

THE STATE OF NEW HAMPSHIRE

BALLOT LAW COMMISSION

DONALD J. CRATE

VS.

TOWN OF ENFIELD, NEW HAMPSHIRE

Hearing was held on the Amended Petition filed by Donald J. Crate (middle initial corrected at start of the hearing) dated March 30, 1994--he was a candidate for election to the Board of Selectmen at the March, 1994 meeting. Timothy J. Wells, Esquire, appeared for Petitioner and Mr. Crate was present for the hearing. Barton L. Mayer, Esquire, appeared for Petitionee, Town. Nancy Scovner (spelling corrected at start of the hearing) a present member of the Board of Selectmen (elected 1993), and Ilene Reed, Town Clerk (for ten years), were also present for the Town.

Emily Gray Rice, Esquire, and the Honorable Hugh Gregg, regular Commission members, and Paul F. Donovan, Alternate Chairman (Mr. Richardson having recused himself), were present.

Mr. Donovan called the hearing to order at 9:00 a.m. in Room 302 of the Legislative Office Building.

Testimony was received from Nancy Scovner, Ilene Reed, Raymond Aldrich and Donald J. Crate. Exhibits submitted for the Petitioner, Numbers 1, 2 and 3 were copies of ads from the "Messenger" a local Enfield publication dated February 16, 1994, February 23, 1994 and March 2, 1994 (the last noted as having had to be prepared not later than February 25 as per "Messenger" requirements), and 4--copy of Nancy Scovner becoming an Inspector of the Election in October, 1992. Exhibits submitted by the Town were Numbers A, B and C--affidavits of Georgianna Sharkey, John Sinclair and Eunice Walker and D--statement of Ballot results at the March 8, 1994 meeting and the recount after such meeting. Additional material before the Commission were the Amended Petition filed as aforesaid and the Town's Answer dated June 17, 1994.

Petitioner's position was that Mrs. Scovner, a member of the Board of Selectmen and an election official, Inspector of the Election, actively worked in the campaign of Bert Gilbert for election to the office of Selectman at the March, 1994 Town Meeting; that the Town Clerk designated Scovner to assist her in the election process by having her deliver certain ballots to six absentee voters in the Town, such ballots to be submitted for voting at such meeting; and that such was an impropriety under RSA 657:15 so as to invalidate the election and require a new election--Mr. Gilbert having obtained a majority of the vote at the March, 1994 meeting.

From the testimony and Exhibits submitted, the Commission makes the following findings of fact:

1. That Nancy Scovner did support Bert Gilbert for election to the Board of Slectmen at the March, 1994 meeting;
2. The she exhibited such support by having an 8½ x 11 piece of paper, supporting Mr. Gilbert, in the back window of her car and by sometimes wearing a campaign button, or badge, supporting Gilbert, on her overcoat;
3. That there is an organization named "Enfield Improvement Society" (EIS) in the Town of which, at various times, Mrs. Scovner and Ilene Reed were members and that Mr. Scovner wrote the EIS column which appeared in the "Messenger", a local Enfield publication;
4. That at some time prior to March 3, 1994 (the date of publication of Petitioner's Exhibit #3), Mrs. Scovner, to assist Ilene Reed, the Town Clerk, who had the flu, asked her if there was anything she could do to help and that the Town Clerk asked her to deliver some absentee ballots to certain voters who had applied for same, which Mrs. Scovner agreed to do;
5. That Mrs. Scovner did deliver the absentee ballots to the subject voters (totalling 6) and that as to the first 4 she did not wear the Gilbert button, or badge, on her coat, she was not sure as to the last 2;
6. That both Mrs. Scovner's and Ilene Reed's names appear as sponsors for Bert Gilbert on the March 3, 1994 ad (Petitioner's Exhibit 3);
7. That neither Mrs. Scovner nor Ilene Reed knew the composition of an alleged group "Citizens Bert Gilbert" and neither were members of such group;
8. That Mr. Crate is not quibbling over 6 votes but is upset due to his perception of the appearance of impropriety due to the way the officials handled the whole process;
9. That further findings are made in ruling on requests as follows:

On Petitionee Town's Requests: Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 are granted.

On Petitioner's Requests: Numbers 1, 2, 3, 4, 7, 9, 10 and 18 are granted.

On Petitionee's Requests: Number 14 is Denied, in view of the Decision hereinafter noted.

On Petitioner's Requests: Numbers 8, 11, 12 and 19 are Denied; Numbers 5, 6, 13, 14, 15, 16, 17 and 20 are Denied as worded.

Decision

Based on the foregoing, it is the Decision of the Commission that Petitioner has not met his burden of proof and the Petition is dismissed.

Dated this 13th day of July, 1994.

Ballot Law Commission

Paul F. Donovan

Paul F. Donovan
Alternate Chairman

Emily Gray Rice

Emily Gray Rice

Hugh Gregg

Honorable Hugh Gregg