

STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

Decision BLC 2024-3

Appeal of Clifford Newton

BACKGROUND

Each of New Hampshire's ten counties have three commissioners. Counties and their officers are created by the legislature which determines how they operate. In seven counties, commissioners are elected from individual districts in which the commissioners must live, and only the residents of those districts can vote for the commissioners. In two counties, commissioners must live in the district, but all county voters vote for all three commissioners. Until 2023, Strafford County elected all three commissioners on an at-large basis. In 2023, the legislature passed Chapter 177, which created three districts in Strafford County. New Hampshire RSA 655:9 states that commissioners must be residents of the county in which they seek to be elected commissioner, and also specifies that in nine counties, commissioners also must be residents of the district within the county in which they seek to be elected commissioner. The nine counties are specified by name, being all except Strafford County. Chapter 177 did not amend RSA 655:9 by adding Strafford County to the list. Chapter 177 also did not amend other statutes which deal with other details of the election of county commissioners.

In 2024, the first year in which the new law resulted in candidates filing to run for Strafford County Commissioner, candidates filed to run for county commissioner. Some, like Clifford Newton, live in the newly created district in which they are running. Others, such as Dianna Rollo and Sean Levitt, filed to run in District 3, although they live in District 2. When candidate Rollo's declaration of candidacy was received in the office of Secretary of State David Scanlan, his staff initially listed her as a candidate in District 2, where she resides, but was informed later that she indeed intended to run in District 3, and the Secretary sought advice from the Attorney General. Upon review of the statutes, the Attorney General informed Secretary Scanlan that there was no requirement in the new statute or the existing RSA 665:9 that candidates in Strafford County live in the commissioner district in which they sought to be a candidate, so the candidates were listed in District 3. Mr. Newton appealed this decision to the Ballot Law Commission. The Commission met to hear the matter on July 2, 2024.

At the hearing, several witnesses testified as to their intent when proposing and enacting the legislation, being to create districts in which candidates for commission had to live. They also testified that the legislation was considered by Legislative Services during the drafting period, had hearings in both the House and Senate, and, due to inconsistencies in versions passed

by each chamber of the legislature, was the subject of a committee of conference. At no point in the discussion, apparently, was the failure to include provisions in the legislation to address the issue of amending RSA 655:9 or other laws noted or discussed, and the issue was not discovered until the filings for office in 2024.

Other testimony and argument at the hearing concerned the confusion which may be created due to the existence of RSA 652:12, which states that a vacancy occurs in an office if the elected candidate "...ceases to have domicile in the state or the district from which he or she was elected." The assertion was that if a candidate who does not live in the commissioner district were elected, immediately after taking office, the candidate would be challenged and the office sought to be declared "vacant" due to the fact that the incumbent did not live in the district. This was asserted to argue that the statute passed must have implicitly have required residence in the district when it created districts.

Counsel to the Ballot Law Commission also provided advice on his opinion of the legal situation and ability of the Commission to alter the specific wording of statutes passed by the legislature.

DECISION

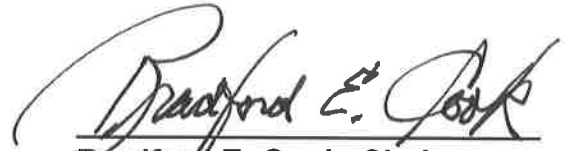
It is apparent to the Commission that those seeking to create districts in Strafford County for county commissioners intended to create three geographical districts and to require that those elected commissioner from each district live in the district. It is also apparent that in the process of seeking to put this into law, the bill drafted and statute passed did not accomplish the entire goal. By passing Chapter 177 (which became RSA 653:1, VI(c) and RSA 662:4, IX (Supp. 2024)), three districts were created, but Strafford County was not added to those counties required to elect commissioners who live in the districts they seek to represent. While voters are free to not elect commissioners who do not live in the district in which they are running, under the law as passed, residents of Strafford County are entitled to run in any of the three districts.

Counsel to the Commission opined at the hearing that the Commission's jurisdiction is to uphold or overturn the decision of the Secretary of State to accept a candidate filing for office, and the Commission has no power to amend the law as passed by the legislature, regardless of the expressed intent of those passing the law, or mistakes which may have been made. In short, although the Commission can acknowledge both the intent and the mistake, it cannot do anything about fixing the asserted error, which is the job of the legislature which passed the law in the first place.

In regard to the asserted issue of a vacancy occurring in the office under RSA 652:12, if a non-resident is elected in one of the Strafford County District, although that matter is not squarely before the Commission at this time, the Commission would note that if the person is entitled to run if a resident of the county, and is elected, a logical reading of the statute, if it applies, is that in this case, the "district" the commissioner is required to live in is Strafford County itself, and not the commissioner district, so no vacancy would exist.

For all the reasons stated, the Commission voted to uphold the decision of the Secretary of State, and deny the appeal, by a vote of 4-1.

So ordered.

A handwritten signature in black ink, appearing to read "Bradford E. Cook". The signature is written in a cursive style with a large, sweeping initial "B".

**Bradford E. Cook, Chairman
James Bouley
David Campbell
Michael Eaton**

Commissioner Robert LeTourneau dissenting:

I must respectfully dissent from the decision of the majority. I agree with the finding of intent of the legislature and that a mistake was made by not catching other specifics in the bill passed, but I believe that the result should be that only district residents have the right to run in commissioner districts in Strafford County, which is clearly what was intended, and that this should be the result until the legislature has a chance to correct the mistake.