

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

September 27, 2023

**SENT BY EMAIL**

Honorable James Gray  
Chair, Senate Committee Election Law and Municipal Affairs  
Legislative Office Building Room 102  
107 North Main Street  
Concord NH 03301

**SENT BY EMAIL**

Honorable Ross Berry  
Chair, House Committee on Election Law  
Legislative Office Building, Room 308  
107 North Main Street  
Concord NH 03301

Dear Senator Gray and Representative Berry:

Enclosed please find the Election Law Complaint Status Report submitted pursuant to RSA 7:6-c for the reporting period July 1, 2022-December 31, 2022. Assistant Attorney General Brendan O'Donnell, who leads the Election Law Unit, is prepared to respond to any questions you may have. He can be reached at 603-271-3650 or [Brendan.A.ODonnell@doj.nh.gov](mailto:Brendan.A.ODonnell@doj.nh.gov).

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "John M. Formella".

John M. Formella  
Attorney General

Enclosure

STATE OF NEW HAMPSHIRE

DEPARTMENT OF JUSTICE

SENATE COMMITTEE ON ELECTION LAW AND MUNICIPAL AFFAIRS

HOUSE COMMITTEE ON ELECTION LAW

Election Law Complaint Status Report

Submitted Pursuant to RSA 7:6-c

Reporting Period July 1, 2022, to December 31, 2022

Issued September 27, 2023

Prepared by:

John M. Formella  
Attorney General

Brendan A. O'Donnell  
Assistant Attorney General  
Election Law Unit  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301  
(603) 271-3650

## INTRODUCTION

Part I, Article 11 of the New Hampshire Constitution provides, in part, that “[a]ll elections are to be free, and every inhabitant of the State of 18 years of age and upwards shall have an equal right to vote in any election.” To safeguard this constitutional provision, and pursuant to RSA 7:6-c, the Legislature has designated the Attorney General to enforce all election laws in New Hampshire. In 2017, the Attorney General established a free-standing Election Law Unit. During this reporting period, the Unit was staffed by two full-time attorneys, Deputy General Counsel Myles Matteson and Attorney Matthew Conley; one full-time elections investigator, Chief Investigator Richard Tracy; and one full-time investigative paralegal, Jill Tekin.

Pursuant to RSA 7:6-c, II, (a), the Attorney General hereby submits to the New Hampshire House of Representatives and Senate this report on the status of all complaints of alleged violations of election laws received from July 1, 2022, to December 31, 2022. This report is divided into three parts. Section I, pursuant to RSA 7:6-c, II (b), includes a summary of complaints received from July 1, 2022, to December 31, 2022, and a categorization of complaints received by type of complaint and month received as required by RSA 7:6-c, II (b). Section II lists all complaints received prior to this reporting period that remain open as of the publication date of this report. Finally, Section III contains an index of matters that have been closed during the reporting period or subsequently, and pursuant to RSA 7:6-c, II (c), attached hereto are the closure letters, settlement agreements, cease-and-desist orders, and other official communications that describe the results of each complaint that has been investigated or an explanation of why the complaint was closed without an investigation.

I.

**SUMMARY OF COMPLAINTS RECEIVED FROM July 1, 2022, to December 31, 2022**

<b>Complaint Against</b>	<b>Complainant</b>	<b>Date of complaint</b>	<b>Allegations</b>	<b>Status</b>	<b>Bates No.</b>
Kathleen Cavalaro	Terese Grinnell	7/6/2022	RSA 659:34, Alleged wrongful voting	Closed on 7/8/2022	001-002
Clear Insight	Patrice Rasche, Rep. Lucy Weber	7/6/2022	RSA 664:16, Push poll	Closed on 8/9/2022	009
Kimberly Abare (Pelham Evergreen)	Dave Wilson	7/28/2022	RSA 664:16, Alleged illegal campaign activity	Closed on 8/8/2022	007-008
Alleged Wrongful Voting - unfounded	James Barry	8/1/2022	RSA 659:34, Alleged wrongful voting	Closed on 8/19/2022	031-032
Alleged Wrongful Voting - unfounded	Town of Chichester	8/2/2022	RSA 659:34, Alleged wrongful voting	Closed on 5/31/2023	161-163
Hooksett Campaign Sign Theft	JR Hoell, Rep. Michael Yakubovich	8/12/2022	RSA 664:17, Alleged illegal campaign activity	Closed on 9/15/2023	195-197
Coos District 3 Election Officials	Gary Whitehill	8/12/2022	RSA 659:69, Alleged election official misconduct	Closed on 1/18/2023	114
Alleged Wrongful Voting	Brenda Towne	8/24/2022	RSA 659:34, Alleged wrongful voting	Open	
Unidentified Mailer-Reynolds DeWalt	Multiple	8/27/2022	RSA 664:14, Alleged illegal campaign activity	Open	

New Hampshire Democratic Party mailer	SoS referral	8/30/2022	RSA 659:34, Alleged Wrongful Voting	Open	
Citizens Count Political Survey	Rep. Daniel Popovici Muller	9/2/2022	RSA 666:6, Alleged illegal campaign activity	Open	
New Durham Town Clerk	Jeff Kratovil	9/14/2022	RSA 654:2, Alleged election official misconduct	Closed on 8/10/2023	168-171
Theft of signs – unknown perpetrator	Roberta Boudman	10/5/2022	RSA 664:17, Alleged illegal campaign activity	Closed on 8/30/2023	178-179
Winchester Election Officials	Jennifer Rhodes, Mary Rogers	10/10/2022	RSA 659:37, Alleged election official misconduct	Closed on 1/5/2023	106-111
603 Forward mailer	Self-reported	10/17/2022	RSA 659:40, Alleged illegal campaign activity	Open	
Carolyn McKinney	Multiple	10/25/2022	RSA 664:14, Alleged illegal campaign activity	Open	
Roger Sylvestre	John McCormick	10/27/2022	RSA 641:3, Alleged illegal campaign activity	Closed on 6/22/2023	164-167
Town of Hooksett	Multiple	10/26/2022	RSA 666:3, Alleged election official misconduct	Open	
Donna Veilleux	Chief Robert King	10/26/2022	RSA 664:17, Alleged illegal campaign activity	Closed on 8/29/2023	174-177
nhFacts.info website	Rep. Sue Homola	11/1/2022	RSA 664:14, Alleged illegal	Open	

			campaign activity		
Alleged Wrongful Voting	Self-reported	11/8/2022	RSA 659:34, Alleged wrongful voting	Open	
Alleged Wrongful Voting - unfounded	Clerk Sally Kellar	11/10/2022	RSA 659:34, Alleged wrongful voting	Closed on 3/10/2023	149-151
Alleged Wrongful Voting	Steve Thomas	11/10/2022	RSA 659:34, Alleged wrongful voting	Open	
Alleged Wrongful Voting	Clerk Jennifer Stewart	11/17/2022	RSA 659:34, Alleged wrongful voting	Open	
Alleged Wrongful Voting	Herb Richardson	11/17/2022	RSA 659:34, Alleged wrongful voting	Open	
Alleged Wrongful Voting	Clerk Jaseya Ewings	11/18/2022	RSA 659:34, Alleged wrongful voting	Open	
Alleged Wrongful Voting - unfounded	Maegan Ellis	11/22/2022	RSA 659:34, Alleged wrongful voting	Closed on 3/10/2023	152-154
Town of Brentwood	SoS referral	11/23/2022	RSA 659:77, Alleged election official misconduct	Open	
Richard Cormier	Eileen Mashimo	11/29/2022	RSA 666:3, Alleged election official misconduct	Closed 1/30/2023	117-118
Town of Windham	Ken Eyring, Tom Murray	12/21/2022	RSA 666:3, Alleged election official misconduct	Open	

**A. Number of Complaints Received Per Month**

<b>Month/ year</b>	<b>Number of Complaints</b>
July 2022	3
August 2022	7
September 2022	2
October 2022	7
November 2022	10
December 2022	1
<b>TOTAL:</b>	<b>30</b>

**B. Complaints Received by Type of Complaint**

<b>Type of Complaint</b>	<b>RSA Violations</b>	<b>Number of Complaints</b>
Alleged Wrongful Voting	RSA 659:34 (wrongful voting)	12
Alleged Illegal Campaign Activity	RSA 664:14 (political advertising disclosure requirements); RSA 664:16 (push poll, political advertising in newspaper,); RSA 664:17 (removal of signs); RSA 666:6 (false documents)	11
Alleged Election Official Misconduct	RSA 654:2 (temporary absence); RSA 659:37 (voter interference); RSA 659:69 (duties); RSA 659:77 (general neglect); RSA 666:3 (official misconduct)	7
Alleged Campaign Finance Violation		0
Election Review & Follow-Up		0
<b>TOTAL:</b>		<b>30</b>



**II.**

**INVESTIGATIONS OPEN PRIOR TO THE  
REPORTING PERIOD**

<b>Alleged Violation</b>	<b>Date Opened</b>	<b>Date Closed</b>	<b>Bates No.</b>
Wrongful Voting RSA 659:34 – charges filed	10/30/19		
Voter Suppression RSA 659:40	8/12/20		
Voter Suppression RSA 657:4	8/27/20		
Illegal Campaign Activity RSA 656:18	10/15/20		
Phone Jamming RSA 659:40 – charges filed	4/23/21	4/24/2023	155-160
Wrongful Voting RSA 659:34 – charges filed	4/26/21		
Voter Intimidation RSA 659:40	6/15/21		
Illegal Campaign Activity RSA 664:6	7/1/21	8/31/2023	180-181
Illegal Campaign Activity RSA 664:14	12/22/21	9/13/2023	188-194
Wrongful Voting RSA 659:34 – charges filed	2/2/22		
Wrongful Voting RSA 659:34	2/18/22		
Illegal Campaign Activity RSA 664:14	2/18/22		
Illegal Campaign Activity RSA 664:14	3/8/22		
Wrongful Voting RSA 659:34	3/15/22		
Illegal Campaign Activity RSA 659:44	3/31/22		
Election Official Misconduct RSA 664:14	4/13/22	9/8/2023	182-187
Wrongful Voting RSA 659:34	6/1/22		
Illegal Campaign Activity RSA 659:34	6/30/22	8/28/2023	173

### III.

#### INDEX OF CLOSURE LETTERS/COMMUNICATIONS

Alleged Violation	Date Closed	Bates Page Number
RSA 659:34 – wrongful voting	7/7/2022	001-002
RSA 659:21 – guardrail	7/25/2022	003-005
RSA 659:40 – threatening	7/29/2022	006
RSA 664:14 – identification	8/8/2022	007-008
RSA 664:16-a – push-poll	8/9/2022	009
RSA 666:2 – official duties	8/19/2022	010-017
RSA 666:2 – official duties	8/19/2022	018-030
RSA 659:34 – wrongful voting	8/19/2022	031-032
RSA 659:34 – wrongful voting	8/24/2022	033-035
RSA 664:17 – theft of signs	8/26/2022	036
RSA 659:34 – wrongful voting	10/6/2022	037-039
RSA 664:6 – campaign finance	10/20/2022	040-042
RSA 664:6 – campaign finance	10/20/2022	043-046
RSA 659:43, :44, :44-a-electioneering	12/9/2022	047-059
RSA 654:34 – official duties	12/19/2022	060
RSA 659:44-a – electioneering	12/22/2022	061-065
RSA 659:44-a – electioneering	12/22/2022	066-068
RSA 659:44-a – electioneering	12/22/2022	069-072
RSA 659:44-a – electioneering	12/22/2022	073-081
RSA 664:14 – political signs	12/22/2022	082-083
RSA 669:19 – candidacy; RSA 666:3 – official duties	12/22/2022	084-088
RSA 659:34 – wrongful voting	12/22/2022	089-091
RSA 659:40 – voter suppression	1/5/2023	092-098
RSA 659:44-a – electioneering	1/5/2023	099-102
RSA 664:14 – identification on advertising	1/5/2023	103-105
RSA 666:1 - term of office	1/5/2023	106-111
RSA 659:44 – electioneering	1/10/2023	112-113
RSA 666:3 – official duties	1/18/2023	114
RSA 659:34 - wrongful voting	1/30/2023	115-116
RSA 666:3 – official duties	1/30/2023	117-118
RSA 659:9 – moderator duties	2/6/2023	119-124
RSA 659:34 – wrongful voting	2/10/2023	125-130
RSA 656:42 – clerk duties	2/10/2023	131-138
RSA 659:44-a – electioneering	2/10/2023	139-142

RSA 664:14 – identification on advertising	2/10/2023	143-144
RSA 666:3 – official misconduct	3/10/2023	145-148
RSA 654:34 – wrongful voting	3/10/2023	149-151
RSA 654:34 – wrongful voting	3/10/2023	152-154
RSA 666:6 – false names	4/24/2023	155-160
RSA 659:34 – domicile	5/31/2023	161-163
RSA 7:33 – qualifications	6/22/2023	164-167
RSA 666:3 – official duties	8/10/2023	168-171
RSA 659:43 – electioneering zone	8/14/2023	172
RSA 659:34 – domicile	8/28/2023	173
RSA 664:17 – removal of signs	8/29/2023	174-177
RSA 664:17 – removal of signs	8/30/2023	178-179
RSA 664:3 – campaign finance	8/31/2023	180-181
RSA 660:7 – incompatible office	9/8/2023	182-187
RSA 664:14 – identification on advertising	9/13/2023	188-194
RSA 664:17 – removal of signs	9/15/2023	195-197
RSA 659:44 – electioneering	9/15/2023	198-200

**Closure Letters, Settlement Agreements,  
Cease and Desist Orders, Complaints Filed With A Court,  
Or Other Official Communications**

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
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JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

July 7, 2022

Kathleen Cavalaro  
[REDACTED]  
Rochester, NH 03867

**Re: TikTok Video and Possible Voter Misinformation**

Ms. Cavalaro:

Yesterday this Office received complaints concerning a TikTok video you posted where you made statements regarding Massachusetts residents being able to vote for you in your campaign for a New Hampshire state representative seat. Having reviewed the video, your comments to the social media post, and interviewed you, we accept your claim that the statements were made in jest and do not constitute criminal solicitation to wrongfully vote. We ask that you consider the risk of voter misinformation—particularly as you are a candidate for elected office seeking to win votes—in your future communications. We also ask that you take steps to mitigate the possible effects of your communications, even if they are being misinterpreted.

The complaints we received concerned a May 23, 2022, video you posted on the social media platform, TikTok. Those complaints alleged that you provided directions for people to vote for you in Rochester by taking a bus from Massachusetts. When we viewed your video on TikTok, we heard your statement, “You can actually vote for me. Just get on one of those buses that comes in from Massachusetts and go to Ward 2 in Rochester and vote for me.”

As with most social media platforms, TikTok allows users to comment on content. The top comment on your video is a “pinned” comment from yourself, also made on May 23, 2022, reading, “For legal reasons and bc Repubs are not funny, this is a joke. I am making fun of Republicans.” “Pinned” comments are those that the writer purposefully places at the very top of a thread or comments section so that they will be read first.

Yesterday the Attorney General’s Chief Investigator Richard Tracy interviewed you by phone. You maintained that the post was made with humorous intent, evidenced by your demeanor and subsequent comments.

It appears clear from social media commentary that consumers have viewed your post either as humor, an attempt at humor, or a serious invitation to commit voter fraud. We recognize

Kathleen Cavalaro

Page 2 of 2

that consumers viewing your video at its original location on TikTok may see your pinned comment clarifying that the communication was a joke. We also recognize that any sharing of your video post—rendering it beyond your control—is likely to remove your clarifying comment from the communication, increasing the risk of misinterpretation. Additionally, we recognize that a wide swath of communications, including your video post, is protected speech under the First Amendment.

As the entity responsible for enforcement of our state's election laws, this Office appreciates opportunities to improve voter education. Understanding that it is still your prerogative to leave your May 23 video post as is, but given that there is a risk that your communication could result in voter confusion—or a criminal act if a Massachusetts resident votes in New Hampshire—we ask that you consider removing your May 23 video post from your TikTok account. If you will not do so, we request that you use your social media platform(s) to clarify that registering to vote in New Hampshire requires being *domiciled* here in our state.

