

**STATE OF NEW HAMPSHIRE  
BALLOT LAW COMMISSION**

**Case No. BLC 2014-1**

**Walter P. Havenstein for Governor**

This matter comes before the Commission at the request of Walter P. Havenstein, who filed to be a candidate in the Republican Primary for Governor, September 2014. His filing papers were accepted by the Secretary of State upon filing of the required affidavit of residency. The Constitution of New Hampshire and New Hampshire Revised Statutes Annotated Chapter 655:5 require that candidates qualified to run for the office of Governor, "...must be qualified as provided in Part 2, Article 42 of the state constitution, at the time of the election, the person must have been an inhabitant of this state for 7 years next preceding, and be of the age of 30 years." RSA 26:1 defines "inhabitant" as someone who has both (1) a domicile or abode; and (2) who "through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others."

Because there had been controversy in the press about Mr. Havenstein's state of residence and qualifications to seek the office of Governor, and assumedly to avoid the risk of spending large amounts of time, effort and resources, potentially to be told later that he was not qualified, Mr. Havenstein filed a pleading entitled, "Petition of Walter P. Havenstein for a Declaratory Ruling" with the Ballot Law Commission on June 11, 2014, through counsel. In that petition, other potentially interested parties were identified, and they were served with copies of the pleadings. These included other candidates for Governor in both parties, the New Hampshire Democratic Party, and Attorney Kathleen Sullivan, former Chair of the New Hampshire Democratic Party. After the filing, the Ballot Law Commission, through its Chairman, communicated with the named parties, inviting them to participate in any hearing which might be held on the matter. The New Hampshire Democratic Party responded with an "Answer and Cross-Petition for Declaration of Ineligibility" and a request for additional discovery and a delay to obtain documents in addition to those included in the petition filed by Mr. Havenstein. The Commission, through its Chairman, contacted counsel for the parties and urged them to exchange as much information as possible prior to the hearing, set for June 30, and indicated that it was unlikely an extension of time would be granted, due to the requirement that ballots be prepared and printed expeditiously, to be sure they were ready in time for the September Primary. The parties filed supplemental materials, memoranda of law, and related materials.

Due to the participation of the New Hampshire Democratic Party and its position on the eligibility of Mr. Havenstein, any questions about the ability of the Ballot Law Commission to issue declaratory or advisory opinions, and any questions about the binding nature of a decision on parties not participating in the hearing, became moot. Indeed, the Commission stated at its hearing on June 30, that it considered the matter to be an appeal from Secretary of State William M. Gardner's acceptance of the Havenstein filing and a challenge to his eligibility to run for Governor of New Hampshire. Also, prior to the hearing, counsel for both parties agreed that there were no objections to the evidence produced by both, that any questions about the validity of a subpoena issued by counsel to the New Hampshire Democratic Party, which had been the

subject of one of the memoranda produced in advance of the hearing, was moot, and that the hearing could proceed potentially with only Mr. Havenstein testifying.

