

STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

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NEW HAMPSHIRE
SECRETARY OF STATE

Petition

Of

Joseph S. Haas, Jr.
(Disqualification of Attorney Candidates)

ORDER

On September 13, 2002, Joseph S. Haas, Jr. filed a complaint with the Ballot Law Commission ("the Commission") claiming that all candidates running for State Representative who are attorneys must be disqualified because otherwise there would be a violation of the separation of powers.

On September 27, 2002, a public hearing was held.

Petitioner Haas argued, both in his written motion and oral testimony, that attorneys are part of the Judicial Branch of government because of their title "Esquire" and, therefore, cannot run for legislative office because to do so would be a breach of the separation of powers as enumerated at Part 1, Article 37, of the New Hampshire Constitution. At the hearing Petitioner Haas stated that he believes that attorneys can run for legislative office; however, if they are elected they must "disband their Bar membership before being seated as an elected official."

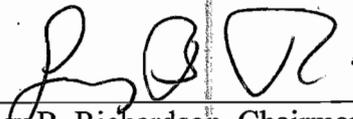
The Commission recently ruled on this same issue in the Petition of Robert Kingsbury (Order dated 9/20/02), who also claimed that attorneys and their spouses should not be allowed to run for political office because of a separation of powers violation. In its Order of September 20, 2002, the Commission found there is no Constitutional bar to attorneys holding offices in the Legislative Branch and dismissed the Petition.

In the Petition currently before the Commission, as in the Petition of Robert Kingsbury, the Commission finds that Attorney General v. Meader, 80 NH 292 (1922), is the controlling authority in this matter. In Meader, the plaintiff challenged Meader's ability to serve as a member of the legislature and a supervisor of the checklist for the city of Rochester. The plaintiff claimed as a state representative that Meader was required to exercise legislative functions and that as a supervisor of the checklist he was called upon to exercise judicial powers. In Meader, the Court ruled that it is not unconstitutional for officials to hold different offices having both judicial and executive functions. The Court ruled, and the Commission concurs, that "all that is meant by the language there (meaning Article 37 of the New Hampshire Constitution) used is that one department of the state government shall not interfere with another department, or usurp its powers and authority; that the legislative, executive and judicial departments should be separate and independent of each other so far as the efficient administration of the state government will permit." The Court further noted that Article 37 was not intended to "limit the offices officials should hold; because in articles 92, 93 and 94 of the constitution that subject is fully considered." The Court further stated, "In those articles certain officials are inhibited from holding offices. But the inhibitions in these articles do not include the offices held by Meader, and there is nothing in the constitution that prohibits him from holding the offices to which he was elected by the suffrage of the people."

In this case, as in Meader, there is no constitutional bar to attorneys holding offices in the legislative branch.

As such, the Petition is hereby dismissed.

NEW HAMPSHIRE BALLOT LAW COMMISSION



Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Margaret-Ann Moran, Alternate Commissioner

10/2/02

Date