Finally, we note that there are circumstances where a communication can constitute criminal solicitation to wrongfully vote in violation of RSA 659:34. Criminal solicitation is a communication that commands, solicits, or requests another person engage in criminal conduct where the communicator has a purpose that another individual engage in that criminal conduct. *See* RSA 629:2. RSA 659:34 concerning wrongful voting includes voting where a person is not qualified to vote. Therefore, soliciting individuals to vote where they are not qualified is a crime. As such, we note that it is very important that a speaker, who asserts that they are making a joke, ensure that the substance and context of a communication are very clear in showing that the communication is in jest.

This matter is closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Attorney General's Office  
Election Law Unit

CC: Terese Grinnell

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

July 25, 2022

**BY EMAIL ONLY**

Re: **CEASE AND DESIST ORDER**  
Joe Hart, Alleged Illegal Campaign Activity

Mr. Hart:

On November 2, 2021, you observed the Manchester city elections at various wards. During your time at Ward 3 you passed beyond the guardrail of the polling place—despite the warnings from election officials that you were not permitted to do so—which is a violation of RSA 659:21. You are free to exercise your First Amendment rights in public meetings, such as an election, but you are warned to cease and desist from entering polling place areas that are restricted by law.

**I. BACKGROUND**

On the morning of November 2, 2021, this Office received a complaint from Emma Mintz that an unknown individual was open carrying a firearm and intimidating poll workers and observers in Manchester's Ward 3. Attorney General Investigator Richard Tracy was in the vicinity of Ward 3 and spoke with you at the polls. Investigator Tracy also spoke with election officials at Ward 3 and reviewed your recorded live stream that you posted to YouTube.

Within minutes of you entering the polling place, the moderator, Patty McKerley, asked you to stay inside the designated observer area. You repeatedly declined, insisting that you were free to roam the polling place. At one point approximately twenty minutes after entering the Ward 3 polls, you proceeded behind the guardrail into the area of the polling place that is restricted by law. An election official politely informed you that you were in a restricted area. You continued on. Another election official then clearly stated that state law prohibited you from being in the voting area. You were asked to leave the area multiple times. You rejected each instruction to leave the area. You told an election official that you were going to "observe" the ballot counting device vote count, to which he responded, "Are you going to shoot me too?" You stated, "Are you going to get to the point where I have to use a gun? No. Please do not do that. Please do not threaten me."

You subsequently left the restricted area beyond the guardrail and continued your observing in the public area of the polling place, though mostly outside of the designated observer area. Shortly after returning to the public area of the polling place a voter asked you to be quiet as she indicated that your running commentary was being disruptive to the voter check-in process.

Subsequent to your intrusion into the restricted area behind the guardrail, you and Investigator Tracy spoke about a number of subjects, including the requirement to remain outside the polling place guardrail. You indicated that the copies of polling place RSAs you were given did not apply to you, and were instead meant to govern the conduct of election officials. Shortly thereafter, you stated that you could recognize the registration tables as a guardrail as it pertains to its function in the RSAs you reviewed, however, you earlier stated that there was no guardrail in the polling place. At multiple times you insisted that you had a right to record the number count on the ballot counting device, voting machinery that is properly situated behind the guardrail. From your comments on your video you also appear to be aware of the requirements of RSA 659:37 relating to interfering with voters, and RSA 659:40 relating to bribing, suppression, and intimidation of voters.

## II. ANALYSIS

As an initial matter, the New Hampshire Constitution provides that “[a]ll persons have the right to keep and bear arms in defense of themselves, their families, their property and the state.” Part 1, Article 2-a. There are no state election laws governing the carrying of a firearm in a polling place. Voters and those lawfully in the polling place should not be prevented from voting or observing based on the possession of a firearm.

Relating to the individuals permitted in a polling place and how they may behave, the New Hampshire Elections Procedure Manual describes the status of observers:

Anyone can come and watch the casting of ballots and the counting of ballots to see for himself or herself whether the election is conducted in accordance with the law. These individuals can best be understood as “Observers.” They have no special status in law and like all members of the public are entitled to silently observe the election as long as they are not disruptive.

2020 New Hampshire Elections Procedure Manual, p. 140. These instructions arise in part from RSAs 654:7-c and 659:13-a.<sup>1</sup> The statute makes clear that while observers have a right to observe in-person voter registration and check-in—subject to restrictions such as “where the physical layout of a polling place makes it impractical to position challengers or interested voters who are registered at that polling place where they can hear the announcement at the check-in table...”—observers are prohibited from interfering with the operations of the polling place.

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<sup>1</sup> 654:7-c Observation to Voter Registration. – Any person shall have a right, as safety, welfare, and rights of voters permit, to observe in-person voter registration, wherever it is conducted, provided however, that the person may not be positioned within 5 feet of the voter registration table where the exchange of nonpublic information between the applicant for registration and the election official receiving the application may be heard or seen. When a person registers to vote on election day, the ballot clerk, upon adding the person's name to the checklist at the check-in table, shall publicly announce the person's name 2 times and shall publicly announce the address the person has registered as his or her domicile one time. These announcements shall be made in a manner that allows any person appointed as a challenger to hear the announcement. Where the physical layout of a polling place makes it impractical to position challengers or interested voters who are registered at that polling place where they can hear the announcement at the check-in table, the moderator shall arrange an alternative means for challengers or interested voters who are registered to vote at that polling place to be informed of the new voter's name and domicile address and be afforded an opportunity to challenge the voter at the check-in table.  
659:13-a Observing Voter Check-In. – No person not authorized by law may stand or sit within 6 feet of the ballot clerk for purposes of observing the check-in of voters without the express permission of the moderator.



It is the duty of the moderator to ensure the observance of polling place obligations and management.<sup>2</sup> Consistent with that duty, and to ensure that voters are in no way inconvenienced, intimidated, or subjected to a violation of their right to protect non-public information, moderators may designate areas for observers to watch the public meeting. The Ward 3 moderator established just such an observer area, which was pointed out to you frequently. You repeatedly declined to stay in the designated area.

In addition to the RSAs governing the management of the public areas of polling places, the law prohibits unauthorized intrusion into the area containing voting booths, ballots, and ballot boxes.

No person other than the election officers, the voters admitted or those admitted to aid a voter pursuant to RSA 659:20 shall be permitted within the guardrail except by the authority of the election officers and, then, only for the purpose of keeping order and enforcing the law.

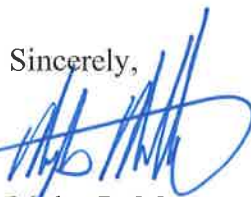
RSA 659:21 Admittance Within Guardrail. You clearly proceeded past the Ward 3 guardrail into the area covered by RSA 659:21. You ignored repeated requests by election officials to leave the restricted area of the polling place.

### III. CONCLUSION

After reviewing the video footage and interviewing election officials, this Office concludes that you proceeded behind the guardrail without authorization. However, given this first known instance and your confusion as to what constituted a guardrail, this Office has also declined to proceed with a violation against you. That said, you are now aware of the laws governing the management of polling places and your obligations to remain in the areas authorized by law. Failure to do so in the future may result in enforcement action. As such, you are hereby ordered to **Cease and Desist from entering polling place areas without authorization under the law.**

This matter is closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Attorney General's Office

CC: Emma Mintz  
Patty McKerley, Manchester Ward 3 Moderator

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<sup>2</sup> 659:9 Moderator to Oversee Voting. – It shall be the duty of the moderator to secure the observance of the provisions of the following sections relating to the conduct of voting.

# Note to File

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Carolyn Carr, Alleged Illegal Campaign Activity

2021152090

7/29/2022  
8:42:00 AM

Case Notes

Closing this matter - note to file

Initially ELU did not open a matter after reviewing Carr's comments, which did not appear to be a violation of the NH Criminal or Election Law Statutes. After receiving additional calls from at least three citizens we did open a matter since the complaints were all about the same candidate. The comments were personally critical, but not threatening or impacting voters. As such, we are closing this matter.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397



JOHN M. FORMELLA  
ATTORNEY GENERAL

JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 8, 2022

Kimberly Abare  
The Pelham Evergreen  
[REDACTED]  
Pelham, New Hampshire 03079

**Re: The Pelham Evergreen  
Warning for Violations of RSA 664:14 & RSA 664:16**

Ms. Abare:

On July 25, 2022, Dave Wilson submitted a complaint to the Secretary of State's Office stating that you, as a candidate, and your publication, The Pelham Evergreen, were not complying with campaign finance obligations. The issues raised are related to political advertisements in The Pelham Evergreen—a publication you own and operate—for your own candidacy for New Hampshire State Representative. We write to educate you regarding RSA Chapter 664 and to warn you against future violations.

The complaint was forwarded to our Office and Department of Justice Investigator Daniel Mederos conducted an investigation. He spoke with you on August 1, 2022. You confirmed that you are the owner and publisher of The Pelham Evergreen, a community periodical that is mailed out to all Pelham residents. Investigator Mederos discussed several of RSA Chapter 664's provisions with you. This Office subsequently spoke with your attorney,

As the publisher of the newspaper, you must charge your own campaign the same advertising rate that the publication charges other campaigns. "No person or business organization publishing a newspaper or periodical...shall charge an advertising rate to any candidate...that is different from that charged to any other candidate[.]" RSA 664:16. A violation of this provision by a business organization could constitute a felony. RSA 664:21, V.


Additionally, "[r]ates for advertising shall be filed, no later than 30 days prior to the deadline for filing for office for an election, with the secretary of state by each person or business organization publishing a newspaper or periodical." RSA 664:16. The Pelham Evergreen had failed to file any such rate card with the Secretary of State's Office prior to contact by this Office. However, your publication filed a rate card on August 2, 2022.

Additionally, political advertisements, in support of your campaign, published in The Pelham Evergreen failed to comply with RSA Chapter 664 in several respects. "All political advertising shall be signed at the beginning or the end with the names and addresses of the candidate...responsible for it." RSA 664:14, I. Additionally, RSA 664:16 requires political advertisements printed in newspapers or periodicals to be marked "at the beginning or the end thereof with 'Political Advertising.'" The purpose of this is to distinguish newspaper editorials, endorsements, articles, or letters from paid advertisements. Political advertisements in support of your candidacy, across three issues of The Pelham Evergreen, failed to comply with these requirements.

We note your prompt attention to filing the rate card as a remediation effort. You are required to ensure that you comply in all respects with the above-referenced statutes going forward. This Office will not be taking any further action on this matter. However, if you again violate any provision of RSA Chapter 664, our Office will pursue regulatory or enforcement action.

This matter will be closed once you have provided this Office with documentary evidence that your campaign has paid the required amounts for each of the political advertisements placed in The Pelham Evergreen.

Sincerely,



Myles Matteson  
Deputy General Counsel  
Election Law Unit

cc: Dave Wilson  
Dave Scanlan, Secretary of State

# Note to File

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Clear Insight push-polling, Alleged Illegal Campaign Activity      2022156754      8/9/2022      Case Notes  
10:42:00 AM

CLOSE OUT MATTER - federal preemption under Bass

Bass Victory order clarifies that federal law preempts enforcement of NH's push polling statute for federal candidates. As the complainants indicate that the push poll only involved federal candidates, we have no enforcement authority.

Closing out matter with this case note after conversations with all complainants explaining the outcome.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 19, 2022

Deputy Town Clerk Jeanette Stewart  
Town of Ashland  
[REDACTED]  
Ashland, NH 03217

Re: **CEASE AND DESIST ORDER**  
Violation of Official Duties and Responsibilities

Dear Deputy Clerk Stewart:

On July 7, 2021, this Office received a complaint alleging that you and Assistant Town Moderator Sandra Coleman unlawfully rejected Susan Longley's absentee ballot in the March 2021 Ashland Town Election. This investigation followed. This Office concludes that you are responsible for the improper invalidation of Susan Longley's absentee ballot in violation of your responsibilities as an election official and Ashland Town Officials have been directed to not allow you any role in future Ashland elections.

**I. FACTUAL BACKGROUND**

a. Initial Complaint and Interview with Susan Longley

On July 7, 2021, Chief Investigator Richard Tracy received a call from Sherrie Downing, an Ashland resident. Ms. Downing reported what she believed was unlawful activity on the part of election officials in the Town of Ashland, namely you and Assistant Town Moderator Sandra Coleman. Ms. Downing alleged that you and Assistant Moderator Coleman had challenged and subsequently rejected Susan Longley's absentee ballot in the March 2021 Ashland Town Election. Ms. Downing explained that Ms. Longley had spent a great deal of time out of town [REDACTED] and that she had voted by absentee ballot as a result. Ms. Downing said that you and Assistant Moderator Coleman claimed that Ms. Longley no longer lived in Ashland. Ms. Downing believed that Ms. Longley had been staying in Somersworth, Massachusetts, close to her son and would then stay with a friend in Campton, New Hampshire, when she was back in the area rather than returning to her home as she had a friend living in and caring for her home in Ashland located on North Ashland Road.

Ms. Downing indicated that only one other absentee ballot was challenged in the March 2021 Ashland Town Election. This ballot was ultimately accepted as the individual was serving in the military.

Investigator Tracy called Ms. Longley on July 7, 2021. Ms. Longley told Investigator Tracy that she had been temporarily staying in Boston, Massachusetts, Greenland, New Hampshire, and Campton, with the intention of returning to Ashland. Ms. Longley indicated that [REDACTED] During this time, Ms. Longley would stay in one of three places: in Boston to be near her son, in Greenland to help her daughter-in-law take care of her grandchildren, or with a friend in Campton.

Because of her long absences, Ms. Longley asked John Morrill if he would stay at her home in Ashland and look after the property. Ms. Longley stated that she would stay at her friend's home in Campton because Mr. Morrill was staying at her home and she did not want to impose on him.

Ms. Longley recounted that she requested an absentee ballot for the March 9, 2021 Ashland Town Election on February 25, 2021, and the ballot was mailed to her on March 1. Ms. Longley said that she hand delivered the ballot to the Ashland Town Clerk's Office where she turned in her absentee ballot and envelope to a woman she believed was named Ann. Ms. Longley explained that Ashland Town Clerk Pat Tucker had recently broken her leg and Ann from the Plymouth Town Clerk's Office was working in Ashland to assist Clerk Tucker.

It was not until sometime after the election that Ms. Longley learned that her absentee ballot had been rejected. Ms. Longley stated that she was not able to get a response or speak to any town officials when she reached out. Ms. Longley approached the Supervisors of the Checklist, at a June 12, 2021, meeting, to inquire why her ballot had been rejected. Supervisor Beverly Ober confirmed that her ballot had been rejected, telling her that you and Deputy Moderator Coleman had challenged whether Ms. Longley was domiciled in Ashland and you and Deputy Moderator Coleman determined that she was not.

Ms. Longley later spoke to Clerk Tucker about her ballot rejection. In that conversation, Ms. Longley explained that she was not renting her home and that Mr. Morrill had been helping her out by staying in her home. Ms. Longley also showed Clerk Tucker utility bills that she continued to pay for the Ashland home's operation. Clerk Tucker explained that Ms. Longley would not have any more issues voting in Ashland as long as she was clerk and present at the elections.

Ms. Longley expanded on her connections to Ashland while speaking with Investigator Tracy. Ms. Longley has lived in Ashland for over 50 years. Both her now-deceased husband and her son were born and raised in her Ashland home. Investigator Tracy was later able to verify, through ElectioNet – New Hampshire's online voting database – that Ms. Longley has voted in Ashland more than thirty times since the database was implemented in 2006.

Ms. Longley provided contact information for John Morrill before the interview with Investigator Tracy ended.

b. Interview with Town Clerk Pat Tucker

On January 12, 2022, Investigator Tracy spoke with Clerk Tucker. Clerk Tucker explained that she fell and broke her leg a week prior to the Town Election and was not able to work at that time. You filled in during her absence until Tucker returned to work on March 17, 2021. Clerk Tucker indicated that, in a discussion prior to the election, you insisted that Ms. Longley no longer lived in Ashland. Clerk Tucker told you that, based on what she knew and the fact that Ms. Longley was still on the checklist, she should be allowed to vote in the upcoming election.

