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**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

OCT 25 2000

**NEW HAMPSHIRE
SECRETARY OF STATE**

In Re: The Libertarian Party of New Hampshire

v.

Secretary of State William Gardner

DECISION

On October 20, 2000, pursuant to RSA 665, the Ballot Law Commission ("the Commission") held a public hearing on the Libertarian Party's Petition to Instruct the Secretary of State to comply with RSA 656:10 and provide "straight ticket" voting for the Libertarian Party on the 2000 general election ballot.

The Petitioner contends, essentially, that as it is considered a political party under RSA 655:40-a, it should also be considered a political party within the meaning of RSA 656:10. RSA 656:10 provides that "[t]he secretary of state shall prepare voting instructions for straight ticket voting for each of the political parties listed on the ballot . . ." Thus, the Petitioner asserts, it is entitled to a straight ticket voting instruction on the 2000 general election ballot.

The Petitioner agrees that it does not fall within the definition of a "party" as defined by RSA 652:11. Under that statute, "'Party' shall mean any political organization which at the preceding general election received at least 4% of the total number of votes cast for any one of the following: the office of governor or the offices of United States Senators." The Libertarians did not receive 4% of the votes at that election.

The Petitioner availed itself of the nomination process, enacted by the Legislature in 1996, RSA 655:40-a, to become listed on the ballot as a party. Under RSA 655:40-a, "[a] political *party* may have its name placed on the ballot for the state general election by submitting the requisite

number of nomination papers, in the form prescribed by the secretary of state, pursuant to RSA 655:42, III" (italics added). The Petitioner submitted the requisite nomination papers and satisfied this requirement.

Subsequently, the Petitioner submitted the names of candidates to be listed on the state general election ballot under the Libertarian Party's name, pursuant to RSA 655:40-b. Thereafter, the Petitioner's ability to list on the general election ballot the names of candidates who had previously run as candidates for the Republican or Democratic Party at the state primary election was questioned under RSA 659:91-a, "the sore loser law." RSA 659:91-a prohibits "[a]ny person who is a candidate on any party's state primary election ballot [from running] as the nominee of a different *party* in the state general election unless he is successful in securing the nomination of his own party in the primary." (Italics added.) The issue raised was whether this restriction applied to the Libertarian Party, thereby precluding anyone who had run and lost in the 2000 state primary election as a Republican or Democratic candidate from running in the 2000 state general election as a nominee of the Libertarian Party.

In its decision of September 29, 2000, the Ballot Law Commission found that the Libertarian political organization was not a "party" as defined by RSA 652:11. Although it had met the requirements of RSA 655:40-a in order to achieve the status of having its name and candidates listed on the general election ballot, it had, nevertheless, not become a party within the meaning of "party" as contained in the general provisions of the elections laws at Chapter 652. Because the Libertarian political organization was not a "party" under the general provisions, (RSA 652:11), the Commission determined that the Libertarian organization was not constrained by the restrictions of 659:91-a. The Commission explained that the Petitioner's compliance with RSA 655:40-a "merely places its collective candidates on the ballot with their organization name,

in this case, Libertarian.” Ballot Law Commission Decision, Petition of Libertarian Party, dated September 29, 2000, at 2.

The same logic applies to the issue raised in the present Petition. As the Libertarian organization is not a “party” under the definition contained in the general provisions of the election laws in Chapter 652 (RSA 652:11), similarly, the terms of RSA 656:10 do not apply to it. Consistent with this interpretation, the Commission notes that RSA 652:11 and 656:10 were both enacted in 1979 as part of the general codification of the election laws. Laws of 1979, Ch. 436. Thus, these provisions may reasonably be considered as using the same meaning of the term “party,” whereas RSA 655-40-a, enacted in 1996, created an alternative method by which a political organization that did not meet the requirements of RSA 652:11 could be listed on the ballot. Thus, the word “party” in RSA 655:40-a necessarily has a different meaning than that contained in the general provisions. While recognizing that there are ambiguities within the language of the election laws, the Commission finds that RSA 655:40-a does not alter the general meaning of “party” within the election laws and does not give a political organization the same status as a “party” as defined in RSA 652:11.

For these reasons, the Commission rules that the Secretary of State need not include an instruction for straight ticket voting for the Libertarian Party on the 2000 general election ballot.¹

NEW HAMPSHIRE BALLOT LAW COMMISSION

Dated: 10/25/00

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

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¹ It is worth noting that the designation of “Libertarian” will still appear on the ballot following the individual Libertarian candidate’s name.