

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

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Petition
Of
Gregory M. Sorg
(New Hampshire House of Representatives,
Grafton District 4)

OCT 10 2000

NEW HAMPSHIRE
SECRETARY OF STATE

DECISION

On September 22, 2000, pursuant to RSA 655:41, Gregory M. Sorg filed a complaint with the Ballot Law Commission ("Commission") challenging the Secretary of State's rejection, as untimely, his request for a recount of the Grafton District 4 Republican House Primary Seat.

On October 2, 2000 the Commission held a public hearing on this matter.

According to the testimony of Mr. Sorg, he contacted the town clerks in his district on the day following the Primary and he was given election results that indicated that he narrowly won his race. On September 14, 2000, upon learning he had actually lost the race which he believed that he had won, he faxed a letter to the Secretary of State's Office along with a copy of his check in the amount of \$10.00 and an RSA 660:7 request for recount. At the bottom of his letter, he noted the letter was also being sent by U. S. Mail. The Commission was provided with a copy of the letter. Mr. Sorg testified that on September 14, 2000, he received a letter from the Secretary of State's Office notifying him that his request for a recount was not accepted because the official request was not received in the Office until Monday, September 18, 2000, and that the deadline for requesting a recount was 5:00 p.m. on Friday, September 15, 2000. The correct filing fee

should have been \$20, not \$10, because the difference between the number of votes cast for the winner and those cast for Mr. Sorg, was between 1 and 3%. RSA 660:2. Mr. Sorg's argument is that he met the intent of the law by faxing his request within the prescribed time limit and that the law does not require that the filing fee be paid by the filing deadlines. He argues that the fact that the U. S. Mail did not deliver his original, written request to the Secretary of State until Monday should not prevent him from receiving the recount.

The Secretary of State's Office testified that on September 14, 2000, they did in fact receive Mr. Sorg's faxed request for a recount. They also testified that on Friday, September 15, 2000, which was the deadline, they had not received the original application which the Secretary of State treats as the official filing. Assistant Secretary of State Karen Ladd attempted to call Mr. Sorg three times on Friday the 14th of September to notify Mr. Sorg that the official filing had not been received, as the fax could not be counted as the official filing. Three messages were left on Mr. Sorg's home answering machine. Mr. Sorg testified that he did not receive the messages until the evening of September 15, 2000. He testified that he did not give the Secretary of State his office number on his Declaration of Candidacy because his law partner objected to his running for public office. Mr. Sorg also testified that as an attorney he could read the law and that he did not inquire about the requirements to request a recount because he did not believe that the Secretary of State could tell him anything that would be helpful.

RSA 660:7 directs that any person who wishes to request a recount must do so "in writing" to the Secretary of State no later than the Friday after the primary. In this case,

the deadline for all recount requests was Friday, September 15, 2000. The statute is silent on whether the application can be submitted by facsimile. Likewise, RSA 660:1 is silent as to when the fee must be paid.

The Ballot Law Commission finds that the Secretary of State's interpretation of the law is reasonable and that the Secretary of State acted in good faith with the utmost of integrity at all times. Further evidence of the Secretary's concern for a proper filing by Mr. Sorg was the extra effort of attempting to reach Mr. Sorg by Assistant Secretary Karen Ladd by three phone calls on Friday. The Commission is also reluctant to reward someone who fails to provide a telephone number where he can be reached and who is unwilling to ask for assistance.

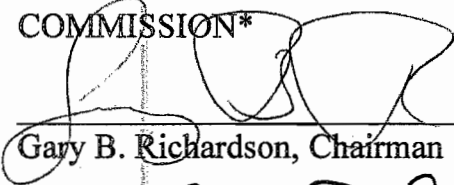
Nevertheless, the Commission finds that given the closeness of the race, the ambiguity of the law and the absence of clear regulations, the interests of justice would be served by ordering a recount.

SO ORDERED.

NEW HAMPSHIRE BALLOT LAW
COMMISSION*

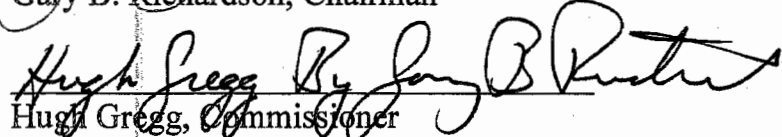
Date: 10/10/00

By:


Gary B. Richardson, Chairman

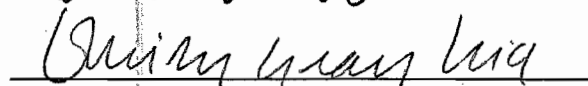
Date: 10/10/00

By:


Hugh Gregg, Commissioner

Date: 10/10/00

By:


Emily Gray Rice, Commissioner

*By agreement, Commissioner Rice listened to the transcript of that portion of the hearing that she did not attend prior to this ruling.