Clerk Tucker explained that she later found out that you spoke to Supervisor Ober and Assistant Moderator Coleman in her absence and convinced them that Ms. Longley did not live in Ashland, convincing them to reject Ms. Longley's absentee ballot.

c. Interview with Town Moderator Roberta "Bobbi" Hoerter

On January 13, 2022, Investigator Tracy spoke with Moderator Hoerter. Moderator Hoerter recalled that, on March 9, 2021, you organized the absentee ballots into alphabetical order and told her that Ms. Longley had moved and no longer lived in Ashland. Moderator Hoerter remembered that you told her that Ms. Longley had moved away from Ashland and rented her house in Ashland to someone else. She further indicated that she had never dealt with a Voter Challenge Affidavit before and, after referring to the Election Procedure Manual, the decision was collectively made to reject Ms. Longley's ballot.

Investigator Tracy asked if there was any animosity between you and Ms. Longley. Moderator Hoerter said she believed there was and apologized if she had made a mistake, but believed she was doing the right thing at the time.

d. Interview with Assistant Town Moderator Sandra Coleman

On January 13, 2022, Investigator Tracy spoke with Assistant Moderator Coleman. She recalled that a conversation took place between her, Moderator Bobbi Hoerter, you, and possibly others regarding the domicile of two registered voters in Ashland, Ms. Longley and another individual. Assistant Moderator Coleman remembered that second individual was allowed to vote following the conversation and that you presented information about Ms. Longley that led to the Moderator's decision to reject Ms. Longley's absentee ballot. Assistant Moderator Coleman also noted that that Ms. Longley was a long time Ashland resident and that she served on the historical society and helped out in past elections.

e. Follow up with Ms. Longley

Investigator Tracy followed up with Ms. Longley several times after his investigation started. On January 20, 2022, Ms. Longley told Investigator Tracy that, after one of these follow ups, John Morrill, Sr. called her and asked her what was going on and said that you had confronted him to ask if he lived at Ms. Longley's home in Ashland.



f. Interview with John Longley

On February 10, 2022, Investigator Tracy went to [REDACTED] looking for John Morrill. A young man answered the door identifying himself as John Longley, Ms. Longley's son. Investigator Tracy explained his purpose at the home. Mr. Longley indicated that his mother had been pretty upset about her ballot being rejected. Mr. Longley said that he did not know whether John Morrill was recently staying at the home, but he did know that Mr. Morrill has been keeping an eye on the home. Mr. Longley indicated that Mr. Morrill may sometimes stay at the home because his work was right down the road and closer to his mother's home than Mr. Morrill's.

g. Interview with John Morrill, Sr. and John Morrill, Jr.

On February 11, 2022, Investigator Tracy spoke with John Morrill, Sr. Mr. Morrill Sr. explained that his son, John Morrill, Jr., lives with him at [REDACTED] in Ashland, but he takes care of Ms. Longley's home because she has been away a lot helping her son and her son's family. Mr. Morrill, Sr. stated that his son makes sure the furnace is on, plows the driveway, and clears snow from the roof at Ms. Longley's home.

Investigator Tracy asked him if you had confronted him about whether he was living at Ms. Longley's home. Mr. Morrill, Sr. told him no, and that he must be thinking about his son. Mr. Morrill, Sr. explained that he recently saw you where you work when he went in to ask about his insurance. Mr. Morrill, Sr. said you and he talked about his son, with him explaining that his son was keeping an eye on Ms. Longley's home.

Investigator Tracy asked Mr. Morrill, Sr. to have John Morrill, Jr. call him. Later that day, Mr. Morrill, Jr. called Investigator Tracy. Mr. Morrill, Jr. explained that he does not live at Ms. Longley's home, but he does stop by regularly to check on it when Ms. Longley is away, especially in the wintertime.

h. Interview with Supervisor of the Checklist Beverly Ober

On February 14, 2022, Investigator Tracy spoke to Supervisor of the Checklist Beverly Ober. Supervisor Ober stated that she was at the Ashland Town Hall and entered absentee ballot information during the March 9, 2021 election. She remembered that you kept "sputtering" about Ms. Longley no longer living on North Ashland Road and that she had been living in Campton. Supervisor Ober remembered that you called the Campton Town Clerk to see if Ms. Longley had registered to vote there and you were told that she had not.

Supervisor Ober explained that Clerk Tucker was not available on election day and that you spoke with Supervisor Ober and Moderator Hoerter, insisting that Ms. Longley no longer lived in Ashland and that she was renting her home to someone. Supervisor Ober stated that she did not call Ms. Longley and she was not sure if anyone else did. Supervisor Ober stated that the Moderator then made the decision to reject the ballot.

Supervisor Ober sent Ms. Longley a 30-day-letter and recalled that Ms. Longley came to see her on June 12, 2021. Ms. Longley tearfully explained her situation to Supervisor Ober and Supervisor Ober followed up by writing a letter to the supervisors. Ms. Longley's name was not removed from the checklist.

Supervisor Ober also noted that Ms. Longley has been a long-time ballot clerk and that it was unusual that Ms. Longley was not at the polls on the March 9 election.

i. Attempts to contact you

On January 21, 2022, Investigator Tracy left a message for you on a phone number that Clerk Tucker verified was your cell phone number. On February 7, Investigator Tracy left a second message at that number.

On February 10, Investigator Tracy knocked on your door at [REDACTED] at 8:30 a.m. No one answered despite the fact that there were three vehicles in the driveway, one of which was registered to you. Investigator Tracy left his business card with his contact information on the door. Prior to leaving Ashland on February 10, Investigator Tracy spoke with both the Ashland Police Department and Clerk Tucker to ask you to call him if they had any contact with you.

On February 11, Investigator Tracy left a third message on your cell phone.

On March 8, Investigator Tracy stopped by the Ashland Elementary School, where the Town Elections were being held, and approached Clerk Tucker. Clerk Tucker indicated that she had not seen you yet. Investigator Tracy handed Clerk Tucker his business card, added his cell phone number to the information provided, and asked her to give it to you. As he did, he explained that if you did not want to speak to him, you did not have to, but he would just prefer that you leave a message indicating that you did not want to speak to him. Clerk Tucker indicated that she would pass all of this information along to you.

On March 16, Investigator Tracy called Clerk Tucker and asked if she had seen you after he left the polls on March 8. Clerk Tucker said that she had seen you the next day, she handed you the business card, she had asked you to call Investigator Tracy, and she explained to you that Investigator Tracy had been trying to contact you.

To date, you have not responded to any of this Office's attempts to contact you.

**II. APPLICABLE LAW**

The Constitution of the State of New Hampshire provides, in relevant part, that, "[a]ll elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election." N.H. Const. Part 1, art. 11th. "Every personal shall be considered an inhabitant for the purposes of voting in the town, ward, or unincorporated place where he has his domicile." Id. The only exceptions to this precept outlined by the Constitution

are those individuals who have “been convicted of treason, bribery or any willful violation of the election laws of this state or of the United States.” Id.

A “domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I (emphasis added).<sup>1</sup> Voters who are absent from the jurisdiction where they are domiciled may vote by absentee ballot. See RSA 567:1. A “domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile.” RSA 654:2 (emphasis added). “Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of fact and intention. A voter can have only one domicile for these purposes.” Id.

In the ordinary course of events, election officials have a duty to ensure that all legal ballots are counted. See RSA 666:2. If there are facts indicating that someone has voted illegally, a vote may be challenged. See RSA 659:27. While any registered voter may challenge another voter in the same town or ward where an election is held, the moderator may only reject a vote on the basis of a well-grounded challenge. Id. A voter who is challenging another voter is required to do so via sworn affidavit. See RSA 659:27-a.

RSA 659:40, III(a) provides that

[n]o person shall engage in voter suppression by knowingly attempting to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information. Prohibited acts of voter suppression include challenging another person’s right to register to vote or to vote based on information that he or she knows to be false or misleading.

“Whoever violates the provisions of this section or whoever conspires to violate the provisions of this section shall be guilty of a class B felony.” RSA 659:40, IV.

RSA 666:2, II provides that “[a] moderator, supervisor of the checklist, selectman or town clerk shall be guilty of a misdemeanor if at any election he shall knowingly omit to receive and count any legal vote.”

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<sup>1</sup> Pursuant to an order issued by the Hillsborough Superior Court, in the matter of League of Woman Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-00433, in April of 2020, Laws of 2017, Chapter 205 (also known as “SB3”) was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016. The version of RSA 654:2 in effect in 2016 did not contemplate the concept of temporary presence, which was added by SB3.

### III. ANALYSIS

Based on our review of the facts, Susan Longley was qualified to vote in the town of Ashland in the March 2021 Town Election. She was over 18 years of age and all of the facts indicate that Ms. Longley was in 2021 and is currently domiciled in Ashland. She has lived there for over 50 years. Her family has lived in Ashland for decades. She has been an active member of the community. Every individual whom Investigator Tracy contacted and who was familiar with Ms. Longley indicated that she lived in Ashland but, [REDACTED] she had been temporarily absent from Ashland for several months helping her son and his family. Multiple individuals with knowledge of the situation confirmed that John Morrill, Jr. was stopping by to take care of Ms. Longley's home in order to help her, not living there, and not subject to any kind of rental agreement. Ms. Longley continued to pay all of the utility bills for her Ashland home despite a temporary physical absence.

Despite all of these facts clearly demonstrating an Ashland residence, you initiated action and convinced Ashland town election officials to wrongfully reject Ms. Longley's absentee ballot.

Given your conversations with Ashland election officials and your intentional act of contacting Campton town officials, it is clear that you questioned whether Ms. Longley was domiciled in Ashland in 2021. However, prior to your decision to challenge Ms. Longley's 2021 town election ballot, Clerk Tucker gave you information regarding Ms. Longley's circumstances at that time with Clerk Tucker, your direct supervisor, informing you that Ms. Longley was a resident of Ashland. Your refusal to respond to the repeated attempts by this Office to contact you resulted in us being unable to gain further insight into why you held such a belief despite all of the contrary evidence and instructions.

### IV. CONCLUSION

Your clear intent was to avoid speaking to this Office regarding this incident and the question of whether Ms. Longley was entitled to vote in the March 2021 Ashland Town Election. We conclude that Ms. Longley's ballot was improperly invalidated. The evidence also indicates that you failed in your fundamental responsibility as an election official and ignored your obligations to a voter to whom you owed a duty as an elected official.

Pursuant to the Constitution of the State of New Hampshire, the above cited statutes, and based upon the investigation conducted by our Office, you are hereby ordered to **Cease and Desist from engaging in official misconduct relating to challenging ballots**. Failure to comply with this Cease and Desist order could constitute violations of the Constitution and the above cited statutes and result in further enforcement action by this Office. **Additionally, this Office is directing Ashland Town Officials to not allow you to work in any appointed role involving elections.**

Finally, this Office advises Ashland election officials that additional efforts must be made to verify a voter's domicile in the future where there are inconsistent claims or evidence. Though not practicable or possible in every case, Ms. Longley was known in the community and had

worked with election officials for years. It is conceivable that this matter could have been avoided with a phone call to Ms. Longley.

This matter is closed. Please contact me if you have any questions.

Cease and Desist Order Issued

By Authority of:

John M. Formella  
Attorney General



Matthew G. Conley  
Attorney  
Civil Bureau  
matthew.g.conley@doj.nh.gov  
(603) 271-6765

cc: Susan Longley  
Ashland Town Clerk Patricia Tucker  
Ashland Board of Selectmen  
Sherrie Downing

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 19, 2022

Paul Forcier

[REDACTED]  
Haverhill, NH (Woodsville) 03785

Re: Haverhill Electioneering Facebook Post

Dear Mr. Forcier:

On March 8, 2021, you contacted this Office alleging improper or unlawful activity regarding a Facebook ad prior to the March 13, 2021, Haverhill Town Election. This investigation followed. This Office concludes that no unlawful activity took place in this instance.

**I. FACTUAL BACKGROUND**

a. Contact with you

You emailed this Office on March 8, 2021, concerning a post made to the Town of Haverhill website. The post itself explained the effects of voting on Article 2 but also expressly advocated for Haverhill residents to "vote YES on Article 02." You believed that the post violated RSA 659:44-a and concerned that a municipal employee had made the posting.

In emails exchanged with Attorney Nicholas Chong Yen, you indicated that what you had seen was in a Facebook post put up by Town Manager Codling on the Town of Haverhill's Facebook page. The post was titled "Understanding Article 2 – Optional Meeting Procedures and why you should vote YES..."

On November 17, 2021, Investigator Tracy spoke with you over the phone regarding the complaints that you made to this Office. You felt strongly that the Facebook post was illegal electioneering.

b. Contact with Brigitte Codling

On July 18, 2022, Investigator Tracy reached out to Town Manager Brigitte Codling to speak with her regarding the Facebook post. She confirmed that she and her staff had created the Facebook post. Manager Codling also told Investigator Tracy that the content of the post had

also been published as an advertisement in the March 4, 2021 edition of the Bridge Weekly. Manager Codling noted that Sherri Sargent, one of her appointees to work on public relations at the time, requested the advertisement be placed and paid for it. Manager Codling provided an invoice to verify this claim.

On July 28, 2022, Manager Codling sent an email to Investigator Tracy describing the procedural history of Article 2 and providing documentation demonstrating that Article 2 was placed on the ballot with the approval of the Board of Selectman following discussions of procedures and recommendations that she made so that the town could comply with HB 1129.

## II. APPLICABLE LAW

RSA 652:14 provides that “[e]lection officer’ shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar.”

Under RSA 652:16-h, “[e]lectioneering means visibly or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” This definition includes “any communication that a reasonable person would believe explicitly advocates for or against any candidate, political party or measure...” *Id.*

RSA 659:44 states that “[n]o election officer shall electioneer while in the performance of his official duties. For the purposes of this section, ‘electioneer’ shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.”

RSA 659:44-a prohibits “public employees,” as defined under RSA 273:A:1, IX from engaging in electioneering. As a general principle, these employees must not use government property or equipment to engage in electioneering. RSA 659:44-a, II. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute “public employees.” Relevant here is the exception for those appointed by the chief executive or legislative body of any political subdivision. RSA 273-A:1, IX(b). Town managers are appointed by the board of selectmen. RSA 37:2.

However, the government may use public funds to support its own measures. Epping Residents For Principled Government v. Epping School Board, No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Marketing Association, 544 U.S. 550, 559 (2005). New Hampshire courts have specifically addressed statements “made by elected public officials speaking on behalf of their respective public entities” where “[t]he public officials recommended residents support warrant articles that their respective public entities believed would benefit residents’ education and safety.” Epping Residents for Principled Government, No. 05-E-0094, Pg. 3. In such instances, “the statements were made in furtherance of a public purpose and not private statements...” in violation of the law. *Id.*

### III. ANALYSIS

Manager Codling admitted to posting this letter on the Town of Haverhill's Facebook page while in the performance of her official duties. Sherri Sargent arranged for this same information to run as an ad in the Bridge Weekly at her direction and in the course of official duties. Therefore, both constitute electioneering and would trigger the prohibition under RSA 659:44-a if they were carried out by non-exempt public employees.

Manager Codling falls squarely into the appointed persons exception RSA 273-A:1. Therefore, she is not subject to the prohibition on electioneering mandated by RSA 659:44-a.

It is unclear if all of Manager Codling's employees are non-exempt employees. As indicated above, those appointed by "the chief executive or legislative body of the public employer" are exempt employees. RSA 273-A:1, IX(b). The New Hampshire Supreme Court has previously ruled that city managers are chief executives. In re Town of Litchfield, 147 N.H. 415 (2002) (citing American Federation of State, County, and Municipal Employees, AFL-CIO v. City of Keene, 108 N.H. 68 (1967)). In so finding, the court noted that "the city manager is the 'chief executive officer of the city' and has 'general supervision of the property or business affairs of the city. He has 'charge, control, and supervision, subject to direction of the governing body', of the Public Works Department of Keene." 108 N.H. at 70.

Manager Codling's powers and duties echo this finding in that she is "the administrative head of all departments of the town and [is] responsible for the efficient administration thereof, except as herein otherwise provided. [She] shall have general supervision of the property and business affairs of the town and of the expenditure of moneys appropriated by it for town purposes..." RSA 37:5. Extending the Supreme Court's prior reasoning to the case at hand, Manager Codling is the chief executive of the town. Therefore, it appears that employees that she appoints are exempt employees under RSA 273-A:1.