At the hearing, Mr. Havenstein testified that he and his wife lived in many locations during his career, both in the U.S. Marine Corps and in private business, moved many times after his graduation from the United States Naval Academy, and moved to Bedford, New Hampshire in 1999 when he was employed by Lockheed-Martin/Sanders, in Nashua, New Hampshire. They continued to reside in Bedford until they built a home in Alton, New Hampshire, in 2003, and moved to it in 2004, Mr. Havenstein also having an apartment in Nashua where he lived during the week, to avoid the long commute to Alton, to be close to work. BAE Systems acquired the company during Mr. Havenstein's employment, and he headed the Nashua operation. In 2007, he was promoted to CEO at BAE Systems' main office in Maryland. He then moved to an apartment there which he used to be close to his office, returning as often as possible to his Alton home. In 2009, Mr. Havenstein worked for Science Applications International Corporation in northern Virginia, and continued to reside in a condominium in Bethesda, Maryland which he and his wife purchased. At the closing of the purchase, in January 2007, they signed documentation stating that the condominium was their "primary residence" and therefore qualified for treatment as that kind of property under Maryland tax law. Mr. Havenstein purchased an automobile for use in commuting to work, registered it in Maryland, and as a result, was required by law to obtain a Maryland driver's license, and surrender his New Hampshire license. Mrs. Havenstein continued to reside in the Alton, New Hampshire home, both had vehicles registered in New Hampshire, and she retained her New Hampshire license. Both Mr. and Mrs. Havenstein remained registered voters in New Hampshire, voted at least in biennial federal and state elections, and Mr. Havenstein returned to New Hampshire as often as his schedule would permit. When Mr. Havenstein left his employment with the Virginia company, the Havensteins sold the Maryland condominium and purchased an additional residence in Pinehurst, North Carolina, where Mrs. Havenstein's elderly parents lived, joining a golf club and at least one retired military officers' organization there, according to testimony.

Among facts produced in other testimony at the hearing or in the documents provided by the parties are the fact that Mr. Havenstein kept his primary care physician, dentist, etc. in New Hampshire at all times relevant to the residency question, filed tax returns with the Alton address with the IRS, New Hampshire Department of Revenue Administration, Maryland (with the exception of one year which listed the Maryland address), and Virginia. He paid New Hampshire Interest and Dividend's Tax to the extent required by New Hampshire law. Mr. Havenstein testified that at all times, he and his wife intended to remain New Hampshire citizens and the condominium in Maryland, like the one in Nashua, was for convenience of getting to workplace that could not be reasonably reached from the Alton residence that he considered his home. There was testimony that the important family items were kept at the Alton residence. The Havensteins continued to support New Hampshire charities with which they were involved throughout the period Mr. Havenstein worked in Maryland and Virginia.

Testimony and documents indicated that on several documents, Mr. and Mrs. Havenstein did state that the Maryland residence was their principal one, and that Mr. Havenstein at least spent more than half his time there.

Mr. Havenstein argues to the Commission that since his intent was to live in New Hampshire, he always was registered to vote and voted in New Hampshire, and kept the residence he considered home in Alton, New Hampshire, he never abandoned that residence or his New Hampshire residency/domicile while away at work in other states and that he continued

to be an “inhabitant” of New Hampshire under the relevant definitions. The New Hampshire Democratic Party argues that the relevant statutes and the New Hampshire Constitution do not require that a candidate be a resident or domicile, but rather that the candidate be an “inhabitant” for seven years prior to holding the office. They argue that the facts presented by Mr. Havenstein clearly indicate he did not “inhabit” the state for seven years prior to the time the term of office to which he seeks to be elected starts. Both parties cited extensive case law in support of their positions.

The Ballot Law Commission heard testimony and argument at a hearing held June 30, 2014.

## DECISION

First, the Commission compliments the parties and counsel for thorough and enlightening materials and for straightforward and clear testimony, and thanks them for the professional and cooperative manner in which they exchanged materials, narrowed the issues, and assisted the Commission in moving this matter forward expeditiously, so that the ballot preparation process could proceed as required.

Questions of inhabitancy, residency, domicile and the related indicia of intent are far more complex in 2014 than they were when many of the laws and cases involved in this matter were written or decided. In the modern world, especially among people in governmental service or international business, employment and assignments take individuals to many places. Individuals and families often have two, three or four physical residences. New Hampshire’s congressional delegation and, as described during argument, former New Hampshire inhabitant Franklin Pierce, have, by necessity spent a considerable amount of time outside of the State performing work-related tasks.

