



New Hampshire Democratic Party

July 22, 1996

VIA FAX 271-6316 AND REGULAR MAIL

Mr. Gary Richardson, Esquire, Chair
N.H. Ballot Law Commission
c/o The Honorable William M. Gardner
Secretary of State
State of New Hampshire
Room 204, State House
Concord, NH 03301

Re: Roger Francoeur - State Senate Candidate District

Dear Chairman Richardson:

Please consider the following original and five (5) copies as an Appeal of the ruling of Secretary of State Gardner that Mr. Roger Francoeur was not registered in Goffstown on the date that he filed his Declaration for Candidacy to the New Hampshire State Senate and is therefore ineligible to appear on primary ballot as Democratic candidate for State Senate. While tradition and common sense might, at first blush, suggest this outcome to be correct, an analysis of the pertinent statutes and constitutional provisions clearly authorizes his candidacy. The pertinent statutes are as follows:

RSA 655:7 - Nominations - General Qualifications - State Senator

To hold the office of state senator, a person must be qualified as provided in Part 2, Article 29 of the state constitution.

Part 2, Article 29 of the New Hampshire Constitution (Qualifications of Senators)

Provided, nevertheless, that no person shall be capable of being elected a senator, who is not of the age of thirty years, and who shall not have been an inhabitant of this state for seven years immediately preceding his election, and at the time thereof he shall be an inhabitant of the district for which he shall be chosen.

Thus, the qualifications for election are as follows:

1. 30 years of age;
2. an inhabitant of the state for seven years **immediately preceding his election**; and
3. **at the time thereof**, an inhabitant of the district for which he shall be chosen.

150 North Main Street, Concord, NH 03301 • Phone 603-225-6899 • FAX 603-225-6797



Mr. Gary Richardson, Esquire, Chair
 N.H. Bar: Law Commission
 July 22, 1996
 Page 2

First, Mr. Francoeur is 30 years old or older. Second, he has been an inhabitant of the State for seven years immediately preceding his election, and third (at the time thereof) he shall be an inhabitant of the district for which he was chosen.

While it is clear that the critical time of the analysis is "immediately preceding his election," even at this time Mr. Francoeur is an inhabitant of the district for which he shall be chosen. He resides at 46 A-1 St. Anselm Drive, Goffstown, New Hampshire 03045; he is domiciled there, in that he has the present indefinite intention to remain in Goffstown, and as of July 8, 1996, he is a registered Democrat voter thereof.

While no statute can constrict the constitutional qualifications for the Office of State Senate, some may suggest that RSA 655:17, Declaration of Candidacy, does so. The pertinent portions are set as follows:

RSA 655:17 Declaration of Candidacy

Declaration of candidacy shall be in the following form and signed by the candidate:

I, _____, declare that I am domiciled in Ward _____, in the city (or town or unincorporated place) of _____, county of _____, state of New Hampshire, and am a qualified voter herein; that I am a registered member of the _____ party; that I am a candidate for nomination for the office of _____ (or for delegate to the state convention) to be made at the primary election to be held on the _____ day of _____; and I hereby request that my name be printed on the official primary ballot of said _____ party as a candidate for such nomination or election. I declare that I am not a candidate for incompatible offices as defined in RSA 655:10, and that I am not a federal employee which makes me ineligible to file as a candidate for this office. I further declare that, if nominated as a candidate for said office or if elected as such delegate, I will not withdraw; and that, [if elected, I will be qualified] for and will assume the duties of said office.

While not conceding that a statute may restrict a candidate's constitutional rights to run for office, Mr. Francoeur clearly meets these criteria as well, he

1. is domiciled in Goffstown;
2. is a qualified voter therein;
3. is a registered member of the Democratic Party, either in Raymond or, following transfer of his registration, in Goffstown;
4. is a candidate for the Office of State Senate;

Mr. Gary Richardson, Esquire, Chair
N.H. Ballot Law Commission
July 22, 1996
Page 3

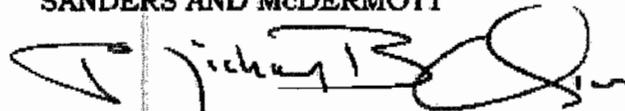
5. is not a candidate for an incompatible office;
6. is not a federal employee; and
7. if elected, he will be qualified.

May I respectfully request that you kindly consider the foregoing and rule that Mr. Francoeur is qualified to appear on the Democratic primary ballot as a candidate for State Senate.

Thank you very much.

Very truly yours,

SANDERS AND McDERMOTT



Michael B. King
Legal Counsel
N.H. Democratic Party

/dh

cc: Mr. Roger Francoeur
The Honorable William Gardner
Assistant A. G. Christopher Reid