Additionally, even if a non-exempt employee had acted in this case, we are left with the general principle that the government may use public funds to support its own measures. Epping Residents For Principled Government v. Epping School Board, No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Marketing Association, 544 U.S. 550, 559 (2005). This Office has previously communicated with agencies and organizations regarding possible violations of RSA 659:44-a, II, in circumstances where government employees were using government property or equipment to engage in electioneering. However, in those instances, the electioneering materials were not centered on government speech supporting its own measures.

That is not the case here. Article 2 was a government measure, one that was specifically designed to carry on the business of government in accordance with the law. As in the Epping Residents case, the statements at issue here were made with the belief that they would help residents understand the government measure and were made to advance a public interest as opposed to a private interest. Therefore, Manager Codling or her employees posting the advertisement was not in violation of RSA 659:44-a.



**IV. CONCLUSION**

Manager Codling's actions were permissible under the laws of the State of New Hampshire, and do not constitute impermissible electioneering

This matter will be closed. Please contact me if you have any questions.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
matthew.g.conley@doj.nh.gov  
(603) 271-6765

cc: Haverhill Board of Selectmen  
Town Manager Brigitte Codling  
Former Town Moderator Albert Holden

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 19, 2022

Fred Garofalo, Chair of the Haverhill Selectboard  
Town of Haverhill  
[REDACTED]  
Woodsville, NH

Re: Haverhill March 13, 2021 Election, Alleged Illegal Activity

Dear Selectman Garofalo:

Beginning on March 15, 2021, this Office received a number of complaints alleging improper or unlawful activity during the March 13, 2021, Haverhill Town Election. This investigation followed. This Office notes that complaints relating to Supervisor of the Checklist Regis Roy was addressed in a separate letter. This Office concludes that no unlawful activity otherwise took place.

**I. FACTUAL BACKGROUND**

**a. Initial Complaint**

On March 15, 2021, Haverhill Selectboard Vice-Chair Matthew Bjelobrk emailed this Office indicating a desire to file a formal complaint regarding a number of actions that he observed during the March 13, 2021, Town Election. Mr. Bjelobrk wrote that Haverhill Town Moderator Alfred "Jay" Holden told Police Sgt. Cam Elliot on the morning of the election to remove several campaign signs belonging to candidate Darwin Clogston that were posted on private property "nearly one-half mile away from the polling place." Specifically, the signs were removed from along Airport Road and Route 16.

Mr. Bjelobrk expressed concern that some of the volunteers counting school ballots at the end of the night migrated over to the town ballot counting side of the room while ballots were still being counted. Mr. Bjelobrk noted that Vickie Wyman was one of these volunteers. He then noted that one of the ballot observers reportedly saw a town ballot volunteer counter erasing marks from a ballot.

Mr. Bjelobrk also questioned Moderator Holden swearing in Assistant Town Moderator Ed Ballam since Mr. Ballam was a vocal critic against Article 2 and Darwin Clogston for selectman. Mr. Bjelobrk expressed concern with Mr. Ballam's handling of ballots during the

ballot count. Mr. Bjelobrk also noticed that Moderator Holden was seen looking at ballots and making notes on a piece of paper prior to placing the ballot in the ballot box.

Mr. Bjelobrk noted that the election was contentious and people used the Woodsville Precinct electric billing process to send residents a letter asking voters to vote “no” on Article 2 and to endorse Michael Graham for selectman.

Finally, Mr. Bjelobrk wrote Woodsville officials allowed for a Mike Graham sign to be placed on town property in front of the fire department, of which he provided a photo.

b. Contact with Moderator Holden

On March 16, 2021, this Office sent Mr. Bjelobrk’s written complaint to Mr. Holden and asked him to respond within fifteen days. On March 25, 2021, Mr. Holden asked for more time to respond to the letter before following up days later with a report of the follow-up that he had conducted.

In that report, he indicated the accusation that he had removed signs from private property was “categorically...false” and noted that the signs were placed along the sides of Morrill Drive, the road off of Route 116 leading to the polling location. Mr. Holden explained that, drawing from his prior experience as a moderator, he was aware that those signs were illegal in accordance with New Hampshire RSA 664:17. He further explained that, after arriving at the polling place, he spoke to Mr. Ballam and the two agreed that the signs should be removed. Mr. Holden contacted Grafton County Dispatch to request that the on-call duty officer to contact him regarding the signs. Moderator Holden then spoke to Sgt. Elliot and explained what he was requesting and why. After looking into the appropriate procedure, Sgt. Elliot called Mr. Holden back and explained that either he would remove the signs himself or have Darwin Clogston do it. Both Mr. Holden and Mr. Ballam then spoke with Sgt. Elliot at the polling location where they explained to him that they only wanted the signs removed from Morrill Drive and nowhere else. Sgt. Elliot then did this, recording the process on his body worn camera. Mr. Holden commented that while he was concerned about campaign signs in the polling areas, he was not involved with signs in the rest of the town. He questioned why Mr. Bjelobrk had not contacted the Woodsville Precinct or the Haverhill Police Department to have the signs removed as Mr. Holden had.

Mr. Holden appeared to agree that Vickie Wyman had “migrated” as Mr. Bjelobrk had indicated and spoke to Robin Irwin and Brenda Jewett. Both individuals indicated that they had completed counting their ballots as had most of the rest of that table. He noted that Vickie did ask what they thought the results of the race might be and the two told her that they believed Michael Graham would defeat Darwin Clogston and Article 2 would be defeated as well.

Mr. Holden noted that, while there was one individual having trouble figuring out how to tally the ballot, no one was “erasing ballots.” Tammy Fortier had a question regarding the absentee ballots and asked her father if he could check her tally sheet. She spoke with her father and Mr. Holden, asking questions and explaining her concerns. After doing so, Mr. Holden had Michael Marshall recount her ballots separately. The two came up with identical numbers except

for disagreement over the placement of one over-counted vote that should have been recorded as an under-counted vote.

In recounting Mr. Ballam's swearing in, Mr. Holden noted that Mr. Ballam already had been sworn in as the Assistant Town Moderator on January 21, 2021. However, Mr. Holden was aware that he would need help with the school part of the election on March 13, 2021. Therefore, Mr. Holden conducted a second swearing in before the polls opened to ensure that Assistant Moderator Ballam could assist.

Mr. Holden indicated that Mr. Ballam had moved ballots at Mr. Holden's request. Mr. Ballam began to place ballots inside of a cardboard box. When ballot observers asked Mr. Ballam what he was doing and why, he asked Mr. Holden how to proceed. Mr. Holden told him to have the ballot counters remain in control of their respective ballots.

In answering the allegation that he was looking at ballots and writing on a pad of paper, Mr. Holden wrote that he "couldn't help but look at the ballots" as there were four ballots handed to him in ballot sleeves, two for the town and two for the school. Mr. Holden sorted these ballots into their respective boxes. He also stated that he was writing notes. Specifically, he was "compiling a list of ballot counters for both the town and school votes." Mr. Holden wrote that more ballot counters were needed and insisted that he was using the pad of paper to keep track of who had volunteered throughout the day to help and who to put where in order to avoid conflicts of interest.

On February 23, 2022, Chief Investigator Richard Tracy met with Mr. Holden at the Grafton County Sheriff's Office. The two discussed many of the topics that Mr. Holden had addressed in his written reply to this Office, with Mr. Holden repeating the written representations that he had made. Mr. Holden provided Investigator Tracy with the pad of paper that he had used on the night of the election. Investigator Tracy made a copy of a page that Mr. Holden represented was the page of volunteers for the 2021 election. Investigator Tracy observed that the page was titled "2021 Ballot Counters" and contained forty names, some with telephone numbers, below two subheadings: "Town" and "School."

c. Contact with Town Manager Codling

On March 18, 2021, Brigitte Codling emailed the Secretary of State's Election Division, State Senator Bob Giuda, and Department of Revenue Director of the Municipal and Property Division James Gerry. In that email Ms. Codling addressed a number of complaints regarding the March 13, 2021 election. She noted that the months leading up to the election were contentious, especially regarding HB1129. Ms. Codling wrote that she was present at the election on March 13, 2021, and that she observed Mr. Holden "unfolding the Alternative ballots and reviewing them" prior to placing them in the ballot box and making notes on a pad of paper.

Ms. Codling further indicated that she believed that the signs that Sgt. Elliot removed were on land that was privately owned or leased.

d. Contact with Office Administrator Aldrich

On March 19, 2021, Office Administrator LorieAnn Aldrich emailed this Office, raising a number of concerns that she witnessed while acting as an observer in the March 13 election. Ms. Aldrich wrote that she “observed several counters writing on and erasing other counters’ tally sheets” and that she saw Mr. Ballam move piles of ballots several times.

Ms. Aldrich said that after the vote, she saw one of the ballot counters first pumping in celebration when the results of Article 2 were announced, noting that this individual was the same one that she had observed writing on and erasing on another ballot counters tally sheet.

On September 24, 2021, Investigator Tracy met with Ms. Aldrich to discuss the concerns she had raised. Ms. Aldrich provided Investigator Tracy with an email exchange between the town manager and Sgt. Elliot regarding his removal of the Darwin Clogston signs. Ms. Aldrich also provided a copy of Sgt. Elliot’s body camera footage documenting his removal of the signs.

e. Contact with Assistant Town Manager Boucher

On September 24, 2021, Investigator Tracy spoke to Assistant Town Manager Jennifer Boucher. Ms. Boucher indicated that she was at the polls on March 13, 2021, and saw Mr. Holden and Mr. Ballam opening ballots prior to placing them in the collection box then writing something down on a piece of paper. Ms. Boucher also noted that Mr. Ballam oversaw the school ballot counting while Mr. Holden was supposed to oversee the town ballot counting process, but he had his back to the town counting table and, in her opinion, Mr. Holden was not properly watching the process.

Ms. Boucher added that the counting for the school ballots finished first with some of the school ballot counters moving to comingle with the town ballot counters and engaging in conversation that she could not hear.

f. Contact with Darwin Clogston

On or around March 17, 2021, former Haverhill Selectman Darwin Clogston spoke with Assistant Attorney General Nicholas Chong Yen to discuss concerns that Mr. Clogston had in regard to the March 13, 2021, Haverhill Town Election. On November 10, 2021, Investigator Tracy spoke to Mr. Clogston. Mr. Clogston believed that Mr. Holden had only Mr. Clogston’s signs removed on the day of the election, noting that Mr. Holden had publicly endorsed Mr. Graham.

g. Contact with Don and Kathleen Vaillancourt

On March 19, 2021, Don and Kathleen Vaillancourt sent an email to this Office expressing their concerns with the March 13, 2021, Haverhill Town Election. Investigator Tracy spoke to the Vaillancourts regarding their concerns. They explained that they did not go to vote until 6:15 pm because they were staying after the polls closed to assist with ballot counting. The Vaillancourts noted that about forty people took part in ballot counting and those people were

divided into two groups, one for the school ballots and one for the town ballots. The group counting the school ballots finished first. The Vaillancourts did not notice anybody marking, erasing, or destroying ballots but they did notice that the school ballot counters comingled with the town ballot counters after they had finished which they found inappropriate.

h. Further Contact with Selectman Bjelobrk

On December 7, 2021, Investigator Tracy spoke with Mr. Bjelobrk on the phone. Among other things, the two discussed the removal of Mr. Clogston's campaign signs by Sgt. Elliot. Investigator Tracy informed him that Investigator Tracy reviewed the police report and Sgt. Elliot's video recording of the sign removal. Investigator Tracy noted that they all appeared to be on the access road or long driveway leading from Route 116 to the middle school, which the moderator was within his rights to have removed. Investigator Tracy told him that signs other than Mr. Clogston's were removed as well. Mr. Bjelobrk disagreed with Investigator Tracy's assessment of the property, saying that the land is private property owned by Howard Hatch. Investigator Tracy explained that Morrill Drive is an access road that leads to the school with no other homes, businesses, or driveways on that section of roadway and that the signs that Sgt. Elliot had removed were just a few feet off the paved portion of the road.

Mr. Bjelobrk told Investigator Tracy that he assisted with the counting of the school ballots after the closing of the polls. That group finished its task before the group counting the town ballots finished. Mr. Bjelobrk stated that about six of the school ballot counters left the school side and comingled with the town ballot counters while they were still counting town ballots. Mr. Bjelobrk stated that an observer reportedly heard Mr. Ballam leaning over a table where ballots were being counted stating "make it no, make it no."

A local physical therapist in town by the name of Marie told Mr. Bjelobrk that some of her patients were told to vote "no" on Article 2 by election officials on election day as they walked into the polls to vote and that doing so would allow them to have in person meetings. Investigator Tracy asked Mr. Bjelobrk if any of them would be willing to come forward, but Mr. Bjelobrk expressed concerns that Marie would be violating patient confidentiality by providing names.

i. Contact with Assistant Town Moderator Ballam

On February 23, 2022, Investigator Tracy met with Assistant Town Moderator Ed Ballam at the Grafton County Sheriff's Office regarding this investigation. Mr. Ballam recalled how, on the day of the election, he and Mr. Holden had discussed the political signs that had been posted on Morrill Drive and how both he and Mr. Holden believed that they had been illegally placed. He and Mr. Holden eventually contacted the Haverhill Police department and coordinated with Sgt. Elliot to have the signs removed.

During that day Mr. Ballam did what Mr. Holden needed him to do, primarily collecting and depositing school ballots into the proper box. Mr. Ballam explained the voting procedure and noted that he and Mr. Holden would separate the ballots, make certain they were correctly folded, and place them into the appropriate box. Mr. Ballam noted that Mr. Holden always has a

yellow note pad with him and Mr. Holden used it to write down questions from voters and to write down the name and number of individuals who had volunteered to help count ballots at the end of the night.

Mr. Ballam noted that the school ballot counters finished first and a few of them walked around. He did not recall if any of them comingled with the town ballot counters.

j. Contact with Vickie Wyman

On February 23, 2022, Investigator Tracy met with Vickie Wyman. Ms. Wyman confirmed that she had volunteered to assist with counting ballots at the end of the night during the March, 2021 town election. Ms. Wyman stated that Mr. Holden divided the counters into two groups, one for school voting and the other for town voting with the school voting counters finishing about ten minutes before the town counters did. Ms. Wyman acknowledged that she walked over from the school side of town to speak with Brenda Jewett and Robin Irwin who were counting town ballots. She asked them about how they thought the election was going with respect to Article 2. They said that they believed Article 2 would be defeated and Clogston would not be reelected.

Ms. Wyman admitted that she stayed for the final count and that she let out a cheer and threw her arms up in the air when she learned that Article 2 had been defeated.

k. Contact with Bookkeeper and Administrative Assistant Diane Thompson

On March 19, 2021 Bookkeeper Thompson emailed this Office raising a number of concerns related to the March 13, 2021 election. First, she expressed concern that she had seen Vicky Wyman approach one of the ballot counters and saw the two of them whispering together. When Ms. Wyman walked away, the ballot counter could be seen "erasing items on the ballot tally sheet." Ms. Thompson indicated that she reported this observation to Ms. Codling. On April 8, 2021, Ms. Thompson emailed this Office again indicated that she had been contacted by Mr. Holden who told her that he was looking into the matter.

On September 24, 2021, Investigator Tracy spoke with Ms. Thompson and explained to her that this Office had asked Mr. Holden to look into this matter and some the complaints that had been raised, something that was not uncommon in such cases. She responded that she had not spoken to Mr. Holden so as to not interfere with this Office's investigation.

Ms. Thompson then explained that she acted as an independent observer on March 13, 2021. Ms. Thompson explained that during the ballot count there were two groups of ballot counters. On one side of the room people were counting school ballots and on the other side they were counting town ballots. Ms. Thompson saw Vicki Wyman, who was counting on the school ballot side, get up and walk over to the town ballot side and whispered with one of the ballot counters seated there. Wyman walked away and then Ms. Thompson saw the ballot counter erasing something from the ballot tally sheet. Ms. Thompson notified the town manager and the town clerk and then went back to observing.

Ms. Thompson went on to say that she observed Mr. Holden moving ballots multiple times, saying that he appeared disorganized and that every movement of the ballots was an opportunity for a ballot to be lost or misplaced.

## **II. APPLICABLE LAW AND PROCEDURE**

RSA 652:14 provides that “[e]lection officer’ shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar.”

