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JAN 15 2004

NEW HAMPSHIRE BALLOT LAW COMMISSION

NEW HAMPSHIRE  
SECRETARY OF STATE

REPLY TO PETITION OF KEN BLEVENS

NOW COMES the Office of the Attorney General and replies to the Petition of

Ken Blevens, as follows:

JURISDICTION

1. This Commission does not have jurisdiction to hear this matter. RSA 665:6-RSA 665:9-a. The Commission's Statute as amended effective January 1, 2004, limits the Commission jurisdiction to hearing and deciding:
  - a. Objections to nominations made at a primary. RSA 665:6, I.
  - b. Objections to nomination papers or the filling of vacancies in nominations occurring after the primary. RSA 665:6, II.
  - c. Disputes arising over whether nomination papers or declarations of candidacy filed with the Secretary of State conform with the law. RSA 665:7.
  - d. Appeals from certain recounts. RSA 665:8.
  - e. Disputes regarding the form of a candidate's name to be used on a ballot. RSA 665:9.
  - f. Administrative complaints of federal law violations pursuant to the Help America Vote Act. RSA 665:9-a; RSA 666:14.
  - g. Disputes over straw candidates. RSA 655:31
  - h. Petitions for revision and verification of a checklist. RSA 654:38.
  - i. Applications for certification of voting machines. RSA 656:41.<sup>1</sup>

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<sup>1</sup> The Commission shall also make rules related to the use of voting machines. RSA 656:42.

2. Mr. Bleven's Petition seeks an advisory opinion regarding whether, during an election, a Moderator may prohibit a person from approaching voters within the polling building and asking the voter to sign a petition for nomination to an office not being voted on at the election then in progress.

3. The Ballot Law Commission has no authority to issue advisory opinions.  
RSA 665.

**MODERATORS HAVE THE AUTHORITY TO PREVENT PETITION DRIVES IN THE POLLING PLACE ON ELECTION DAY**

4. Should the Ballot Law Commission consider the Petition, the Commission should order that the Moderator may prohibit an individual from asking voters to sign a petition within the polling place on any nomination, candidacy, question, or political issue. The Moderator should have discretion to determine the boundaries of the polling place.<sup>2</sup>

5. "The meetings for the choice of governor, council and senators, shall be . . . governed by a moderator . . ." New Hampshire Constitution Part 2, Article 32. The broad constitutional grant of power to the Moderator to govern the conduct of meetings is properly understood to include all the modern day variations of the meetings for choosing the Governor, Council, and Senators, including all State and local elections as well as the presidential preference primary.

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<sup>2</sup> When the polling place is a building containing rooms that are not part of the railed-in voting area and which are not part of the path from the voting area to and from the entrance(s) used by voters, we raise no objection to Moderators allowing this type of activity in a separate room. Similarly, when the polling place is in a large gymnasium and the railed in area takes up only a small percentage of the room, we raise no objections to Moderators designating a far corner of the gym, not along the path voters must follow to enter or exit the room, for non-electioneering activities.

6. "It shall be the duty of the moderator to secure the observance of the provisions of the following sections relating to the conduct of voting . . ." RSA 659:9.

These provisions include:

**659:37 Interfering with Voter, Etc.** No person shall interfere or attempt to interfere with any voter when such voter is in the space within the guardrail or endeavor to induce any voter before voting to show how he marks or has marked his ballot. Whoever knowingly violates this section shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

**659:43 Distributing Campaign Materials at Polling Place.** I. No person who is a candidate for office or who is representing or working for a candidate shall distribute or post at a polling place any campaign material in the form of a poster, card, handbill, placard, picture, or circular which is intended to influence the action of the voter within the building where the election is being held.

II. No person who is a candidate for office or who is representing or working for a candidate shall distribute any campaign materials or perform any electioneering activities or any activity which affects the safety, welfare and rights of voters within a corridor 10 feet wide and extending a distance from the entrance door of the building as determined by the moderator where the election is being held.

III. Whoever violates any of the provisions of this section shall be guilty of a violation.

**659:44 Electioneering at the Polling Place.** No election officer shall electioneer while in the performance of his official duties. For the purposes of this section, "electioneer" shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.