The New Hampshire laws and legal principles involved in this case variously refer to “residence,” “inhabitant,” and “domicile,” and cases interpreting all three vary according to the context in which they arise. In the context of candidacy for Governor of New Hampshire, the statute and Constitution state that the candidate “must have been an inhabitant of this state for 7 years next preceding, and be of the age of 30 years.” RSA 21:6 further describes both “inhabitant” and “resident.” There is no question that Walter P. Havenstein qualifies under the second Constitutional requirement. It is the job of the Commission to determine from the facts and the evidence whether he qualifies for the first. The Commission made its determination having considered this constitutional requirement within the context of the relevant statutes and caselaw.

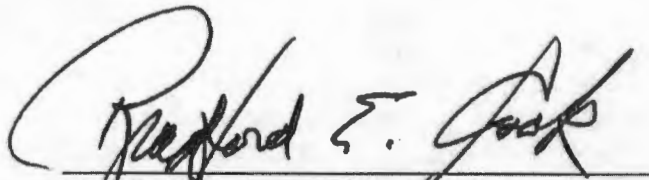
There are many facts presented in this case, some of which argue for and against the position Mr. Havenstein asserts. His continuous ownership of property, registering to vote and voting, filing taxes, listing his address as New Hampshire almost universally, and stating that he considered and intended New Hampshire to be his home, all support a finding that Mr. Havenstein was an “inhabitant” of New Hampshire. The fact that his wife kept living in Alton provides strong support for the assertion that the family kept its domicile in New Hampshire and that Mr. Havenstein viewed himself as an inhabitant of New Hampshire – his physical absence and residential purchase being made only to accommodate the necessities of his job.

In law, individuals can have many residences, but only one domicile, and the classic legal definition of domicile is the place the person intends it to be, this intent being manifested in the person’s actions. However, many doctrines of law and statutes allow the facts to refute the

statement of intent. The sworn statements of Mr. Havenstein that the property he was acquiring in Maryland was his "principal residence," is troubling. His obtaining a license, registering a car, and other factors could lead to the conclusion that he in fact abandoned his New Hampshire domicile, viewed himself as an "inhabitant" of Maryland, and interrupted the required seven year period required to run for Governor, regardless of his stated intent. In fact, for the dissenting minority in this case, those factors lead them to that conclusion.

However, for the majority, reviewing the past decisions of this Commission, the law, and the facts, leads to the conclusion that Walter P. Havenstein, regardless of his physical location during various job assignments, important as they were, intended and did remain a New Hampshire "inhabitant," kept his domicile here, and therefore meets the requirements to run for Governor. The facts in this case make it a close case, but we believe it is clear that Walter P. Havenstein has demonstrated that he meets the legal test set out in law.

**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, looping initial 'B'.

**Bradford E. Cook, Chairman**  
**Martha Van Oot**  
**Michael Eaton**

Commissioners Manning and Wellington, dissenting:

The undersigned members of the New Hampshire Ballot Law Commission respectfully dissent from the majority opinion upholding the New Hampshire Secretary of State's determination that Walter Havenstein is qualified to seek the office of Governor of the State of New Hampshire.

One need not be a practitioner of the law to understand the plain language of Article 42 of the New Hampshire Constitution (in part): "And no person shall be eligible to this office, unless at the time of his election, *he shall have been an inhabitant of this state for 7 years next preceding* (emphasis added), and unless he shall be of the age of 30 years." Nowhere in Article 42 is there a reference to, nor an allowance for, temporary residence in another state, nor a provision for residing in another state with an "intention" of returning at some unspecified time. Nor does the word "domicile" appear in Article 42. A rudimentary understanding of civics provides that there is an allowance in the Constitution for amending the Constitution. Until such time, the undersigned must, and do, interpret the Constitution precisely as it was authored and ratified.

