

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

Petition

Of

The Libertarian Party

DECISION

On September 27, 2000, pursuant to RSA 665, the Ballot Law Commission (“the Commission”) held a public hearing on the Libertarian Party’s challenge of the Attorney General’s determination pursuant to RSA 655:40-a that the Libertarians have gained “party” status and are therefore subject to the provisions of RSA 659:91-a.

The crux of the Attorney General’s Opinion is that the Libertarian organization, by virtue of complying with RSA 655:40-a, became certified as a political party and gained party status by submitting to the Secretary of State’s Office the requisite nomination papers. By so doing, the Opinion states that RSA 659:91-a, known as the “sore loser statute,” is applicable to the Libertarian organization due to its new “party status.” With this interpretation, any candidate who ran in the September 2000 primary as either a Democrat or a Republican cannot now have their name placed on the ballot as a Libertarian Party candidate in the upcoming general election.

At the heart of the argument is the fact that, although the word “party” has many different meanings under New Hampshire law, “party” is used interchangeably within a number of election law statutes. RSA 652:11 defines a “party” as “any political organization which, at the preceding state general election, received at least four percent of the total number of votes cast for governor or U.S. Senators”. RSA 655:40-a permits

“a political party” to have its name placed on the ballot by submitting nomination papers signed by legal voters, equaling three percent of the total votes cast (RSA 655:42). The Libertarian organization failed to receive four percent of the total number of votes cast, but submitted nomination papers signed by three percent of the number of votes cast in the last state election. Therefore, the issue before the Commission is whether a political organization that failed to receive at least four percent of the number of votes cast in the last election, but has submitted petitions signed by three percent of the number of votes cast, is a political party for purposes of RSA 659:91-a. The Commission finds that the definition of party contained in RSA 652:11 is controlling, and that the Libertarian organization is not subject to the provisions of RSA 659:91-a.

It is undisputed that ^{the} Libertarian organization did not receive at least four percent of the total number of votes cast in the last gubernatorial election. Therefore, under a strict reading of RSA 652:11, the Libertarian organization is not, in fact, recognized as a party under New Hampshire election laws. The fact that it complied with RSA 655:40-a, and found an alternative method for having candidates names placed on the ballot with the Libertarian heading, does not vault them into status as a political party as contemplated by RSA 652:11. It merely places their collective candidates on the ballot with their organization name, in this case, Libertarian. *See* RSA 655:40.

It is the Commission’s ruling that complying with RSA 655:40-a does not, on its own, give a political party, or organization, “party” status as defined at RSA 652:11. Therefore, RSA 659:91-a does not apply to these candidates because 659:91-a specifically refers to candidates who previously have run as a candidate for a “party,” as defined in RSA 652:11.

Accordingly, the Commission finds that the Libertarians are not a political party within the statutory definition and therefore are not bound by RSA 659:91-a, the "sore loser statute." The Secretary of State's Office is hereby authorized to include on the ballot for the general election any Libertarian candidate otherwise qualified.

NEW HAMPSHIRE BALLOT LAW COMMISSION

Date: 9/29/00

By: 

Gary B. Richardson, Chairman
Hugh Gregg, Commissioner
Emily Gray Rice, Commissioner