

STATE OF NEW HAMPSHIRE
THE GOVERNOR AND THE EXECUTIVE COUNCIL

DOCKET NO. 2010-002

IN RE: PETER HILDRETH

**OPPOSITION TO PETER C. HILDRETH'S
"MOTION FOR CONSTITUTIONALLY FAIR AND EQUAL
TREATMENT AS TO LEGAL COSTS AND FEES"**

Special Counsel to the Governor and the Executive Council hereby opposes the "Motion for Constitutionally Fair and Equal Treatment as to Legal Costs and Fees" (the "Motion") filed by respondent Peter C. Hildreth ("Hildreth"). In opposition to the Motion, Special Counsel states as follows:

This matter is before the Governor and the Executive Council on a petition for the removal of Hildreth as Bank Commissioner pursuant to RSA 4:1 and RSA 383:3. Neither RSA 4:1, nor RSA 383:3, require a non-classified employee or the bank commissioner to have counsel during a removal hearing before the Governor and the Executive Council, nor do they provide any mechanism for the non-classified employee or bank commissioner to obtain counsel at the public expense to address a removal petition.

To the contrary, RSA 4:1(IV) is explicit that "no official [subject to a removal petition before the Governor and the Executive Council] shall be entitled to have any legal fees paid by the state unless the attorney general determines that he or she is the prevailing party." (Emphasis added). Consequently, in order to have any claim to have his legal fees paid by the state, Hildreth must be determined by the Attorney General to be "the prevailing party." Logically, the Attorney General cannot determine who "the prevailing party" is before the Removal Petition has been heard and the Governor and the Executive Council rule on the merits.

Notwithstanding the clear language of RSA 4:1(IV), Hildreth's counsel has now filed the Motion, seeking "immediate reimbursement" of \$10,000 of "outstanding legal expenses," and "authorization for his [Hildreth's] continuing entitlement to reimbursement for reasonable future legal expenses and costs." See Motion at 5. Such an order would violate the explicit prohibition of such payments or authorizations set out in RSA 4:1(IV).

Moreover, the only decisional authority Mr. Hildreth cites for his position, King v. Thomson, 119 N.H. 219 (1979), is, in relevant part, obsolete. King v. Thomson was decided in 1979, interpreting a prior iteration of RSA 4:1.¹ That version, which had then been recently amended in 1978, required that "the justice or master shall set an equal and reasonable legal fees rate for counsel to each of the parties involved." See Exhibit B hereto. Based on this language, the Court found that the State was obligated to pay respondent John King's counsel fees and expenses. 119 N.H. at 222. (It is also notable that in King v. Thomson, the respondent had already prevailed in the removal hearing. 119 N.H. at 219. Clearly, there has been no such ruling in this case.)

Since that time, RSA 4:1 has been amended twice. The first amendment of RSA 4:1 was in 1981, shortly after King v. Thomson was decided. The 1981 amendment was substantive, altering RSA 4:1 to bar payment of legal fees for a responding party unless that person prevails at the removal hearing. The new provision read, in relevant part:

IV. The justice or master shall set a reasonable rate for the legal fees of parties. However, no official shall be entitled to have any legal fees paid by the state unless governor and council determine that he is the prevailing party. (Emphasis added).

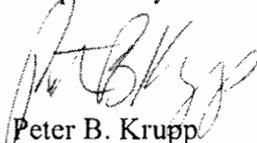
¹ For the convenience of the Governor and the Executive Council, and with appreciation for the assistance of the staff of the New Hampshire Law Library, the version of RSA 4:1 in effect prior to 1978, as well as the versions adopted in 1978 and 1981, are attached as Exhibits A, B and C respectively. The current version of RSA 4:1, which is not attached, was adopted in 2001.

See Exhibit C hereto. This modification eliminated any ambiguity created by the King v. Thomson decision about when and under what conditions a responding party might seek payment of legal fees in connection with a proceeding under RSA 4:1. Under the amended statute, a responding party could not seek reimbursement for defense fees and expenses or be paid until the end of the case, and then only if the respondent was “the prevailing party.”

