II, Article 29 of the New Hampshire Constitution states: "No person shall be capable of being elected a senator...who shall not have been an *inhabitant* of the State for seven years immediately preceding his election." Emphasis added. I find the constitution requires that the candidate be an inhabitant of the State, which allows for *temporary* absences for activities such as service in the military or schooling. The right of absence contained in 654:2, while not exclusive, is representative of the types of temporary absences that do not necessarily cause a person to lose the status of inhabitant. Once an individual sets up residence in another state, works in that other state, pays taxes in that other state, and otherwise has chosen to reside outside of the State of New Hampshire, that individual no longer meets the requirements of being an inhabitant of the State.

Simply intending to return to the State of New Hampshire at some undefined future date is an insufficient basis for maintaining the right to run for political office in this State.

The facts presented in this case are not consistent with the statutory and constitutional requirements. Mr. Mahoney did not reside in New Hampshire. He lived and worked in Massachusetts. He did not maintain any property in New Hampshire between 1996 and 2000. While for a period before 1996 he resided outside of Massachusetts for educational purposes, he did not return to New Hampshire at the end of his studies. A future intent to return to the State does not qualify him as an inhabitant of the State.

As such, we respectfully dissent from the majority opinion.

Date: 7/6/06

  
Gary Francoeur, Chm.  
Paul McGuirk