

THE STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION

SEAN MAHONEY'S HEARING MEMORANDUM

NOW COMES Sean Mahoney, of 27 Austin Street, Portsmouth, New Hampshire, a Republican candidate for Executive Councilor, District 3 and hereby submits the following Hearing Memorandum.

I. Sean Mahoney Meets the Constitutional and Statutory Qualifications for the Office of Executive Councilor

Mr. Mahoney meets the constitutional and statutory qualifications to serve as an Executive Councilor because he has maintained a domicile in New Hampshire throughout the seven-year period preceding the general election scheduled on November 7, 2006.

Part II, Article 61 of the New Hampshire Constitution provides that "the qualifications for councilors shall be the same as for senators." In turn, Part II, Article 29, qualifications for a senator provides, in pertinent part, that "no person shall be capable of being elected a senator... who shall not have been an inhabitant of this state for seven years immediately preceding his election, and at the time thereof he shall be an inhabitant of the district for which he shall be chosen." N.H. Const. Part II, Art. 29 (emphasis added).

RSA 655:6 states that:

To hold the office of councilor, a person must be qualified as provided in Part 2, Article 61 of the state constitution: the person must be of the age of 30 years, and shall have been an inhabitant of this state for 7 years immediately preceding the election, and at the time thereof shall be an inhabitant of the district for which he or she shall be chosen. Should such

person, after election, cease to be an inhabitant of the district for which he or she was chosen, he or she shall be disqualified to hold said position and a vacancy shall be declared therein.

(emphasis added). RSA 21:6 defines "inhabitant" as follows:

A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

(emphasis added). Part II, Article 30 of the New Hampshire Constitution provides:

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.

(emphasis added). In conjunction with Part II, Article 30, RSA 655:2 states "[t]o hold any elective office in the state, a person must have a domicile in the state. Registration to vote or voting in another state during the relevant time period shall create a presumption that a person does not have a domicile in this state." Mr. Mahoney did not register to vote in any state other than New Hampshire during the relevant seven-year period.

Although temporarily absent from the state for brief periods, Mr. Mahoney has continually demonstrated his intent to maintain his New Hampshire domicile. Under New Hampshire law, "residency shall not be interrupted or lost by a temporary absence from [the state], if there is an intent to return to such residency or residency as the principal place of physical presence." RSA 21:6-a.

II. Sean Mahoney's Domicile in New Hampshire

On June 8, 2006, Mr. Mahoney filed his declaration of candidacy for the office of Executive Councilor, District 3. Mr. Mahoney completed an affidavit affirming that he has been domiciled in the State of New Hampshire for the seven years immediately preceding the November 7, 2006 election.

Mr. Mahoney was born in Portsmouth, New Hampshire and raised in North Hampton, New Hampshire. In 1992, Mr. Mahoney was registered to vote in North Hampton, New Hampshire. Mr. Mahoney voted in North Hampton in the 1996 Presidential Primary and General Election.

Mr. Mahoney was maintained on the North Hampton, New Hampshire voter checklist for 1997, 1998 and 1999. During these years, Mr. Mahoney did not register to vote in any other state. Although Mr. Mahoney temporarily lived in Cambridge, Massachusetts from 1996 through 2000, he did not register to vote in Massachusetts during this time period.

Even while living in Massachusetts, Mr. Mahoney had a definite intention of returning to New Hampshire. For example, Mr. Mahoney was working with a New Hampshire real estate agent in 1998 and 1999 to purchase a home in the Portsmouth, New Hampshire area. Eventually, Mr. Mahoney purchased his home in Portsmouth, New Hampshire in August of 2000, where he currently resides. Also in 2000, Mr. Mahoney changed his voter registration from North Hampton, New Hampshire to Portsmouth, New Hampshire. The voter registration card required Mr. Mahoney to affirm that his permanent established domicile is in the State of New Hampshire.

Mr. Mahoney's other activities demonstrate he has always regarded his domicile as being the State of New Hampshire since his birth here in Portsmouth. For example, Mr. Mahoney has maintained a membership at the Abenaki Golf Club in Rye Beach, New Hampshire each year since the mid-1980's, including 1998, 1999 and 2000. In 1998 and 1999, Mr. Mahoney made donations to New Hampshire non-profit organizations such as St. Theresa Parish (Rye, New Hampshire), Pro Portsmouth, Inc. and Junior Achievement of New Hampshire. In 1998 and 1999, Mr. Mahoney made political contributions to the New Hampshire Republican Party.

Mr. Mahoney has maintained a New Hampshire driver's license since 1986. He received a duplicate title for his vehicle from the State of New Hampshire, Department of Motor Vehicles.

III. Conclusion

Mr. Mahoney has continually demonstrated his intent to maintain his New Hampshire domicile. As such, he meets the seven-year durational residency requirement.

In 2002, the New Hampshire Democratic Party objected to the nomination of Fergus Cullen for State Senate, District 6. In written submission to the Commission, the New Hampshire Democratic Party stated:

By its 2001 amendment of N.H. RSA 655:2 the legislature declared that registering to vote or voting in another jurisdiction are the only acts which preclude a claim of domicile during the relevant time period. By way of contrast, the legislature did not declare that registering a car, applying for a motor vehicle, professional or trade license, paying taxes, or any other activity precluded a claim of domicile. By registering to vote a person joins a political community.

Mr. Mahoney agrees with this position. He did not register to vote in any state other than New Hampshire during the relevant seven-year period. Mr. Mahoney's actions during this relevant period demonstrate his intent to maintain his New Hampshire domicile.

Based on the above, Sean Mahoney is a qualified candidate for the office of Executive Councilor, District 3, based on the seven-year durational residency requirement.

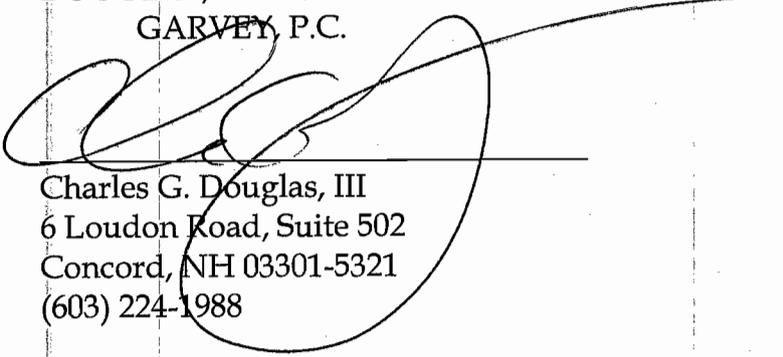
WHEREFORE, Sean Mahoney requests that the Commission:

- A. Determine that Sean Mahoney is legally qualified to be elected to or serve in the Office of Executive Councilor; and
- B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,
SEAN MAHONEY
By his attorneys,
DOUGLAS, LEONARD &
GARVEY, P.C.

Date: June 28, 2006

By:


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