In 2001, RSA 4:1 was amended to its present form, again making clear that defense fees and expenses cannot be paid until the conclusion of the removal proceeding and then only if the respondent is “the prevailing party.” See RSA 4:1(IV) (“no official shall be entitled to have any legal fees paid by the state unless the attorney general determines that he or she is the prevailing party”). Given the unambiguous language of RSA 4:1, it would violate the law for the Governor and the Executive Council to grant the relief Mr. Hildreth seeks in the Motion.

For these reasons, the Governor and the Executive Council should deny Mr. Hildreth’s “Motion for Constitutionally Fair and Equal Treatment as to Legal Costs and Fees”.²

Respectfully submitted,



Peter B. Krupp
Thomas E. Lent
Sara A. Laroche
Lurie & Krupp, LLP
One McKinley Square
Boston, MA 02109
Tel: 617-367-1970

Dated: October 25, 2010

Special Counsel to the Governor and
the Executive Council

² The undersigned does not address here the reasonableness or necessity of the legal work by Mr. Hildreth’s counsel as for which Mr. Hildreth might seek reimbursement if he is determined to be “the prevailing party” under RSA 4:1(IV). The undersigned reserves his rights to address such issues if Mr. Hildreth is determined to be “the prevailing party.”

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document with exhibits was served on October 25, 2010 by email and by first-class mail to Donald J. Perrault, Jeffrey A. Meyers, David L. Nixon (email to ksimoneau@nixonraiche.com, as requested) and Karen Ladd.

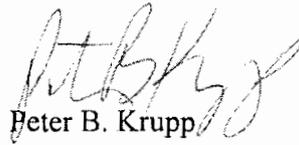

Peter B. Krupp

EXHIBIT A

NEW HAMPSHIRE
REVISED STATUTES
ANNOTATED

1955

1970 REPLACEMENT EDITION

Volume 1
Constitutions
Chapters 1-40-A

FIRST EDITION

*Prepared Under the Supervision
of the Revision Commission*

LAW DIVISION
N. H. STATE LIBRARY

PUBLISHED BY



PUBLISHING CORPORATION
ORFORD, NEW HAMPSHIRE

Audit of state bonds and coupons paid or received in exchange, see RSA 6:25.
 Budget message of governor, see RSA 9:2 et seq.
 Comptroller, appointment or removal, see RSA 8:2, 3.
 Director of accounts, appointment and removal, see RSA 8:10, 11.
 Director of purchase and property, appointment or removal, see RSA 8:15, 16.
 Director of purchase and property, duties as to state-owned real and personal property, see RSA 8:19.
 Districts for election of councilors, see RSA 62:5-10.
 Financial assistance to counties, towns and cities, see RSA 13:2-7.
 Real estate, acquisition and disposal of, by governor, see RSA 4:29-40.
 Revolving funds, creation by, see RSA 9:15.
 Supervision of state institutions, see RSA 10:1.

4:1 Removal of Public Officers for Cause. Except as otherwise specifically provided, no official of the state outside of the state classified service shall be discharged or removed except by the governor and council for malfeasance, misfeasance, or inefficiency in office, or incapacity or unfitness to perform his duties, or for the good of the department, agency or institution to which he is assigned. The attorney-general, or the appointing authority of such official may petition the governor and council for his removal, setting forth the grounds and reasons therefor. The governor and council shall hold a public hearing upon such petition, giving due notice thereof to such official not less than thirty days before the hearing, and shall, if they find, upon due hearing, good cause for removal of such official, order his removal from office.

HISTORY

Source. 1947, 231:1, 1950, 5, part 25:3, eff. June 30, 1950.

ANNOTATIONS

Library references

Conviction within provision making conviction of crime ground of disqualification for, removal from, or vacancy in, public office. 71 ALR2d 593.

Governmental control of actions or speech of public officers or employees in respect of matters outside the actual performance of their duties. 163 ALR 1358.

Inefficiency or misconduct of deputy or subordinate as ground for removal of public officer. 143 ALR 517.

Induction or voluntary enlistment in military service as ground for removal. 140 ALR 1470; 147 ALR 1427; 148 ALR 1400; 150 ALR 1447; 151 ALR 1462; 152 ALR 1459; 154 ALR 1456; 156 ALR 1457; 157 ALR 1456.

Judgment entered on plea of *nolo contendere* as a conviction of crime constituting cause for removal. 81 ALR 1100.

