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SECRETARY OF STATE

THE STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

Wright v. Houlahan

ORDER

This matter was heard by the Ballot Law Commission on July 28, 1994. Present at the hearing were the Complainant, Robert W. Wright, Jr., and his attorney, Paul Hodes of Manchester, New Hampshire; and the Respondent, Thomas G. Houlahan, and his counsel, Professor Marcus Hurn.

The gravamen of the complaint by Mr. Wright is that Mr. Houlahan is not eligible to serve in the State Senate because he does not meet the requirements of Part II, Article 29 of the New Hampshire Constitution which states, "No person shall be capable of being elected a senator of the State of New Hampshire unless he shall have been an inhabitant of this State for seven years immediately proceedings his election." Part II, Article 30 defines inhabitant as follows:

[Art.] 30th. [Inhabitant Defined.] And every person, qualified as the constitution provides, shall be considered an inhabitant for the purpose of being elected into any office or place within this state, in the town, or ward, where he is domiciled.

Both Mr. Wright and Mr. Houlahan testified during the hearing. While he testified that he had no personal knowledge of the facts in the petition relating to Mr. Houlahan's residence or domicile, Mr. Wright provided the Commission with copies of a number of documents relative to Mr. Houlahan's residency during the period from 1981 through 1990.

The Commission finds that Mr. Houlahan has been domiciled in the State of New Hampshire since 1985, and is, therefore, a qualified inhabitant of this State within the meaning of Part II, Article 29 of the New Hampshire Constitution. The Commission finds as follows:

Mr. Houlahan formed an intention to make the State of New Hampshire his home after his parents relocated their residence from New York to New London, New Hampshire, in September of 1985. At that time, Mr. Houlahan spent approximately a month in New London and, upon his return to military service, completed a State of Legal Residence Form on December 10, 1985, declaring the State of New Hampshire as his domicile. At the time that he completed this form, Mr. Houlahan understood that a copy would be provided to the State in which he was formerly domiciled, thereby fulfilling one of the means specified by the form for changing one's domicile. In September 1986, Mr. Houlahan's name appeared on the rolls for the "head tax" in the Town of New London. Several weeks prior to December 16, 1987, while on leave from the military, Mr. Houlahan returned from to New London, New Hampshire, while on leave and registered to vote. He voted in New Hampshire, in person, during the February 1988 presidential primary.

Although Mr. Houlahan subsequently obtained driver's licenses in North Carolina and Pennsylvania, the Commission finds that if at all relevant to these proceedings, the obtaining of such licenses are merely reflective of Mr. Houlahan's residence

and not of his domicile.

In order to establish a domicile in New Hampshire, an individual must maintain a physical presence in this State and manifest an intent to make New Hampshire his home, to the exclusion of all others. Although the Respondent's counsel correctly noted that RSA 654:1 and :2 apply specifically to voter qualifications, these statutes have guided the Commission's decisions respecting domicile in the past and provide similar guidance in this instance. The determination of domicile is not controlled simply by RSA 654:1 as expressed by the Complainant's counsel, but also by RSA 654:2, which specifies that an individual does not lose his domicile in this State by virtue of service in the military or student status. Moreover, the maintenance of a residence in New Hampshire is not a prerequisite to establishing a New Hampshire domicile. N.H. Constitution, Part II, Article 30.

With the exception of absences from the State due to military service and student commitments, Mr. Houlahan has been present in the State of New Hampshire on many occasions beginning in 1985 and, based upon both the above-referenced actions and the intent that he has consistently expressed to others, has made New Hampshire his domicile.

Moreover, during this period, Mr. Houlahan was not domiciled in any other place. Accordingly, Mr. Houlahan is not disqualified from candidacy under Part II, Article 29 of the New Hampshire Constitution.

SO ORDERED.

Dated: August 3, 1994

Gary B. Richardson (BMC)
Gary B. Richardson, Chairman

Emily Gray Rice
Emily Gray Rice, Commissioner

Elizabeth W. Maiola
Elizabeth Maiola, Commissioner