The undersigned emphasize that Article 42 requires that candidates for governor be an inhabitant of the state, the word inhabit deriving from the Latin *habitare*, meaning to live or dwell. For guidance, the undersigned have relied upon the United States District Court of New Hampshire's decision in *Chimento v. Stark* which reads, in part:

*We conclude that the residency requirement of the New Hampshire Constitution does promote legitimate state interests. It ensures that the chief executive officer of New Hampshire is exposed to the problems, needs, and desires of the people whom he is to govern, and it also gives the people of New Hampshire a chance to observe him and gain firsthand knowledge about his habits and character. We hold, therefore, that Part Second, Article 42, of the New Hampshire Constitution is not violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.*

Despite the Court's holding that "*the residency requirement of the New Hampshire Constitution does promote legitimate state interests,*" Mr. Havenstein has attested that he was a **resident** (emphasis added) of the state of Maryland by virtue of receiving a "homestead property tax exemption on his condominium as his principal residence under Maryland law" (Petition, Section 26). Further, at Petition Exhibit A-1 (Affidavit Of Purchaser Regarding Exemption From Recordation Tax), Mr. Havenstein "hereby swears or affirms under the penalty of perjury that the property herein conveyed is intended to be used as my/our principal residence...."

Mr. Havenstein mortgaged his Maryland residence with the Bank of America (Exhibit M). Mortgages on principal residences carry a lower interest rate than loans for second (or third) homes, hence Mr. Havenstein's rationale for seeking financing on a principal residence is obvious. However, having availed himself of this lower cost option, Mr. Havenstein cannot retrospectively assert that he always resided in New Hampshire. A plainly worded legal document signed at the time in question should trump Mr. Havenstein's current declaration that

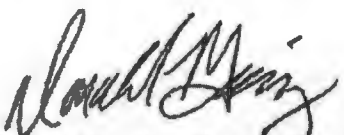
he always had an "intention to return," such declaration being the key element on which the majority of the Commission relied for proof of domicile.

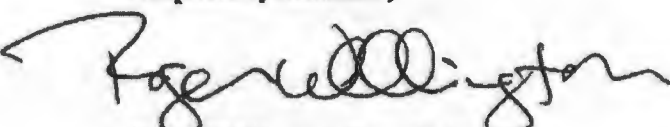
Further, Mr. Havenstein has attested that "he purchased an automobile in Maryland" and that "Maryland law required (him) to register this vehicle in Maryland and to obtain a Maryland driver's license" (Petition, Section 24). Mr. Havenstein cited Maryland law in his petition as follows: "As a new resident (emphasis added) of Maryland you must register your vehicle within 60 days of moving (emphasis added) to Maryland."

Mr. Havenstein has attested that, under Maryland law, he was a resident of that state. As such, he could not be both a resident of Maryland and an inhabitant of the state of New Hampshire. Further, New Hampshire law (RSA 263:4) states, "Driver Limited to one License. - No person shall receive a driver's license unless and until he surrenders to the division all valid driver's licenses in his possession issued to him by any other jurisdiction. All surrendered licenses shall be returned by the division to the issuing department together with information that the licensee is now licensed in a new jurisdiction." New Hampshire law does not, of course, hold in the state of Maryland, but the undersigned assume that the laws of Maryland are in accord with the laws of New Hampshire regarding the holding of valid licenses simultaneously in two states. When Mr. Havenstein acquired a Maryland driver's license as required of those registering an automobile in that state, the Maryland driver's license superseded the validity of his New Hampshire driver's license, unless Mr. Havenstein wishes to contend that he was licensed by both states simultaneously. He has not, and the undersigned suspect, he would not so contend.

The undersigned again refer to *Chimento v. Stark* that held that "the residency requirement of the New Hampshire Constitution does promote legitimate state interests." The Court specifically used the word "residency" in reference to the New Hampshire Constitution's requirement for eligibility for the office of Governor of the State of New Hampshire. By his words and deeds, Mr. Havenstein has, in the opinion of the undersigned, left no doubt that he was a resident of the state of Maryland within seven years of filing for the office of Governor of the State of New Hampshire and is, therefore, ineligible to hold that office.

Respectfully submitted,

  
Donald Manning, Commissioner

  
Roger Wellington, Commissioner