Membership in or affiliation with political society or group as ground for removal of public officer. 116 ALR 358.

Physical or mental disability as ground for removal. 28 ALR 777.

Power to suspend or lay off public officer for a temporary period without pay as an economy and not a disciplinary measure. 111 ALR 432.

Refusal of public officer to answer frankly questions asked him during an investigation, as ground for removal. 77 ALR 616.

Removal of public officer for bringing or defending an action affecting personal rights or liabilities. 74 ALR 500.

Removal for misconduct in another office. 17 ALR 283; 139 ALR 758.

Removal of public officer for misconduct during previous term. 17 ALR 279; 138 ALR 753.

Removal of public officer for collection of mileage when he had traveled at no expense to himself. 81 ALR 493.

Reversal of conviction as affecting status of one removed from office because of conviction of crime. 106 ALR 644.

What amounts to conviction of crime within statute prescribing grounds for removal of public officers. 24 ALR 1290.

What constitutes offense of official repression. 83 ALR2d 1007.

Administrative Law and Procedure ⇐ 111, 112, 113.

Officers ⇐ 60-70.

1. Investigatory powers

The broad and comprehensive statutory powers of the governor and council include the ultimate executive authority over state institutions as set forth in RSA 10:1 and broad investigatory powers concerning the application of state funds and the methods of business of the state departments, as stated in RSA 9:12 and the power to remove public officers for cause after public hearing and due notice of the charges preferred as in this section. Barry

States ⇐ 52.

CJS Officers §§ 24, 59, 60, 62(2), 63, 133, 143.

CJS States §§ 49(b), 67, 78.

v. King (1965) 106 NH 279, 210 A2d 161.

It is within the powers of the governor and council to direct the commissioner of health and welfare to verbally respond to questions propounded to him in connection with an investigation of state departmental business which a member of the executive council was requested to undertake by the governor, and to suspend him from office upon his refusal. Barry v. King (1965) 106 NH 279, 210 A2d 161.

4:2 Vacating Office of Trustee of State Institution. Whenever the trustee of any state institution shall have been absent from three consecutive meetings of the board of which he is a member, the governor and council may, after investigation of the cause of such absence, in their discretion declare the office of such trustee vacant, and thereupon his commission shall be automatically revoked. The vacancy shall then be filled for the unexpired term in the same manner as by law provided for an original appointment.

HISTORY

Source. 1931, 108:1. RL 27:3.

4:3 Anticipation of Vacancies. The governor and council may anticipate by not more than ninety days, and fill any vacancy to occur in any office during their term of office which they have power to fill.

HISTORY

Source. 1844, 90:1. CS 16:1. GS 18:2. GL 19:2. PS 20:2. PL 19:2. RL 27:2.

4:4 Adjustment of Terms of Office. In cases where the terms of office of the members of any permanent state board, commission or committee do not expire in successive years, the governor, with the advice and consent of the council may in making any appointment or filling any vacancy to such office, appoint any person for a period less than the full term in order to adjust the commissions of each member so that their terms of office will expire in successive years.

HISTORY

Source. 1943, 39:2, eff. March 3, 1943.

4:5 Temporary Department Heads. In case of the temporary inability, by reason of illness or otherwise, of the head of any state department

to perform his duties, provision for the appointment of a governor, with the authority to act in his stead, and perform the duties of compensation, and subject may from time to time

Source. 1917, 175:1. 27:18.

1. Cited

Cited in Opinion of the 96 NH 517, 83 A2d 738.

4:6 Assignment of shall assign rooms to

Source. 1917, 47:1. PL 184:1. RL 12:12. 1950, 5, June 30, 1950.

Assignments. Laws of provides for the temporary rooms in the State House state departments until relative personnel at a general court.

Laws of 1959, 268:1, dir-able space be made available estate division of the inst-ment.

4:7 —Availability of foregoing provision is li- as determined by the effect when such space shall thereupon assign s

Source. 1950, 5:2, eff. J

4:8 Gifts to the Sta name of the state gifts - benefit of its inhabitants to carry out the terms an- for the benefit of the in

Source. 1923, 32:1, 2. P 27:13.