Under RSA 652:16-h, “[e]lectioneering means visibly or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” This definition includes “any communication that a reasonable person would believe explicitly advocates for or against any candidate, political party or measure...” *Id.*

RSA 659:44 states that “[n]o election officer shall electioneer while in the performance of his official duties. For the purposes of this section, ‘electioneer’ shall mean to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this provision shall be guilty of a misdemeanor.”

RSA 659:44-a states that “[n]o public employee...shall electioneer while in the performance of his or her official duties.”

RSA 664:17 states, in relevant part, that “[n]o political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner’s consent...Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel.”

Per RSA 666:3, [a]ny public officer upon whom a duty relating to elections is imposed who shall knowingly fail to perform such duty or who shall knowingly perform it in such a way as to hinder the objects thereof shall be guilty of a misdemeanor if no other penalty is provided by law.” As the New Hampshire Election Procedure Manual: 2020-2021, p. 153, provides:

The moderator may select volunteers to assist election officers in counting ballots. These volunteers must be voters in the town or ward or 17-year-olds who would be qualified as a voter were they 18 years old. RSA 658:7 gives the moderator authority to appoint such election officials as he or she deems necessary. Swear in these volunteers as election officers pro tem. As election officers, the volunteer ballot counters are swearing or affirming that they will perform their duties lawfully and they become subject to criminal prosecution for official misconduct pursuant to RSA 666:3. Written oaths must be completed and filed with the clerk. RSA 42:1; RSA 42:7, RSA 42:8; RSA 658:4.



Finally, the New Hampshire Election procedure manual repeatedly emphasizes that elections must be neutral process in which the public can place its trust: "This process reinforces the neutrality and enhances the legitimacy of the counting process." p. 359.

### III. ANALYSIS

#### a. Posting Political Signs

The political signs that Sgt. Elliot removed were unlawfully placed along public property. Morrill Drive is an access road connecting Benton Road and Airport Road. With the exception of the Haverhill Cooperative Middle School, there are no other homes, driveways, or businesses along it. The signs at issue were placed just a few feet off of a road that serves no other purpose than as a public access way to the school. Therefore, these signs had been placed in violation of RSA 664:17. After speaking to Haverhill officials and reviewing Sgt. Elliot's body camera footage, this Office concludes that these signs were appropriately and lawfully removed. Therefore, this point is moot and no further action will be taken.

#### b. Swearing in Ed Ballam

Per RSA 658:7, Moderator Holden had the lawful authority to swear in volunteers to assist with the election process. According to multiple witnesses, Mr. Ballam was sworn in as required by the law and assisted Mr. Holden at Mr. Holden's direction. Nothing about this constitutes unlawful activity. Therefore, no further action will be taken.

#### c. Cheering of volunteers and the intermingling of volunteers

Though the moderator possesses the lawful authority to appoint such election officials as he or she deems necessary, such election officials have a responsibility to execute their duties lawfully. *See* New Hampshire Election Procedure Manual: 2020-2021, p. 153. In this case *we do not find* that any election officials engaged in unlawful conduct such as electioneering or tampering with votes. However, the processing of our elections must be a neutral process in which the public can participate with trust and confidence. We urge all New Hampshire election officials to sufficiently train assisting volunteers as to what their duties are as well as their responsibility to be neutral and unbiased in the course of executing those duties. Such training ensures that election officials do not run afoul of unlawful activity and helps to inspire public confidence in our elections.

#### d. Note taking and modification of tallies

After investigating allegations that Mr. Holden was making unlawful notes and that volunteers were unlawfully modifying ballots or tally sheets, we find that no such violations occurred. Mr. Holden presented our Office with physical evidence of what he had been writing that night. Mr. Ballam confirmed that Mr. Holden had been writing the names of volunteers and a number of witnesses confirmed that volunteers were divided into two groups as appeared on Mr. Holden's writing pad. Though there was some confusion as the counting progressed, those volunteers were supervised and had their questions answered when such confusion arose. We do not find that any

volunteers were unlawfully erasing or modifying votes in the course of the election. Both Mr. Holden and Mr. Ballam further explained that some ballots had to be refolded and placed into the appropriate box. We do not find that any ballots were inappropriately handled in this instance.

#### **IV. CONCLUSION**

All election officials in New Hampshire should strive to conduct their elections in a manner that is organized, efficient, and instills public confidence in our democratic process. The New Hampshire Department of State provides a number of resources to this end in the form of trainings and the New Hampshire Election Procedure Manual. While we find that no violations of New Hampshire State law occurred in the items addressed here, we urge you to take advantage of the resources that are publicly and freely available to train election officials and reduce confusion on the day of the election. Doing so ensures that our officials are executing their duties responsibly and promotes the public trust that is so necessary for our elections and institutions to function.

This matter will be closed. Please contact me if you have any questions.

Sincerely,



Matthew G. Conley  
Attorney

Civil Bureau  
matthew.g.conley@doj.nh.gov

cc: Matthew Bjelobrk  
Darwin Clogston  
Haverhill Town Clerk  
Haverhill Board of Selectmen  
Vickie Wyman  
Town Manager Brigitte Codling  
Former Town Moderator Albert Holden

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 19, 2022

Judge James Barry

[REDACTED]  
Gilford, NH 03249

**Re: [REDACTED] Alleged Wrongful Voting**

Judge Barry:

On July 27, 2022, this Office received a complaint from you concerning [REDACTED] [REDACTED] s domicile in Belmont and qualifications to vote and run for office in that jurisdiction. After conducting an investigation, we are closing this matter as unfounded.

Department of Justice Investigator Anna Croteau was assigned to this investigation. She spoke with you on August 4, 2022. You indicated that [REDACTED] was claiming domicile at a [REDACTED] address in Belmont but did not live at that location following an injunction related to a lawsuit brought by the Town of Belmont against [REDACTED] for living at that address without adequate infrastructure or permitting. Investigator Croteau reviewed property records and learned that [REDACTED] owned a second property in Belmont with a residence on [REDACTED] as well as a house in Greenville, New Hampshire.

From review of court documents, a Superior Court judge ruled that [REDACTED] lived—and was domiciled—at the [REDACTED] address in 2019. [REDACTED] communicated to this Office that he resides at the [REDACTED] residence and considers his [REDACTED] property to be his domicile to which he intends to return when permitted to do so. [REDACTED] routinely lists [REDACTED] as his mailing address and registered to vote at this address a decade ago. In his recent Declaration of Candidacy for State Representative form, [REDACTED] listed his mailing address as [REDACTED] and, consistent with the requirements of the form, was only required to list “Belmont” as the town in which he was domiciled. This Office’s investigation indicated that [REDACTED] has had an ongoing association with Belmont and has not established a domicile in any other jurisdiction.

In New Hampshire, in order to vote in a town, ward, or unincorporated place a person must be domiciled there. A “domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in

democratic self-government.” RSA 654:1, I.<sup>1</sup> “A person has the right to change domicile at any time, however, a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.” *Id.* Additionally, RSA 654:2 states:

A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained.

RSA 654:2, I.

However, the question of domicile is a continuing analysis that is not isolated to the proof provided at the time a voter registers to vote. When this Office is contacted with complaints or reports involving the domicile of a voter, it must review the totality of the circumstances to determine if a voter was in fact domiciled for voting purposes in the town or city in which he/she registered and voted. Additionally, we note that domicile as it relates to qualification for office is the same as the qualification to vote, and under the law that qualification is tied to the district, ward, or political subdivision. That is, a voter is qualified to vote or run for office in Belmont if that voter lives anywhere in Belmont.

As confirmed by court order in 2019, ██████████ domicile was the ██████████ address in Belmont. He indicated to this Office that he resides at another address in Belmont, but still considers the ██████████ property as his domicile and intends to return there when permitted after a temporary absence. These statements are consistent with the documentation reviewed and the investigation conducted by this Office.

Whether at ██████████ or ██████████ this Office is satisfied that ██████████ is domiciled in Belmont for the purposes of being a qualified voter in Belmont and being qualified to run for office representing Belmont. As such, we find that the complaint is unfounded.

This matter is closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Election Law Unit

CC: ██████████

<sup>1</sup> Pursuant to an order issued by the Hillsborough Superior Court in the matter of League of Woman Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-00433, in April of 2020, Laws of 2017, Chapter 205 (also known as “SB3”) was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016.

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Merrimack Superior Court  
5 Court Street  
Concord NH 03301

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**RETURN FROM SUPERIOR COURT**

Case Name: **State v. Michael Lewis**  
Case Number: **217-2018-CR-01164**

Name: **Michael Lewis**, MCHC 314 DW Highway Boscawen NH 03303

DOB: [REDACTED]

Charging document: Indictment

Offense:	GOC:	Charge ID:	RSA:	Date of Offense:
Voter Fraud - RSA 659:34, I(b)		1572142C	659:34,II	November 08, 2018

Disposition: Dismissed/Quashed

Date: August 12, 2022

Action taken: By Judge

Andrew R. Schulman

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor Myles Brand Matteson, ESQ  Defendant  Defense Attorney Aileen M. O'Connell, ESQ  
 Other \_\_\_\_\_  \_\_\_\_\_ Dist Div. \_\_\_\_\_





# Note to File

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Teresa Vigneault, Alleged Illegal Campaign Activity - 2021151262 8/26/2022 Note to File  
sign theft 11:34:00 AM

There are no investigative leads or prospects for additional information. Closed with a note to file.



THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

Rockingham Superior Court  
Rockingham Cty Courthouse/PO Box 1258  
Kingston NH 03848-1258

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

RETURN FROM SUPERIOR COURT

Case Name: **State v. Mary Kate Lowndes**  
Case Number: **218-2020-CR-00780**

Name: **Mary Kate Lowndes,** [REDACTED] Hyannis MA 02601

DOB: [REDACTED]

Charging document: Indictment

<b>Offense:</b> Voter Fraud	<b>GOC:</b>	<b>Charge ID:</b> 1786319C	<b>RSA:</b> 659:34,l(e)	<b>Date of Offense:</b> November 06, 2018
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Disposition: Not Guilty

Date: September 23, 2022

Action taken: By Jury

Hon. Daniel I. St. Hilaire

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor Myles Brand Matteson, ESQ  Defendant  Defense Attorney William E. Christie, ESQ  
 Other \_\_\_\_\_  \_\_\_\_\_ Dist Div. \_\_\_\_\_

THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT

Rockingham Superior Court  
Rockingham Cty Courthouse/PO Box 1258  
Kingston NH 03848-1258

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RETURN FROM SUPERIOR COURT

Case Name: **State v. Mary Kate Lowndes**  
Case Number: **218-2020-CR-00780**

Name: **Mary Kate Lowndes**, [REDACTED] Hyannis MA 02601

DOB: [REDACTED]

Charging document: Complaint

<b>Offense:</b> Voter Fraud - RSA 659:34, I (a,c,d,e,f)	<b>GOC:</b>	<b>Charge ID:</b> 1805775C	<b>RSA:</b> 659:34,II	<b>Date of Offense:</b> November 06, 2018
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Disposition: Dismissed/Quashed

Date: September 23, 2022

Action taken: By Judge

**Dismissed**

Hon. Daniel I. St. Hilaire

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor Myles Brand Matteson, ESQ  Defendant  Defense Attorney William E. Christie, ESQ  
 Other \_\_\_\_\_  \_\_\_\_\_ Dist Div. \_\_\_\_\_

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Rockingham Superior Court  
Rockingham Cty Courthouse/PO Box 1258  
Kingston NH 03848-1258

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**RETURN FROM SUPERIOR COURT**

Case Name: **State v. Mary Kate Lowndes**  
Case Number: **218-2020-CR-00780**

Name: **Mary Kate Lowndes,** [REDACTED] Hyannis MA 02601

DOB: [REDACTED]

Charging document: Complaint

<b>Offense:</b>	<b>GOC:</b>	<b>Charge ID:</b>	<b>RSA:</b>	<b>Date of Offense:</b>
Misusing Absentee Ballot		1805773C	657:24	November 06, 2018
Voter Fraud - RSA 659:34, I (a,c,d,e,f)		1805774C	659:34,II	October 25, 2016

Disposition: Not Guilty

Date: September 23, 2022

Action taken: By Jury

Hon. Daniel I. St. Hilaire

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor Myles Brand Matteson, ESQ  Defendant  Defense Attorney William E. Christie, ESQ  
 Other \_\_\_\_\_  \_\_\_\_\_ Dist Div. \_\_\_\_\_

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 25, 2022

Representative Debra Altschiller  
Rockingham County, District 19  
[REDACTED]  
Stratham, NH 03885

**Re: Warning for violation of RSA 664:6 relating to 2020 campaign finance filings**

Representative Altschiller:

Pursuant to RSA 664:19, this Office conducted an examination of the receipt and expenditure reports filed by you over past election cycles. Additionally, this Office received a complaint against you for violations of RSA 664:6 relating to campaign finance reporting obligations, notably filing late reports in the 2020 election cycle, failing to file reports, reporting incorrect surpluses, and missing expenses or reimbursements.

On June 23, 2022, Department of Justice Chief Investigator Richard Tracy spoke with you. He discussed with you your campaign finance filings, and apparent inaccuracies or filing failures. Having reviewed your 2020 filings, we note the following—which is a non-exhaustive list—regarding this set of reports:

- It appears you failed to file reports on or prior to 6/5/19, 12/4/19, 6/17/20, 10/14/20, 10/28/20, 11/12/20, and 5/3/21.
- The three reports you filed on 9/19/20 were 30, 17, and 3 days late, respectively.
- Election cycle starting balance sources were not documented.
- Expenses, such as for postcards, were not included in your filings.

On July 5, 2022, you indicated to Investigator Tracy that you had requested bank statements and had been assembling other documentation to determine how to accurately amend your reports.

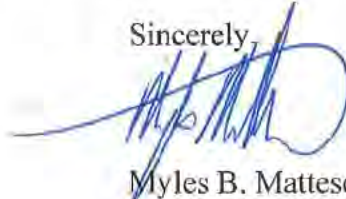
You previously received a warning for failing to comply with RSA 664:6 in 2018 regarding the failure to list the city or town of the principal place of business for each contributor to your campaign. This Office recognizes that the 2018 warning letter concerned different compliance issues and is related to a different election cycle. While this correspondence does not constitute a second warning for the same issue or election cycle, please be advised that ongoing noncompliance with RSA 664 may lead to escalated enforcement action by this Office.

**Please refile the above referenced reports, amended as necessary, within seven (7) days of receipt of this letter. Additionally, notify this Office when you have done so and provide a brief summary of the amendments you have made.**<sup>1</sup> If you originally filed your report on the Campaign Finance System (CFS), please amend your report on that system. Your amended report will replace your original report and it will be designated as an amendment. If you originally filed your report by paper, please refile with the Secretary of State and be sure to clearly label the filing as an “amended” report for each appropriate date. In the event that you are unable to refile, please provide our Office with a brief written statement explaining why you are unable to comply with the above requirements for this reporting period.

**Additionally, please take immediate action to ensure that your future reports comply with the minimum disclosure requirements set forth in RSA 664:6.** For your convenience, we are enclosing a copy of the compliance checklist that our Office follows when reviewing campaign receipt and expenditure reports. Please review this document to ensure that your reports contain all of the required information.

Be advised that any future failure to comply with these minimum disclosure requirements may result in a cease and desist order, enforcement action, fines, and/or criminal prosecution. *See* RSA 664:9; RSA 664:18; RSA 664:21, V. Please contact me if you have any questions.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
(603) 271-1119  
myles.b.matteson@doj.nh.gov

CC: Amy Jeffrey

---

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**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

October 20, 2022

Representative Debra Altschiller  
Rockingham County, District 19  
[REDACTED]  
Stratham, NH 03885

**Re: Warning for violation of RSA 664:6 relating to 2020 campaign finance filings**

Representative Altschiller:

Pursuant to RSA 664:19, this Office conducted an examination of the receipt and expenditure reports filed by you over past election cycles. On August 25, 2022, this Office sent you a warning letter for apparent lack of compliance with campaign finance filing requirements. Per our letter, you amended your filings—including additional filings not covered by our letter—and supplied this Office with explanations for your amendments.

Following review of your submitted materials, it appears that your referenced filings are in compliance with campaign finance requirements and this Office is taking no further action. Thank you for your prompt attention to this Office's requests for information and amendment of your campaign finance filings.