**659:45 General Provisions.** It shall be the responsibility of the moderator to report any violation occurring under RSA 659:34 through 659:44 to the attorney general. . . .

7. Moderators and the Ballot Law Commission should construe these statutes to require a Moderator to prohibit any form of electioneering inside the room where voting is conducted, inside any section of the building which a voter must pass through to reach the voting area, and inside the ten foot wide no-electioneering zone required by law outside the polling place.

8. The Secretary of State's Election Procedures Manual, issued with the advice and approval of the Attorney General, directs Moderators to avoid allowing any activity that may have the effect of electioneering or which may discourage voting by creating the appearance of improper electioneering.

The Moderator shall not allow [public information displays on issues before the community even if not before the voters at the election, discussion of current political events, persons engaged in electioneering to enter the building to warm up while carrying signs or electioneering materials] in the path into and out of the voting area. A voter must be able to come to the polling place, cast his or her vote, and leave without having to avoid or turn away from those involved in these activities.

...  
Moderators should exercise caution when allowing any kind of activity that involves public education or displays of information on issues of public interest/concern. Particular caution must be exercised if a moderator allows petition or letter signing drives to occur in the room where voting occurs. The best practice is not to allow such activities. . . .

Election Procedures Manual at 70 (2004-2005 edition). *See* pages 70-71 of the Election Procedures Manual for a more extensive review of the guidance provided on electioneering.

9. Mr. Blevens cites RSA 31:102-a and seeks to have the Ballot Law Commission hold that it prohibits a Moderator from preventing petitioning inside the

building where the polling place is established. RSA 31:102-a is meant to allow towns to regulate salespersons who travel from house to house or who set up temporary or transient sales locations. The apparent purpose of preventing the application of this statute to candidates for public office is to prevent a town from requiring a candidate to obtain a license to go from house to house campaigning or seeking signatures from voters at the town common. RSA 31:102-a is not applicable to the Moderator's management of the polling place.

10. "[I]n the case of conflicting statutory provisions, the specific statute controls over the more general statute." *Sanborn Regional School District V. The Budget Committee Of The Sanborn Regional School District*, No. 2003-290, slip op. at 2 (N.H. November 10, 2003) (citing *Appeal of Plantier*, 126 N.H. 500, 510 (1985)). Even were RSA 31:102-a applicable, the more specific statutes cited at paragraph 6 above would control.

11. The Ballot Law Commission should decline to accept Mr. Belven's Petition as the Ballot Law Commission lacks jurisdiction. If the Ballot Law Commission accepts Mr. Beleven's Petition, the Ballot Law Commission should order that the Moderator has the constitutional and statutory authority to control the polling place which includes the authority to prevent petitioning in the building where the polling place is established.

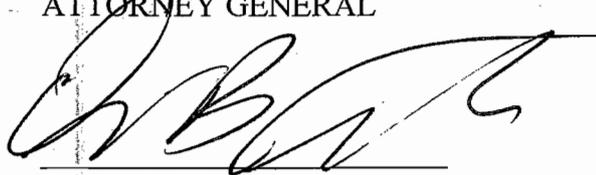
WHEREFORE, the Attorney General respectfully requests this Commission to:

- A. Dismiss this Petition for lack of jurisdiction; or .
- B. If this matter is heard, deny the Petition for the reasons stated above; and

C. Grant such other relief as justice may require.

Respectfully Submitted,

PETER W. HEED  
ATTORNEY GENERAL



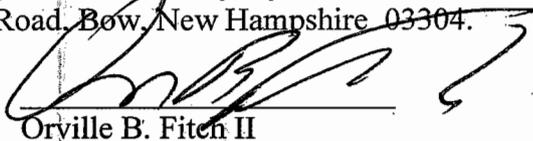
January 15, 2004

Orville B. Fitch II  
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January 15, 2004

CERTIFICATION

I certify that a copy of the foregoing was sent this day, by facsimile and first class postage prepaid, to Ken Blevens, 2 Valley Road, Bow, New Hampshire 03304.



Orville B. Fitch II