EXHIBIT B

1978 PAMPHLET

For use with 1977 Cumulative Supplements.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Chapters 1-651

Cite bound volumes as RSA, with
chapter and section; thus
RSA 21: 3

Cite supplement and pamphlet in
the same way, followed by
(supp); thus
RSA 21: 3 (supp)

PUBLISHED BY



PUBLISHING CORPORATION

ORFORD, NEW HAMPSHIRE

1978

1978 PAMPHLET

(FOR USE WITH 1977 CUMULATIVE SUPPLEMENTS)

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 1

STATE BOUNDARIES

Seaward Limits of Jurisdiction

1:15 Lateral Boundaries.

ANNOTATIONS

Construction

To extent that proposed 1977 legislation, which declared that lateral marine boundary between New Hampshire and Maine is sought to be different from boundary as defined in a consent decree of Supreme Court of United States entered in 1973 in action initiated by New Hampshire, sought

to deny binding character of Supreme Court decision, it was inconsistent with 1973 New Hampshire statute which declared certain line to be boundary between Maine and New Hampshire "until otherwise established by law, interstate compact or judgment of the supreme court of United States." Opinion of the Justices (1977) 117 NH 393, 373 A2d 647.

CHAPTER 4

POWERS OF THE GOVERNOR AND COUNCIL IN CERTAIN CASES

4:1 Removal of Public Officers for Cause; Application.

Except as otherwise specifically provided, no official of the state outside of the state classified service shall be discharged or removed except as provided herein for malfeasance; misfeasance; or inefficiency in office; incapacity or unfitness to perform his duties; or for the good of the department, agency, or institution to which he is assigned. The attorney general, or the appointing authority of such official, may petition the governor and council for his removal setting forth the grounds and reasons therefor. Upon receipt of a petition, the governor and council may request the secretary of state to assign the matter to a retired justice of the New Hampshire supreme or superior court, or, if no such justice is available, another qualified person from the approved list of masters as provided by the superior court. The commission of the justice or master shall be commensurate with that received by a master of the superior court and shall be paid out of general funds not otherwise appropriated. The justice or master shall set an equal and reasonable legal fees rate for counsel to each of the parties involved and shall schedule and conduct a hearing in accordance with the rules of superior court governing trials by masters insofar as such rules are not inconsistent herewith. The report of the justice or master shall be presented to the governor and council for their order and thereafter sent to counsel or the parties, if not represented by counsel.

Any party aggrieved by the order of the governor and council may appeal such decision in accordance with RSA 541 as though the case were originally heard by the governor and council. Any rehearing which may be granted shall follow the same procedure as provided in RSA 4:1.

II. Application. This section shall apply to the removal of public officials, as specified in paragraph I, who are holding such office on or after its effective date.

Source. 1947, 231:1. 1950, 5, part 25:3. RSA 4:1. 1978, 55:3, eff. July 27, 1978.

Amendments—1978. Amended section generally.

ANNOTATIONS

Library references

State employee rights in New Hampshire, 18 N.H.B.J. 86 (Dec. 1976).

6. Absence from proceeding

Short absence would not disqualify member of the executive council, in proceeding for removal of state official, from participating in governor and council's decision, provided transcript of testimony was read

and evidence was such as not to require personal observation of witness. Opinion of the Justices (1977) 117 NH 390, 373 A2d 642.

Supreme court excused itself from answering question whether reason advanced by member of executive council for his withdrawal from removal-of-state-official proceeding was sufficient, as withdrawal was personal decision by councilor and did not appear to involve matter which related to action to be considered by governor and council and hence was not within spirit or letter of constitutional provision for advisory opinions. Opinion of the Justices (1977) 117 NH 390, 373 A2d 642.

CHAPTER 9

BUDGET AND APPROPRIATIONS; REVOLVING FUNDS

[New Sections]

Deficit Control

9:13-d Civil Emergency.

9:13-d Civil Emergency. Should it be determined by the governor that a civil emergency exists, the governor may, with the advice and consent of the advisory budget control committee, authorize such expenditures, by any department or agency, as may be necessary to effectively deal with said civil emergency and may draw his warrants in payment for the same from any money in the treasury not otherwise appropriated. In determining whether a civil emergency exists, the governor shall consider whether there is such imminent peril to the public health, safety and welfare of the inhabitants of this state so as to require immediate action to remedy the situation. This section shall not be construed to enlarge any of the powers which the governor may possess under the constitution or other statutes.