This matter is closed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Myles B. Matteson".

Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
(603) 271-1119  
myles.b.matteson@doj.nh.gov

CC: Amy Jeffrey

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 25, 2022

Jonathan A. Caldwell, Treasurer  
Stratham Town Democratic Committee  
[REDACTED]  
Stratham, NH 03885

**Re: Warning for violation of RSA 664:6 relating to campaign finance filings**

Treasurer Caldwell:

Pursuant to RSA 664:19, this Office conducted an examination of the receipt and expenditure reports filed by the Stratham Town Democratic Committee (Committee) over past election cycles. Additionally, this Office received a complaint against the Committee for violations of RSA 664:6 relating to campaign finance reporting obligations.

On June 30, 2022, Department of Justice Chief Investigator Richard Tracy spoke with you. He discussed with you the Committee's campaign finance filings and apparent inaccuracies. Having reviewed your 2018 and 2019 filings, we note the following—which is a non-exhaustive list—regarding this set of reports:

- The Committee's first receipt and expense report of 2019 showed a \$890.85 surplus increase with no indication as to how that money was received.
- Some contributions received in excess of \$25 were missing a complete postal address.
- Some contributions of \$100 or more were missing a postal address and/or business employer information.

A week and half after your initial conversation with Investigator Tracy, you indicated to him that you had been working through documentation to determine how to accurately amend the Committee's reports. However, following that review, you stated that based on the financial paperwork you were able to compile, you were concerned that you might not be able to reconcile the \$890.85 difference. You indicated that the Committee has had three treasurers over the past four years, and that the identified issues were from reports prior to you taking the role of treasurer.

The Committee previously received a warning letter from this Office in 2018 for failing to comply with RSA 664:6 regarding the failure to list the city or town of the principal place of

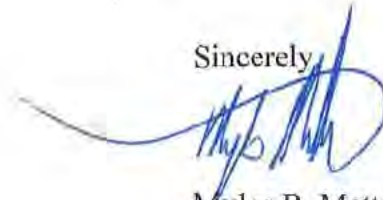
business for each contributor to your campaign. Please be advised that ongoing noncompliance with RSA 664 may lead to escalated enforcement action by this Office.

**Please refile the above referenced reports, amended as necessary, within seven (7) days of receipt of this letter. Additionally, notify this Office when you have done so and provide a brief summary of the amendments you have made.**<sup>1</sup> If you originally filed your report on the Campaign Finance System (CFS), please amend your report on that system. Your amended report will replace your original report and it will be designated as an amendment. If you originally filed your report by paper, please refile with the Secretary of State and be sure to clearly label the filing as an “amended” report for each appropriate date. In the event that you are unable to refile, please provide our Office with a brief written statement explaining why you are unable to comply with the above requirements for this reporting period.

**Additionally, please take immediate action to ensure that your future reports comply with the minimum disclosure requirements set forth in RSA 664:6.** For your convenience, we are enclosing a copy of the compliance checklist that our Office follows when reviewing campaign receipt and expenditure reports. Please review this document to ensure that your reports contain all of the required information.

Be advised that any future failure to comply with these minimum disclosure requirements may result in a cease and desist order, enforcement action, fines, and/or criminal prosecution. See RSA 664:9; RSA 664:18; RSA 664:21, V. Please contact me if you have any questions.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
(603) 271-1119  
myles.b.matteson@doj.nh.gov

CC: Amy Jeffrey

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October 5, 2022

Mr. Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
33 Capitol Street  
Concord, NH 03301

Re: Your letter dated August 25, 2022

Deputy General Counsel Matteson:

As I explained to Investigator Tracy, I assumed the responsibilities of Treasurer, Stratham Town Democratic Committee in January 2019. In the second half of 2018, the previous Treasurer, Sue Bourn, was in the process of caring for a disabled daughter, a grievously ill husband, selling their home and moving to Florida all at once. These reports and careful execution of the Treasurer responsibilities fell through the cracks.

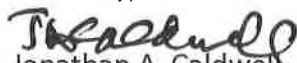
Among the consequences were a dozen uncashed checks. These checks from 2018 were stale dated. I attempted to get replacement checks issued by donors and our vendor Act Blue at the beginning of 2019. I do not have the detail of that period other than a copy of our bank register spreadsheet from that period which I have enclosed. This is the cause of the additional \$890.85 balance.

Once I received an understanding of the required reporting requirements, I believe we have been in compliance for the past four years.

As I noted to Investigator Tracy, this complaint is from an aggrieved State Rep candidate who came in fourth of four in the 2020 election. To what end other than petty harassment? There is clearly no intentional malfeasance. Perhaps Ms. Jeffrey and Mr. Abrami would like to explain why their local Republican committee has *never* filed required reports. On behalf of the NH taxpayers, I apologize that your time has been wasted by inconsequential complaints.

Thank you for your understanding.

Sincerely,

  
Jonathan A. Caldwell

Treasurer  
Stratham Town Democratic Committee  
7 Drury Plains Road  
Stratham, NH 03885

Cc: Heidi Hanson, Chair

Deposit Date	Transaction	Gross Amt	Check #	Net Deposit/Payment	Account Balance	Full name of contributor
1-Jan-19	Opening Balance				\$569.65	
9-Jan-19				\$60.00	\$629.65	
15-Jan-19				\$96.04	\$725.69	
17-Jan-19				\$1,076.88	\$1,802.57	
23-Jan-19				\$48.02	\$1,850.59	
23-Jan-19	Jonathan Caldwell/Heidi Hanson added to TD Bank account and Sue Bourn removed			n/a	\$1,802.57	1852.47 (per Jonathan)
24-Jan-19	Jonathan deposits replacement checks from Jonathan and David London and cash (see 2019-01)			\$742.60	\$2,593.19	
29-Jan-19	Town of Stratham, check written by Sue		105	-\$296.00	\$2,297.19	January ending balance
6-Feb-19	Heidi deposits Act Blue replacement checks (see 2019-01)			\$539.70	\$2,836.89	Check number 106 not used, wrinkled
12-Feb-19	Heidi deposits Cushman/Lovejoy replacement checks (see 2019-01)			\$300.90	\$3,137.79	February ending balance
7-Mar-19	Reimbursement check to JoEllen Cuff, coffee for Govt 101		107	-\$50.60	\$3,087.19	March ending balance
15-Apr-19	Check to Lester Cuff for Stratham campaign (see 2019-02)		108	-\$1,200.00	\$1,887.19	per Executive Committee
1-Apr-19	donations			\$67.00	\$1,954.19	
16-Apr-19	Cash from Meeting donations			\$19.00	\$1,973.19	April ending balance
6-May-19	Reimbursement check to Jan Dunn for stamps, envelopes, golf balls thank you for David, Casa de Fruita thank you for Londons, Candy for Sue Born		109	-\$777.29	\$1,195.90	May ending balance

046

## Note to File

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Town of Croydon, Election Review and Follow Up      2022155358      12/9/2022      Case Notes  
1:24:00 PM

Closeout Note by MGC

All communications on this case have been included, no further action is expected on the items contained here. To be closed following discussion with MM

**From:** [Conley, Matthew](#)  
**To:** [REDACTED]  
**Cc:** [DOJ-Election Law](#)  
**Subject:** Response to Croydon Complaint  
**Date:** Monday, June 20, 2022 10:16:00 AM

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Good morning,

Our Office is reaching out today to address a number of concerns and complaints that we have received regarding Croydon over the last several weeks.

**While this Office can reference statutes and guidance materials, we cannot provide legal counsel to the town of Croydon or the citizens of Croydon. You may wish to seek your own legal counsel and seek relief if appropriate through the Sullivan County Superior Court if necessary.**

One complaint concerned pamphlets and election materials that were distributed at the May 7<sup>th</sup>, 2022 special meeting, indicating that such materials needed to be at least 10 feet away from the building where the meeting was held. This appears to be referencing RSA 659:43 – Electioneering at the Polling Place. This statute applies to *elections* as opposed to *meetings*. While meetings commonly include votes and ballot measures, this does not transform a meeting into an election under the law. Please see RSA 652:1. Moderators do possess the authority to control how and when electioneering communications regarding articles to be voted at the meeting are displayed during that meeting provided that constraints are applied equally to all points of view. RSA 40:4, I (“The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe the rules of proceeding, but such rules may be altered by the town).

Addressing several other complaints, public employees and election officials may not electioneer while in the performance of their official duties. RSA 659:44 and 659:44-a. However, “persons elected by popular vote,” are explicitly exempt from this definition under RSA 273-A:1, IX. This same exemption applies to elected or appointed or elected election officials but only when the electioneering is done outside of that person’s official election duties. RSA 659:44.

One complaint alleged that two of the three members of the Croydon School Board met with the New Hampshire Department of Education without posting the meeting to the public. Under RSA 91-A:2, I, II, and II-a:

**For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters...** Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at

such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

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We take no position on whether the described conduct constituted a meeting that is subject to these notice requirements. Anyone who believes the law was violated and seeks a remedy, must, under RSA 91-A:7 and 91-A:8, petition the superior court for injunctive relief.

Multiple complaints referenced language that the complainant considered threatening, regarding publicly posted voter information. Under RSA 654:31-a, “[t]he information contained on the checklist of a town or city, specifically, the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-a.” As the First Amendment protects free speech, the threshold for speech to be considered a threat is high, and is discussed by both state and federal courts in *Brandenburg v. Ohio*, 395 U.S. 444, (1969), *Opinion of the Justices*, 128 N.H. 46 (1986), and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Based on this Office’s review, the statements submitted to us do not constitute criminal threats.

At the same time, this Office reiterates that all elected officials are bound by the oath they swear and are obligated to neutral application of the New Hampshire Constitution and law.

This Office is not investigating the issue of advertisements or letters posted in mailboxes as that is a matter of federal law, not state law.

Finally, this Office declines to take a position on disagreements of policy between complainants and elected officials. Such disagreements are properly resolved through the ordinary course of the democratic process.

Thank you,

**Matthew G. Conley**  
Attorney  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301-6397  
Phone: (603) 271-6765

#### STATEMENT OF CONFIDENTIALITY

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We take no position on whether the described conduct constituted a meeting that is subject to these notice requirements. Anyone who believes the law was violated and seeks a remedy, must, under RSA 91-A:7 and 91-A:8, petition the superior court for injunctive relief.

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At the same time, this Office reiterates that all elected officials are bound by the oath they swear and are obligated to neutral application of the New Hampshire Constitution and law.

This Office is not investigating the issue of advertisements or letters posted in mailboxes as that is a matter of federal law, not state law.

Finally, this Office declines to take a position on disagreements of policy between complainants and elected officials. Such disagreements are properly resolved through the ordinary course of the democratic process.

Thank you,

**Matthew G. Conley**  
Attorney  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301-6397  
Phone: (603) 271-6765

#### STATEMENT OF CONFIDENTIALITY

The information contained in this electronic message and any attachments to this message may contain confidential or privileged information and is intended for the exclusive use of the intended recipient. Please notify the Attorney General's Office immediately at (603) 271-3650 or reply to [justice@doj.nh.gov](mailto:justice@doj.nh.gov) if you are not the intended recipient and destroy all copies of this electronic message and any attachments. Thank you.

**From:** [Conley, Matthew](#)  
**To:** [REDACTED]  
**Cc:** [DOJ-Election Law](#)  
**Subject:** Response to Croydon Complaint  
**Date:** Monday, June 20, 2022 10:16:11 AM

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Good morning,

Our Office is reaching out today to address a number of concerns and complaints that we have received regarding Croydon over the last several weeks.

**While this Office can reference statutes and guidance materials, we cannot provide legal counsel to the town of Croydon or the citizens of Croydon. You may wish to seek your own legal counsel and seek relief if appropriate through the Sullivan County Superior Court if necessary.**

One complaint concerned pamphlets and election materials that were distributed at the May 7<sup>th</sup>, 2022 special meeting, indicating that such materials needed to be at least 10 feet away from the building where the meeting was held. This appears to be referencing RSA 659:43 – Electioneering at the Polling Place. This statute applies to *elections* as opposed to *meetings*. While meetings commonly include votes and ballot measures, this does not transform a meeting into an election under the law. Please see RSA 652:1. Moderators do possess the authority to control how and when electioneering communications regarding articles to be voted at the meeting are displayed during that meeting provided that constraints are applied equally to all points of view. RSA 40:4, I (“The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe the rules of proceeding, but such rules may be altered by the town).

Addressing several other complaints, public employees and election officials may not electioneer while in the performance of their official duties. RSA 659:44 and 659:44-a. However, “persons elected by popular vote,” are explicitly exempt from this definition under RSA 273-A:1, IX. This same exemption applies to elected or appointed or elected election officials but only when the electioneering is done outside of that person’s official election duties. RSA 659:44.

One complaint alleged that two of the three members of the Croydon School Board met with the New Hampshire Department of Education without posting the meeting to the public. Under RSA 91-A:2, I, II, and II-a:

**For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters...** Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at

such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held. The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

We take no position on whether the described conduct constituted a meeting that is subject to these notice requirements. Anyone who believes the law was violated and seeks a remedy, must, under RSA 91-A:7 and 91-A:8, petition the superior court for injunctive relief.

Multiple complaints referenced language that the complainant considered threatening, regarding publicly posted voter information. Under RSA 654:31-a, “[t]he information contained on the checklist of a town or city, specifically, the name, domicile address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-a.” As the First Amendment protects free speech, the threshold for speech to be considered a threat is high, and is discussed by both state and federal courts in *Brandenburg v. Ohio*, 395 U.S. 444, (1969), *Opinion of the Justices*, 128 N.H. 46 (1986), and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). Based on this Office’s review, the statements submitted to us do not constitute criminal threats.

At the same time, this Office reiterates that all elected officials are bound by the oath they swear and are obligated to neutral application of the New Hampshire Constitution and law.

This Office is not investigating the issue of advertisements or letters posted in mailboxes as that is a matter of federal law, not state law.

Finally, this Office declines to take a position on disagreements of policy between complainants and elected officials. Such disagreements are properly resolved through the ordinary course of the democratic process.

Thank you,

**Matthew G. Conley**  
Attorney  
Attorney General's Office  
33 Capitol Street  
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Phone: (603) 271-6765

#### STATEMENT OF CONFIDENTIALITY

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# Note to File

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Town of Windham, Alleged Elecction Official  
Misconduct

2020142516

12/19/2022  
3:42:00 PM

Note to File

## CLOSURE NOTE

This was brought to the AG's attention by the Secretary of State's office. The Secretary of State's Office has incorporated instructions into trainings and there have been no issues related to the acceptance of change-back forms this election cycle.



**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

December 22, 2022

Jason Johnson  
[REDACTED]

Mont Vernon, NH 03057

Re: **Electioneering by public employee - Alleged Illegal Campaign Activity**

Mr. Johnson:

This letter is in response to a complaint this Office received April 5, 2021, regarding allegations that you violated RSA 659:44-a, which prohibits public employees from engaging in electioneering. We understand that there may be confusion regarding the issue of which public officials are allowed to electioneer and what, if any, public resources can be used by them while electioneering. We conclude that when you were the MACC Base director you were not in the class of public employees that is prohibited from electioneering under RSA 659:44-a—and you were therefore entitled to electioneer with certain limitations concerning the use of governmental resources.

**I. FACTUAL BACKGROUND**

On April 5, 2021, this Office received a complaint from Mark Fougere alleging that you, as a public employee, had coordinated or overseen electioneering communications or activities through use of a large political sign in the back of a truck parked in a public location in Milford on February 27, 2021.

Attached to the complaint was a police report. To summarize, Milford police noted that a truck with a large sign reading "Vote No on Article 3: Keep Dispatch Regional," in the back was parked at the Milford oval. The truck had been parked in the same parking spot at the Milford Royal from at least 7:00pm on February 26<sup>th</sup>, was observed covered in snow at 7:30pm on the 27<sup>th</sup> indicating that it hadn't been moved, and according to the report could be considered an abandoned motor vehicle under the applicable statute. After calling in to MACC Base—the Milford Area Communications Center, where at the time you were the director—and then discussing the vehicle with you, an officer observed an individual drive the vehicle around the oval and then park it back in the same parking spot. The officer observed you as you got out and walked away from the vehicle. He soon thereafter received a text to his personal cell phone that he assumed was from you concerning the truck, stating that someone would move it once per day

to comply with the abandoned vehicle statute, and that free speech litigation would be expensive for the town.