Source. 1978, 52:15, eff. July 6, 1978.

CHAPTER 12-A

DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT

12-A:2-b Harbor Masters, Mooring Permits and Fees.

[Repealed 1978, 22:1, eff. June 22, 1978.]

This section was derived from 1977, 600:10, II and related to mooring permits and fees.

CHAPTER 17-D

PERMANENT STANDING COMMITTEES OF

17-D:6 Interim Mileage. Subject to approval of the senate or of the house of representatives may be, a senator or a representative shall be the legislative mileage rate from his home to attendance at an authorized meeting of a standing committee in which he shall be a member when such a meeting in Concord between regular and/or special court, provided, further, that when such a meeting in Concord, he shall be reimbursed for mileage at the same rate provided for state employees.

Source. 1973, 551:1. 1978, 52:20, eff. July 6, 1978.

Amendments—1978. Substituted the words "at the same rate provided for state employees."

CHAPTER 17-G

LEGISLATIVE REVIEW OF STATE AGENCIES

[New Sections]

17-G:10 Effect of Termination on Obligations.

17-G:4 Exemptions.

Five exemptions from legislative review. 1978, 58:1, eff. Nov. 14, 1978, provided:

"Notwithstanding any other law to the contrary, the following 5 state agencies are hereby exempted from the provisions of the legislative review of agencies and programs mandated by RSA 17-G ("Sunset" act) [this chapter]:

- 1. The Council on Energy [Exec. Order No. 78-12 (1978)]

17-G:5 Termination Schedule.

Sunset termination schedule established. 1978, 57:1, eff. Nov. 9, 1978, provided:

"Pursuant to RSA 17-G:5 [this section], the joint legislative committee on review of agencies and programs hereby establishes a termination schedule to be utilized in the review process mandated by RSA 17-G [this chapter]. Said schedule shall be as follows:

- I. (a) The following program appropriation units (PAU) and PAU's included in the following budget departments, set out in Laws 1977, 600:1, shall terminate on July 1, 1981:

- General Government:
Office of Legislative Services (01, 02, 02), Executive Office (01, 03, 03 thru 09),

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EXHIBIT C

1981 SUPPLEMENT

For use until 1983 Cumulative Supplement is issued.

NEW HAMPSHIRE REVISED STATUTES ANNOTATED

Volume 1

Constitutions

Chapters 1-40-A

Cite bound volumes as RSA, with
chapter and section; thus
RSA 21: 3

Cite Supplement in the same way,
followed by (supp); thus
RSA 14: 18 (supp)

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ORFORD, NEW HAMPSHIRE

1981

3:9-c [New] —Injunction. Whenever the attorney general is aware of a violation of the provisions of RSA 3:9-a, he may bring an action in the name of the state to enjoin distribution of any articles or things upon which a representation or likeness of the state seal has been placed.

Source. 1971, 236:1, eff. Jan. 1, 1972.

3:11 State Insect. The ladybug, also known as the ladybird and the lady beetle, is hereby designated as the official state insect of New Hampshire.

Source. 1977, 62:1, eff. June 14, 1977.

CHAPTER 3-A

POET LAUREATE

3-A:1 Position Established. There is hereby established the position of poet laureate for the state. The governor, with the advice and consent of the council, shall appoint the poet laureate. Said person so honored shall be a resident of this state and shall serve for a 5 year term. There shall be no restriction on reappointment.

Source. 1967, 70:1. 1977, 60:1, eff. June 14, 1977.

Amendments—1977. Deleted lifetime appointment; established 5 year term and provided for reappointment.

Present incumbent exempted from 5 year term provisions. 1977, 60:2, provided: "Sections 1 [which amended this section] and 2 [which amended RSA 3-A:2] of this act shall take effect upon the expiration of the term of the person who holds the position of poet laureate on the effective date of this act [effective June 14, 1977]."

3-A:2 Recommendations. Prior to the appointment of a poet laureate the board of directors of the Poetry Society of New Hampshire shall submit to the governor and council the name or names of persons whom they deem to be worthy of the honorary position. Upon the expiration of the term of the poet laureate, as provided in RSA 3-A:1, the society shall again submit to the governor and council a name or names for a successor.

Source. 1967, 70:1. 1977, 60:2, eff. June 14, 1977. Amendments—1977. Substituted the words "expiration of the term" for "death" of the poet.

CROSS REFERENCES

Present incumbent exempted from 5-year term provisions, see RSA 3-A:1 note.

CHAPTER 4

POWERS OF THE GOVERNOR AND COUNCIL IN CERTAIN CASES

[New Sections]

- | | |
|---|---|
| 4:6-a Office Space; Secretary of State. | Acquisition and Disposal of Real Estate |
| 4:7-a Identifying Information Required in Correspondence. | 4:30-b Acquisition of Substitute Recreation Land. |
| 4:12-f Duties of Office of State Planning. | Miscellaneous Provisions |
| 4:13-c Constitution Days. | 4:43 Naming of Certain Formations. |
| 4:13-d American History Month. | |

4:1 Removal of Public Officials for Cause. No state official who is not a classified employee shall be discharged or removed except for

malfeasance, misfeasance, inefficiency in office, incapacity or unfitness to perform his duties, or for the good of the department, agency or institution to which he is assigned, according to the procedures set out in this section, unless otherwise provided by law.

I. The attorney general, or the appointing authority of such official, may petition the governor and council for his removal setting forth the grounds and reasons therefor.

II. Upon receipt of a petition, the governor and council may request the secretary of state to assign the matter to a retired justice of the New Hampshire supreme or superior court, or, if no such justice is available, another qualified person from the approved list of masters as provided by the superior court. The commission of the justice or master shall be commensurate with that received by a master of the superior court and shall be paid out of general funds not otherwise appropriated.

III. The justice or master shall schedule and conduct a hearing in accordance with this section and with those superior court rules governing trials by masters which are consistent with this section.

IV. The justice or master shall set a reasonable rate for the legal fees of parties. However, no official shall be entitled to have any legal fees paid by the state unless governor and council determine that he is the prevailing party.

V. The report of the justice or master shall be presented to the governor and council for their order and thereafter sent to counsel or the parties, if not represented by counsel.

VI. Any party may appeal the order of the governor and council in accordance with RSA 541 as though the case were originally heard by the governor and council. Any rehearing shall be according to the procedure set out in this section.

Source. 1947, 231:1. 1950, part 25:3. RSA 4:1. 1978, 55:3. 1981, 179:1, eff. June 2, 1981.

Amendments—1978. Amended section generally.

—1981. Restructured section generally and provided in par. IV that no official shall be entitled to have attorney fees paid by the state unless governor and council determine that he is the prevailing party.

ANNOTATIONS

Library references

State employee rights in New Hampshire, 18 N.H.B.J. 86 (Dec. 1976).

½. Constitutional law

Provision of this section authorizing removal for the good of the department is neither void for vagueness nor overbroad. *Bennett v. Thomson* (1976) 116 NH 453, 363 A2d 187, appeal dismissed, 429 U.S. 1082, 97 S.Ct. 1086, 51 L.Ed.2d 528 (1977).

Under this section, removal proceedings against public official could be conducted by same parties who brought charges of removal and combination of prosecuting or investigating functions with judicial

function was not a denial of due process. *Bennett v. Thomson* (1976) 116 NH 453, 363 A2d 187, appeal dismissed, 429 U.S. 1082, 97 S.Ct. 1086, 51 L.Ed.2d 528 (1977).

Where director of division of economic development in a question and answer session following speech given in his official capacity, made remarks that were knowingly insubordinate and seriously compromised his ability to effectively carry out responsibilities of the department, his removal for the good of the department of resources and economic development did not violate his first amendment rights. *Bennett v. Thomson* (1976) 116 NH 453, 363 A2d 187, appeal dismissed, 429 U.S. 1082, 97 S.Ct. 1086, 51 L.Ed.2d 528 (1977).

Governor and executive council, while holding hearings on petition for removal of director of division of economic development, did not commit error in denying official's motion to conduct voir dire examination of governor and two councilors who demanded his resignation for making statements contrary to established divisional policy. *Bennett v. Thomson* (1976) 116 NH 453, 363 A2d 187, appeal

dismissed, 429 U.S. 1082, 97 S.Ct. 1086, 51 L.Ed.2d 528 (1977).