Department of Justice Investigator Scott Gilbert spoke with Milford Town Administrator John Shannon on September 16, 2021. Mr. Shannon indicated that the towns of Milford, Wilton, and Mont Vernon had a contract to pay MACC Base to provide dispatch services to the three towns. You were at the time the director of MACC Base. Mr. Shannon indicated that you were not a Milford town public employee, and he forwarded copies of the MACC Base intermunicipal agreement and bylaws.

On May 13, 2022, Investigator Gilbert spoke with you. You indicated that you were aware of the complaint, and that your former employer, MACC Base, had conducted an internal investigation of the complaint and determined that it was unfounded. You stated that MACC Base was a quasi-public municipal agency with a three-member Board consisting of representatives from the three towns served by the entity. You stated that the truck at issue was owned by Kevin Kleber, who at the time was living at your house. You said that Mr. Kleber was out of the country covering the dates of the 26<sup>th</sup> and 27<sup>th</sup> of February 2021, and that he did not park the truck at the Milford oval. You stated that you did not park it there either but declined to provide Investigator Gilbert any information on who parked the truck other than that it was not a MACC Base or public employee. Finally, you stated that you had no idea who made the sign.

## **II. ANALYSIS**

To constitute an electioneering violation under RSA 659:44-a, I, the following facts must be established: (1) a public employee, (2) that is not exempt under RSA 273-A:1, IX, (3) must electioneer, (4) while in the performance of his or her official duties.

For this Office's assessment of the complaint against you, who parked the truck at the Milford oval and who was responsible for creating the sign in the back are not determinative, assuming that no other public employee was involved. This Office accepts your claim that no additional public employee was involved, as our investigation yielded no information indicating any involvement of another public employee.

A threshold question is whether MACC Base is a governmental institution such that you *could* potentially qualify as a public employee subject to RSA 659:44-a. Review of the intermunicipal agreement and bylaws shows that MACC Base is a corporation created only by the intermunicipal agreement. MACC Base is overseen by a Board appointed pursuant to that intermunicipal agreement. The MACC Base director is appointed by the Board. Even though MACC Base is not a governmental unit of a single town, it is a governmental entity as it only exists through operation of a governmental intermunicipal agreement. As such, we find that employees of MACC Base are public employees for the purposes of analyzing conduct under RSA 659:44-a.

a. Electioneering

RSA 652:16-h, which was enacted on January 1, 2020, defines “electioneering” as “information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” RSA 652:16-h. (Emphasis added.)

Concerning element (3) listed above, the sign in the back of the truck constitutes explicit advocacy and is electioneering, as it directly opposes Article 3, a ballot question. This is the “express advocacy” contemplated under RSA 652:16-h, and is not “implicit advocacy,” the regulation of which has been recognized by courts as being unconstitutional. See Buckley v. Valeo, 424 U.S. 1 (1976). See also Stenson v. McLaughlin, 2001 WL 1033614, 3 (D.N.H. Aug. 24, 2001).

b. Public Employee

RSA 659:44-a prohibits “public employees,” as defined under RSA 273-A:1, IX, from engaging in electioneering. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute “public employees.” Relevant here are the following two exceptions:

- Persons appointed to office by the chief executive or legislative body of the public employer; and
- Persons whose duties imply a confidential relationship to the public employer

RSA 273-A:1, IX(b) and (c).

The MACC Base director is appointed by the MACC Base Board. That Board is the chief executive or legislative body of the public employer within the meaning of RSA 273-A:1, IX and X.

The New Hampshire Supreme Court holds that:

The term “chief executive” is not defined in RSA chapter 273-A and again, we look to the plain meaning of the term. In Appeal of Westwick, 130 N.H. 618, 621, 546 A.2d 1051 (1988), when deciding whether the plaintiff was the chief executive officer of an administrative agency, we noted that “chief” means “being accorded highest rank, office or rating ... or one who is put above the rest.” Furthermore, we have interpreted this term to include high level positions such as city manager, university president, and mayor.

In re Town of Litchfield, 147 N.H. 415, 418 (N.H. 2002) (Internal citations omitted.) (Emphases added.)

Therefore, because you were appointed as the MACC Base director by the Board, you qualify for the exception under RSA 273-A:1, IX(b).

In addition, the confidential relationship exception also appears to apply under RSA 273-A:1, IX(c). The factor that determines whether an individual is a confidential employee is whether he/she has access to confidential information including, but not limited to:

1. Labor relations;
2. Negotiations; and/or
3. Significant personnel decisions.

In Appeal of City of Laconia, the New Hampshire Supreme Court held that City's personnel director's administrative secretary was a confidential employee under RSA 273-A:1, IX. See, Appeal of Town of Moultonborough, 164 N.H. 257, 262 (2012) (““Confidential employees” are those employees who have access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like.”) (Internal quotations omitted.). The Court noted that a city's personnel director's administrative secretary was a “confidential employee” and could not be included in a bargaining unit of other city employees where the administrative secretary was privy to the personnel director's personal thoughts about the collective bargaining process. It would be unjust and unreasonable to require the city's personnel director to keep secrets from his secretary about a significant part of his work. Appeal of City of Laconia, 135 N.H. 421 (N.H. 1992).

The MACC Base director appears to have access to such information given his/her administration of subordinate employees. Given the supervisory and administrative responsibilities of an intermunicipal agreement governmental entity such as MACC Base, the director necessarily has access to confidential information such as personnel files, employment records, salary information, as well as significant personnel decisions.

Additionally, considering that the Court has determined that an administrative secretary qualifies under this exception, a director must have the same, if not a higher level, of confidential relationship with the Board.

You are exempt from the electioneering prohibition by operation of RSA 273-A:1, IX(c) as you are a “confidential employee” within the meaning of the statute. Additionally, the position of director would fall into a traditional and widely applied reading of the RSA 273-A:1, IX(b) exemption as an employee appointed by the chief executive or legislative body of the public employer.

Given the analysis above, we need not reach element (4) and the question of whether you acted while in the performance of your official duties.

c. Use of Public Resources

While you do not constitute a public employee covered by the electioneering prohibition under RSA 659:44-a, II—and there are no established facts indicating public resources were used—we take this opportunity to clarify that the use of departmental resources is improper under the statute even for a public employee that is permitted by statute to electioneer. For example, a governmental entity printer and a communication channel that was routinely utilized

for sharing information with the public (such as Twitter or Facebook) are both resources listed, closely tied to, or covered by the non-exhaustive list of government property or equipment described in RSA 659:44-a.

This Office acknowledges the general principle that the government may use public funds to support its own measures. Epping Res. for Principled Gov. v. Epping School Brd. No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 559 (2005). Even so, given governmental entities' role in their respective communities, the specter of impropriety or partisanship can jeopardize public confidence in the neutrality of public institutions. Even while public employees exempt from the prohibition may electioneer, the use of governmental resources by those employees is still prohibited by statute as it creates the perception that the *public* entity is functioning as a *political* entity engaged in inappropriate electioneering.

### **III. CONCLUSION**

This Office concludes that you were not in the class of public employees that is prohibited from electioneering under RSA 659:44-a—and you were therefore entitled to electioneer with certain limitations concerning the use of governmental resources.

This matter is closed.

Sincerely,



Myles Matteson  
Deputy General Counsel  
Attorney General's Office

cc: Mark Fougere

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

December 22, 2022

Milford Police Department  
Milford Fire Department  
Milford Ambulance Service  
c/o John Rattigan, Esquire  
Donahue, Tucker & Ciandella, PLLC  
16 Acadia Lane  
P.O. Box 630  
Exeter, NH 03833

Re: **UPDATE TO JUNE 7, 2021, CEASE AND DESIST ORDER**  
Violation of RSA 659:44-a

Attorney Rattigan:

On June 7, 2021, this Office issued a cease and desist order to the Milford agencies listed above regarding electioneering in violation of RSA 659:44-a. Following receipt of the Town's remediation plan on July 1, 2021, this Office accepted the plan and closed this matter.

We write today to update and clarify our enforcement position with respect to which public employees may electioneer under New Hampshire law. To that end, we revise our prior conclusions and determine that Captain Frye, Captain Pelletier, Chief Flaherty, and Director Shelberg are covered by an RSA 273-A:1, IX exemption—and may therefore electioneer—but that the electioneering at issue was conducted through official communication channels, and therefore was still in violation of RSA 659:44-a. We apologize for the fact that our prior correspondence was overinclusive as it pertains to Captain Frye, Captain Pelletier, Chief Flaherty, and Director Shelberg on the issue of which individuals are permitted to electioneer. Our conclusions and the cease and desist order related to the use of governmental resources is unchanged.

**Summary of prior correspondence**

As you know, on March 3, 2021, Kevin Kleber submitted a complaint to this Office, alleging that the Milford Police Department violated RSA 659:44-a, which prohibits electioneering by public employees. Mr. Kleber alleged the Department violated this statute through its posts on its official Facebook page. On March 7, 2021, this Office received another complaint from Paul Bagley, indicating that Facebook pages belonging to the Milford Fire

Department and Milford Ambulance Service, both similarly published electioneering material in violation of RSA 659:44-a.

This Office investigated and concluded that the Facebook posts appearing on the Police Department's, Fire Department's, and Ambulance Service's pages—that displayed images containing and messages stating, "Vote YES to Article 3"—constituted impermissible electioneering for the purposes of RSA 659:44-a. *See* Attorney General's Office Cease and Desist Order, June 7, 2021. In that letter, this Office determined that for Captain Frye, Captain Pelletier, Chief Flaherty, and Director Shelberg, none of the "public employee" exceptions under RSA 273-A:1, IX were applicable. That resulted in the conclusion that those individuals were subject to the electioneering prohibition under RSA 659:44-a, and the electioneering in the Facebook posts was in violation of the statute.

### Amended analysis

This Office's conclusion in the June 7, 2021, correspondence was overbroad and is modified as follows: Captain Frye, Captain Pelletier, Chief Flaherty, and Director Shelberg are covered by the RSA 273-A:1, IX exemptions relating to (b) persons appointed to office by the chief executive or legislative body of the public employer; and/or (c) persons whose duties imply a confidential relationship to the public employer. Those individuals are agency heads or have a management status sufficient to qualify them under either of the RSA 273-A:1, IX exemptions listed above. *See* attached correspondences for reference.

At the same time, we emphasize that the action complained of—electioneering material on the respective agencies' official Facebook pages—*is prohibited* under RSA 659:44-a, II: "No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering."

While we conclude that Captain Frye, Captain Pelletier, Chief Flaherty, and Director Shelberg are covered by at least one of the RSA 273-A:1, IX exemptions—and therefore are permitted to electioneer—they are still prohibited from using *public resources* while electioneering. As a communication channel that was routinely utilized for sharing information with the public, the agencies' Facebook pages are resources closely tied to the non-exhaustive list of government property or equipment described in RSA 659:44-a, II. Posting express advocacy material on the agencies' Facebook pages was a use of agency resources—public resources—to advocate in support of Article 3.

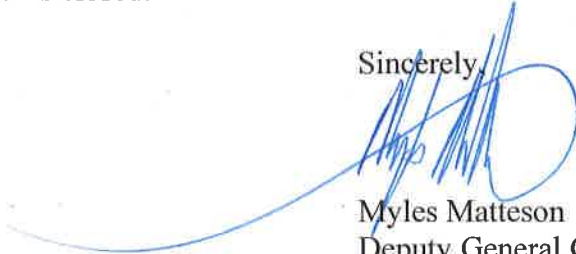
This Office acknowledges the general principle that the government may use public funds to support its own measures. Epping Res. for Principled Gov. v. Epping School Brd. No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). *See also* Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 559 (2005). However, public agencies have an important role in their respective communities dependent on public confidence that cannot be jeopardized by the specter of impropriety or partisanship. Even while the agency heads are exempt from the electioneering prohibition, the electioneering Facebook posts could be—and were—perceived as the agencies functioning as political entities engaged in inappropriate electioneering.

**Conclusion**

This Office determines that as the agencies' respective Facebook pages were official channels of communication, they constitute public resources that fall within the prohibition in RSA 659:44-a, II. As the Facebook posts appearing on the Police Department's, Fire Department's, and Ambulance Service's pages—that displayed images containing and messages stating, "Vote YES to Article 3"—constitute electioneering for the purposes of RSA 659:44-a, public resources were used for electioneering in violation of the statute.

This matter is closed.

Sincerely,



Myles Matteson  
Deputy General Counsel  
Attorney General's Office  
Election Law Unit

cc: Kevin Kleber  
Paul Bagley



**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

December 22, 2022

James Tollner, Police Commissioner  
City of Nashua,  
1 Sequoia Circle  
Nashua, NH 03063

**Re: Nashua Mayor's Office Electioneering Complaint**

Commissioner Tollner:

On July 28, 2021, you contacted our Office to express concerns that the Nashua Mayor and his staff were violating RSA 659:44-a, which prohibits public employees from engaging in electioneering. After investigation, we conclude that no election law violations occurred. The Mayor is not in the class of public employees that is prohibited from electioneering under RSA 659:44-a—he is therefore entitled to electioneer with certain limitations—this Office found no evidence that mayoral staff were engaged in electioneering, and the Mayor did not utilize departmental resources in violation of RSA 659:44-a, II.

There is confusion regarding which public officials are allowed to electioneer and what, if any, public resources can be used by them while electioneering. Even while finding no violations, we take this opportunity to discuss the law for educational purposes.

**I. FACTUAL BACKGROUND**

**a. Complaint**

On July 28, 2021, you contacted our Office and spoke with Chief Investigator Richard Tracy. You alleged that, during work hours, Mayor James Donchess and his staff were asking citizens to sign a petition in support of having Nashua voters decide if the Nashua Police Commissioners should be appointed by the Nashua Mayor and Aldermen as opposed to the existing Governor and Executive Council appointment process. You stated that you did not personally see citizens signing the petition, but you had heard from others that the Mayor and his staff had been seen in downtown Nashua and at a local coffee shop during "Coffee with the Mayor" events asking citizens to sign the petition. You also noted that you had heard that the Mayor's vehicle was involved in a traffic accident during a petition drive.

**b. Investigation**

Investigator Tracy sought information regarding the traffic incident from the Nashua Police Department. Chief Kevin Rourke reviewed the incident records and stated that the Mayor was involved in a minor accident, on July 23, 2021, at 5:35PM, and that he was traveling alone in his vehicle.

Investigator Tracy interviewed Cecilia Ulibarri, the Mayor's Constituent Services & Cultural Affairs staff member. Ms. Ulibarri stated that she and another staff member attended the "Coffee with the Mayor" events. Ms. Ulibarri's recollection was that, during the summer of 2021, the office only had one, or possibly two, such events as the Mayor became concerned with the number of people gathering in one location during a period with higher COVID caseloads. Ms. Ulibarri was fairly confident that no individuals were collecting signatures during the "Coffee with the Mayor" events. However, Ms. Ulibarri stated that she would have had paper with her and she would have been writing notes regarding any constituents concerns being brought to the Mayor's attention. Finally, Investigator Tracy asked about who was responsible for the petition drive. Ms. Ulibarri referred Investigator Tracy to Mayor Donchess as the subject was "out of the Mayor's office purview," and also that staff would not be involved in any door to door activities to obtain signatures.

Investigator Tracy spoke with Attorney Michael Pignatelli, who called on behalf of Mayor Donchess. Attorney Pignatelli stated that at no point did the Mayor direct his staffers to obtain signatures and staffers assured Attorney Pignatelli they were not soliciting signatures. Attorney Pignatelli indicated that it is possible there may have been supporters of the Mayor present at "Coffee with the Mayor" events, who may have been seeking signatures for the petition. Attorney Pignatelli further stated that the Mayor did not go door to door with staffers seeking signatures from residents nor did he at any time direct his staff to obtain signatures in such a manner. Attorney Pignatelli relayed that the Mayor may have been with non-public employee supporters at times when they were seeking signatures, but he would not have involved his staffers if any were present.