Portion of state constitution which provides that it is right of every citizen to be tried by judges as impartial as lot of humanity will admit applies to governor and council while they are conducting hearing pursuant to this section. *King v. Thomson* (1976) 116 NH 838, 367 A2d 1049.

1½. Removal or suspension—Generally

Authority to suspend or remove warden of state prison resides exclusively in governor and executive council. *Opinion of the Justices* (1976) 116 NH 531, 363 A2d 1005.

Governor and executive council may act on suspension or removal of state prison warden only upon petition from attorney general or board of prison trustees. *Opinion of the Justices* (1976) 116 NH 531, 363 A2d 1005.

Under this section, governor and council and not fish and game commission has authority and jurisdiction to remove director of department of fish and game. *Corson v. Thomson* (1976) 116 NH 344, 358 A2d 866.

Provision of this section stating that state officials can only be removed from office when cause exists, while providing procedural safeguards for an official's property interest, also protects a vital and integral state interest; state manifests as strong an interest in maintaining employment of qualified officials as it has in removing those for whom cause for removal exists. *King v. Thomson* (1979) 119 NH 219, 400 A2d 1169.

Mere absence of the phrase "shall serve at the pleasure of the governor" in executive order by which plaintiff was appointed to position of coordinator for drug abuse would not control issue whether plaintiff was an employee of a state agency or an employee of governor's office. *Tice v. Thomson* (1980) 120 NH 313, 414 A2d 1284.

2. Notice and hearing

Reasonable interpretation of the language contained in commission of office would be that the director of business profits tax division was to serve the state as long as he properly performed his duties and if he could prove his alleged reliance on the language of the commission, he would be entitled to protection which that language affords to unclassified public employees so that he could not be removed without cause and notice and hearing.

dismissed, 429 U.S. 1082, 97 S.Ct. 1086, 51 L.Ed.2d 528 (1977).

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2. Notice and hearing

Reasonable interpretation of the language contained in commission of office would be that the director of business profit tax division was to serve the state as long as he properly performed his duties and if he could prove his alleged reliance on the language of the commission, he would be entitled to protection which that language affords to unclassified public employees so that he could not be removed without cause and notice and hearing.

Blake v. State (1975) 115 NH 431, 345 A2d 223.

3. Appointing authority

Under the express language of RSA 12-A:3, providing that the commissioner of resources and economic development "shall nominate for appointment by the governor and council" a director of economic development, the commissioner nominates and the governor and council appoints and neither has authority to carry out the function of the other; therefore, the governor and council constitute the "appointing authority" of the director within the meaning of this section's reference to "appointing authority". *Opinion of the Justices* (1975) 115 NH 385, 341 A2d 758.

4. Jurisdiction

Superior court had jurisdiction of a petition to recuse governor from sitting in any proceeding which might be brought pursuant to this section for purpose of discharging or removing state official from his position as director of probation. *King v. Thomson* (1976) 116 NH 838, 367 A2d 1049.

Where no petition had been filed with governor and council seeking state official's removal as director of probation and governor had not been given opportunity to make determination whether or not to recuse himself from such proceedings, any action by superior court would have been premature. *King v. Thomson* (1976) 116 NH 838, 367 A2d 1049.

Where fish and game commission had not voted to petition governor and council to remove director of fish and game department, and governor had not been put in position of making determination of whether or not he should recuse himself, any action by trial court on director's petition requesting that in a hearing, if any, before governor and council regarding his removal, governor be disqualified in view of "manifest and recorded, although groundless bias against plaintiff" would be unwarranted. *Corson v. Thomson* (1976) 116 NH 344, 358 A2d 866.

5. Bias or prejudice

Fact that governor asked for official's resignation and two members of executive council publicly suggested that official should resign did not require that governor and two councilors recuse themselves for bias in hearing on petition held by governor and executive council at which findings were made that official's state-

ments were contrary to established and divisional policy and were in direct contravention of instructions which he had received from superior officer and that official should be removed for good of department. *Bennett v. Thomson* (1976) 116 NH 453, 363 A2d 187, appeal dismissed, 429 U.S. 1082, 97 S.Ct. 1086, 51 L.Ed.2d 528 (1977).

6. Absence from proceeding

Short absence would not disqualify member of the executive council, in proceeding for removal of state official, from participating in governor and council's decision, provided transcript of testimony was read and evidence was such as not to require personal observation of witness. *Opinion of the Justices* (1977) 117 NH 390, 373 A2d 642.

Supreme court excused itself from answering question whether reason advanced by member of executive council for his withdrawal from removal-of-state-official proceeding was sufficient, as withdrawal

4: 6 Assignment of Rooms to Departments. The governor and council shall assign rooms to different departments with the exception of the rooms and office space over which the legislature has control under the provisions of RSA 14: 14-b.

Source. 1917, 47: 1. PL 7: 13. 1939, 184: 1. RL 12: 12. 1950, 5, part 7: 5. RSA 4: 6. 1975, 479: 1, eff. July 1, 1975.

was personal decision by councilor and did not appear to involve matter which related to action to be considered by governor and council and hence was not within spirit or letter of constitutional provision for advisory opinions. *Opinion of the Justices* (1977) 117 NH 390, 373 A2d 642.

7. Counsel fees and expenses

On petition for writ of certiorari seeking an order that state pay balance of legal fees and expenses owed by state director of probation to his counsel and incurred when he defended himself against an unsuccessful proceeding to remove him from office, probation director, by asserting his defense, was protecting a state interest in maintaining employment of qualified officials, and therefore state was obligated to pay his counsel fees and expenses. *King v. Thomson* (1979) 119 NH 219, 400 A2d 1169.

8. Cited

Cited in *Monier v. Gallen* (1980) 120 NH 333, 414 A2d 1297.

Amendments—1975. Added exception which has legislative control.

4: 6-a Office Space; Secretary of State. Notwithstanding any other provision of law to the contrary, the following shall be assigned for use by the secretary of state: rooms numbered 203 through 206, inclusive, on the second floor of the state house. The secretary of state may have access to the vault in room 104.

Source. 1977, 600: 30. 1979, 434: 90, eff. July 1, 1979.

"and rooms numbered 113 and 114 on the first floor of the state house" from the end of the first sentence.

Amendments—1979. Deleted the words

4: 7-a Identifying Information Required in Correspondence. All officers and employees of the state shall, when sending written correspondence to any member of the general public, include in such correspondence the following:

(a) the name of the sender of said correspondence;

(b) the name of said sender's office, the room number of said office, the name of the building in which said office is situate and the mailing address of said building, including the zip code;

(c) the office telephone number of said sender.

Source. 1977, 103: 1, eff. July 30, 1977.

4: 8-a Gifts for Historic Sites and Technical Institutes or Vocational-Technical Colleges. The governor and council may, by executive order authorize the department of resources and economic development to

accept, for the state, gifts of personal property donated for use in connection with his structures thereon, which are under the control of the state. Each such executive order shall relate to the use of such personal property in accordance with the terms of the gift department. Such executive order, as may also authorize the sale or exchange of such property to be in accordance with the terms of the gift, and application in exchange for the purposes of the gift to keep a permanent inventory or record thereof. The governor and council may have same authority with reference to gifts to technical colleges authorizing the acceptance thereof, and all other provisions thereto.

Source. 1967, 116: 1. 1977, 290: 8, eff. Aug. 26, 1977.

4: 12 Governor's Staff.

ANNOTATIONS

1. Removal

Merely absence of the phrase "shall serve at the pleasure of the governor" in executive order by which plaintiff was appointed to position of coordinator for drug abuse would not control issue whether plaintiff was an employee of a state agency or an employee of governor's office. *Tice v. Thomson* (1980) 120 NH 313, 414 A2d 1284.

Where the governor's office was designated as the state agency responsible for coordinating all drug abuse programs and where the position of coordinator for drug abuse was not approved by legislature, did not have duties prescribed by legislature and was not subject to legislative oversight, the person appointed by governor to be coordinator for drug abuse was an employee of the governor's office.

4: 12-a Coordinator of Federal Funds. The council shall appoint a coordinator of federal funds at the pleasure of the governor; he shall be a qualified by education and experience shall:

I. Inform and advise the heads of agencies and commissions and the legislative programs from which the state may receive federal funds and concerning the application require to participate therein;

II. Review all requests and agreements