**II. ANALYSIS**

To constitute an electioneering violation under RSA 659:44-a, I, the following facts must be established: (1) a public employee, (2) that is not exempt under RSA 273-A:1, IX, (3) must electioneer, (4) while in the performance of his or her official duties.

We note, as an initial matter, that a petition drive by its nature seeks signatures to create an *opportunity* to vote on a measure, but that at the point of the petition drive itself, there may be no underlying measure *being voted* on as required by RSA 652:16-h. We need not analyze this issue further as it is not determinative in this matter.

**a. Electioneering**

RSA 652:16-h, which was enacted on January 1, 2020, defines "electioneering" as "information that a reasonable person would believe explicitly advocates for or against any

candidate, political party, or measure being voted.” RSA 652:16-h (emphasis added). RSA 652:16-h prohibits “express advocacy,” as distinguished from “implicit advocacy,” the regulation of which has been recognized by courts as being unconstitutional. See Buckley v. Valeo, 424 U.S. 1 (1976). See also Stenson v. McLaughlin, 2001 WL 1033614, 3 (D.N.H. Aug. 24, 2001).

b. Public Employee

RSA 659:44-a prohibits “public employees,” as defined under RSA 273-A:1, IX, from engaging in electioneering. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute “public employees.” RSA 273-A:1, IX(a) specifically states that “[p]ersons elected by popular vote” are exempt from the electioneering prohibition. Mayor Donchess is an elected official, and is therefore exempt from the RSA 659:44-a electioneering prohibition.

Additionally, RSA 273-A:1, IX(c) also excludes from the electioneering prohibition “[p]ersons whose duties imply a confidential relationship to the public employer.” The factor that determines whether an individual is a confidential employee is whether he or she has access to confidential information including, but not limited to:

1. Labor relations;
2. Negotiations; and/or
3. Significant personnel decisions.

In Appeal of City of Laconia, the New Hampshire Supreme Court held that City’s personnel director’s administrative secretary was a confidential employee under RSA 273-A:1, IX. See, Appeal of Town of Moultonborough, 164 N.H. 257, 262 (2012) (“Confidential employees’ are those employees who have access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like.”) (Internal quotations omitted.). The Court noted that a city’s personnel director’s administrative secretary was a “confidential employee” and could not be included in a bargaining unit of other city employees where the administrative secretary was privy to the personnel director’s personal thoughts about the collective bargaining process. It would be unjust and unreasonable to require the city’s personnel director to keep secrets from his secretary about a significant part of his work. Appeal of City of Laconia, 135 N.H. 421 (N.H. 1992).

We need not reach a conclusion as to whether any of the Mayor’s staff qualifies as a confidential employee under RSA 273-A:1, IX(c) as we found no evidence that any staff were in engaged in electioneering activity.

c. Use of Public Resources

This Office did not identify evidence to substantiate the allegation that the Mayor or his staff were using public resources for electioneering activity. However, given the allegation, we will take this opportunity to discuss the electioneering prohibition under RSA 659:44-a, II, concerning the use of a departmental resources.

RSA 659:44-a, II states "No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering."

A communication channel that is routinely utilized for sharing information with the public, such as a Facebook page or other social media channel—is likely a resource that would qualify under the non-exhaustive list of government property or equipment described in RSA 659:44-a. Using such a communications channel for electioneering activities would be a violation of RSA 659:44-a, II, even if the communications were made by public employees exempt from the electioneering prohibition.

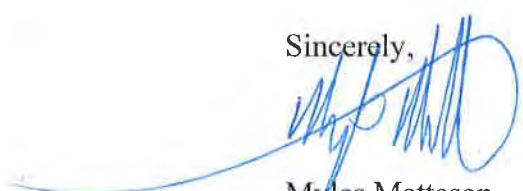
This Office acknowledges the general principle that the government may use public funds to support its own measures. Epping Res. for Principled Gov. v. Epping School Brd. No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 559 (2005). Even so, we urge public officials to exercise a higher degree of care and diligence to ensure that public employees do not engage in conduct that could give rise to questions of integrity related to the use public resources in violation of RSA 643:1 or RSA 659:44-a, II.

### III. CONCLUSION

We conclude that no election law violations occurred. The Mayor is not in the class of public employees that is prohibited from electioneering under RSA 659:44-a—and, he is therefore entitled to electioneer with certain limitations. This Office also found no evidence that mayoral staff were engaged in electioneering, and the Mayor did not utilize departmental resources in violation of RSA 659:44-a, II.

This matter is closed.

Sincerely,



Myles Matteson  
Deputy General Counsel  
Attorney General's Office

cc: Michael A. Pignatelli, Esq.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

December 22, 2022

Michael Carignan, Police Chief (Retired)  
James Testaverde, Deputy Chief  
Nashua Police Department  
28 Officer James Roche Drive  
Nashua, NH 03061-0785

Re: **ELECTIONEERING CEASE AND DESIST ORDER**

Chief Carignan and Deputy Chief Testaverde:

This cease and desist order is issued in response to a complaint this Office received during the Fall of 2021 regarding allegations that you violated RSA 659:44-a, which prohibits public employees from engaging in electioneering. Although we conclude that you are not in the class of public employees that is prohibited from electioneering under RSA 659:44-a—and you both are therefore entitled to electioneer with certain limitations—the manner in which you electioneered in this matter utilized departmental resources in violation of RSA 659:44-a, II.

We understand that there is confusion regarding the issue of which public officials are allowed to electioneer and what, if any, public resources can be used by them while electioneering. While issuing a cease and desist order, we do not find that you had any intent to violate the law.

**I. FACTUAL BACKGROUND**

**a. Complaints**

On August 8, 2021, this Office received an electioneering question from a Nashua citizen concerning a letter from Chief Carignan, posted on the Nashua Police Department website, related to efforts to reform the Nashua Police Commission. An initial response from this Office stated that the content of that letter did not contain express words of advocacy, and as such, the letter would not constitute electioneering material and was not prohibited under RSA 659:44-a.

On August 20, 2021, this Office received a voicemail from Sonia Prince stating that Chief Carignan was “telling people not to vote in favor” of the police commission reform ballot question, and that “he will campaign against it.” On October 27, 2021, and in the days following, Ms. Prince submitted formal complaints to this Office alleging:

- (1) Chief Carignan statements in opposition to a Police Commission reform proposal and a July 23, 2021, Chief Carignan letter posted on the Police Department Facebook page were electioneering;
- (2) The Nashua Police Department sent three police cruisers to her home on July 7, 2021, to intimidate her; and
- (3) On October 28, 2021, Deputy Chief Testaverde spoke at a public meeting, stating that the Police Department wants to remain “autonomous” as it relates to the composition of the Police Commission, and in doing so he was electioneering.

Ms. Prince also included in her complaint information about former law enforcement officers electioneering. RSA 659:44-a applies only to *current* public employees. As such, this investigation and action focuses only on individuals covered by the statute who were in their positions at the time the complaint was filed.

This Office spoke with Ms. Prince on October 28, 2021. Ms. Prince advised that we may receive additional communications from her attorneys. This Office received a letter, dated November 16, 2021, from Attorney Kristin Jacobson, an attorney associated with a law firm in Richmond, Virginia. As well as outlining the allegations presented by Ms. Prince, Attorney Jacobson alleged that Ms. Prince “personally endured threats and harassment related to this [electioneering] matter,” and that she is seeking a formal written apology from the Attorney General’s Office while also requesting that we conduct a full investigation of Chief Carignan.

**b. Investigation**

**(1) Chief Carignan’s statements in opposition to a Police Commission reform proposal and July 23, 2021, Chief Carignan letter on Police Department Facebook page**

On May 6, 2021, Nashua Mayor Jim Donchess and five aldermen proposed Resolution R-21-143 to amend the Nashua City Charter relative to the manner of appointment of the Nashua Police Commission. The proposal called for a ballot question to Nashua voters as to whether the police commissioners’ appointment should be amended from appointment by the Governor and Executive Council to the Nashua mayor and board of aldermen.

Chief Carignan made public statements in opposition to Resolution R-21-143 in the weeks following the proposal, and on July 23, 2021, he posted an open letter on the Nashua Police Department’s Facebook page. The letter included the following statements:

- “I oppose this resolution.”
- “Please do not sign the petition for Resolution R-21-143 until you are fully informed of the implications for this change.”
- “The proposed resolution will almost certainly have consequences for your public safety.”
- “Will a change to the Police Commission make Nashua a SAFER city? No, it will not. Will it result in hiring and retaining better officers? No, it will not.”
- “I am opposed to this Resolution.”

- “[P]eople should not sign the petition for Resolution R-21-143 until they have had an opportunity to hear both sides of the issue.”

On November 19, 2021, Attorney General Chief Investigator Richard Tracy met with Chief Carignan, Deputy Chief Testaverde, and attorney Eric R. Wilson for an interview. Chief Carignan admitted writing and posting the July 23, 2021, letter on the Department’s Facebook page. He noted that he believed that he posted the letter, though it is possible that his administrative assistant, Kathy Breslin, could have assisted him. Ms. Breslin’s duties include sitting in non-public session during meetings with the Police Commission where the Chief and commissioners talk about personnel matters and other sensitive and confidential topics. Chief Carignan stated that, in his letter, he did not believe he was telling people how to vote on a Police Commission ballot question, and was instead asking that voters become informed on the topic before voting.

On October 28, 2021, Nashua City Corporation Counsel Steve Bolton sent to Chief Carignan a copy of a cease and desist letter the Attorney General’s Office issued to Milford town officials concerning electioneering. Three hours after reviewing the letter—and having consulted with counsel and being unsure as to whether his actions constituted electioneering in violation of RSA 659:44-a—Chief Carignan had public statements concerning Police Commission reform, including his July letter, removed from Department social media accounts and the Department website. Shortly after he sent an email to all Nashua Police Department employees ordering them not to speak about the ballot questions and Police Commission reform while on duty. The next day, he ordered all Department employees to take part in a training concerning electioneering by public employees.

## **(2) July 7, 2021, Officers at Ms. Prince’s home**

Chief Carignan provided three dispatch logs associated with calls for service related to Sonia Prince in June and July of 2021:

- On June 3, 2021, Alicia Houston called Nashua Police to report harassment and possible stalking by Sonia Prince. Police Department employee Blake Chestna spoke with Houston, reviewed Facebook posts by Prince, and stated that the posts were not threatening. Mr. Chestna advised Ms. Houston how she could block Ms. Prince on Facebook if she wished to avoid her posts.
- On June 29, 2021, Ms. Houston walked into the lobby of Nashua Police Department to report that “State Rep Deborah Stevens is making claims to wage war against her,” following Ms. Houston making a statement that Ms. Prince posted on Facebook, prompting Rep. Stevens to write “wage war against hate.” Ms. Houston was given advice on how to obtain a restraining order if she felt the need.
- On July 7, 2021, Nashua Police received two complaints made against Sonia Prince, one from Laurie Ortolano and the other from Ms. Houston, claiming that Ms. Prince posted on social media that Ms. Ortolano appears to be associated with a white supremacist group.

Dispatch logs show that, on July 7, 2021, a member of the Nashua Police Department was dispatched to Ms. Prince's home to speak to her about the complaints received from Ms. Ortolano and Ms. Houston. A second officer also responded, as well as a supervisor. Ms. Prince was not home. Ms. Prince wrote to the Attorney General's Office, "What are the odds that police officers have never had anything to do with me in over 25yrs, but the day after I speak at a hearing about the police commission, there are three cop cars in my yard?" Ms. Prince noted that she exchanged emails with Officer Lacerda, the officer dispatched to her home, but they never spoke substantively about the reason he responded to her home on July 7<sup>th</sup> looking to speak with her.

### **(3) October 28, 2021, Deputy Chief Testaverde public meeting statements**

On October 13, 2021, Deputy Chief Testaverde attended and spoke at a local Crime Watch meeting as a panelist. An attendee asked Deputy Chief Testaverde about Police Commission reform. Deputy Chief Testaverde explained the history of the Police Commission, stated that the current system gives the Nashua Police Department "political autonomy," and that structure reduces the potential for outside political pressure intruding on the Department's ability to "do things by the book."

Deputy Chief Testaverde also provided information related to his duties in the Department. Prior to the start of labor negotiations, he stated that he would obtain guidance and direction from the mayor and aldermen as to how they would like to see the negotiations proceed, then would keep Chief Carignan, the Police Commission, and the mayor and aldermen apprised of how negotiations were proceeding.

#### **c. Structure of the Nashua Police Department and Police Commission**

The Nashua City Charter lays out the structure and duties of the Police Commission. The commissioners are appointed by the Governor with the advice and approval of the Executive Council. The Charter establishes the duties of the commissioners:

It shall be the duties of said police commissioners, to appoint such police officers, constables and superior officers as they may in their judgment deem necessary, and fix their compensation, who shall devote their whole time to their said duties and who shall not be engaged or engage in any other business or occupation, or hold any other state, county or municipal office; all of who shall be appointed by the police commissioners, and who shall serve during good behavior and while competent to discharge the duties of the office. The police commissioners shall have authority to remove any officer at any time for just cause and after due hearing, which cause shall be specified in the order of removal.

Nashua City Charter, Subpart B Related Laws, Chapter 1. Board of Police Commissioners, § A-103. Duties; appointing and removing officers.

The Nashua Police Chief reports to the Police Commission, participates in confidential negotiations with the mayor, engages in collective bargaining and vendor contract negotiations, and is responsible for internal operations of the Nashua Police Department.



Deputy Chief Testaverde provided a copy of his job description, which includes working “under the direct supervision of the Chief of Police,” participating in “confidential negotiations with the Mayor or his designee, to include collective bargaining agreements or vendor contracts,” and participating in “confidential discussions that pertain to the Nashua Police Department or the City of Nashua.”

## II. ANALYSIS

To constitute an electioneering violation under RSA 659:44-a, I, the following facts must be established: (1) a public employee, (2) that is not exempt under RSA 273-A:1, IX, (3) must electioneer, (4) while in the performance of his or her official duties.

### a. Electioneering

RSA 652:16-h, which was enacted on January 1, 2020, defines “electioneering” as “information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.” RSA 652:16-h. (Emphasis added.)

Concerning element (3) listed above, Chief Carignan’s July 23, 2021, letter constitutes explicit advocacy and is electioneering. While it disclaims taking any position because of the statement, “Please do not sign the petition for Resolution R-21-143 until you are fully informed of the implications for this change,” there are numerous other statements that make explicit that the Chief is advocating against the ballot measure, notably the repeated claim: “I oppose this resolution.” The use of “I” does not eliminate this as explicit advocacy. The clear and repeated message—oppose this resolution—directs the reader to vote a particular way on a specific ballot measure. This is the “express advocacy” contemplated under RSA 652:16-h, and is not “implicit advocacy,” the regulation of which has been recognized by courts as being unconstitutional. See Buckley v. Valeo, 424 U.S. 1 (1976). See also Stenson v. McLaughlin, 2001 WL 1033614, 3 (D.N.H. Aug. 24, 2001).

Additionally, under element (4) above, Chief Carignan admitted posting his letter on the Department’s Facebook page while in the performance of his official duties. Therefore, Chief Carignan’s July 23, 2021, letter constitutes electioneering and would trigger the prohibition under RSA 659:44-a if the (1) public employee and (2) exemption elements are also met.

Whether Deputy Chief Testaverde’s statements at the October 13, 2021, Crime Watch meeting constitute electioneering is a closer call. His statements regarding “political autonomy,” and the potential for outside political pressure intruding on the Department’s ability to “do things by the book,” do not blatantly direct a voter to vote a particular way on a specific ballot measure. While at the very least Deputy Chief Testaverde’s opposition was implicit, it is unclear from the record established by this Office whether his statements would constitute explicit advocacy under the relevant statutes and case law. However, based on subsequent discussion, whether the statements constitute explicit advocacy is not determinative as to a violation of RSA 659:44-a due to his public employee status.

b. Public Employee

RSA 659:44-a prohibits “public employees,” as defined under RSA 273-A:1, IX, from engaging in electioneering. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute “public employees.” Relevant here are the following two exceptions:

- Persons appointed to office by the chief executive or legislative body of the public employer; and
- Persons whose duties imply a confidential relationship to the public employer

RSA 273-A:1, IX(b) and (c).

The Nashua Chief of Police is appointed by the Police Commission. The Police Commission is the chief executive or legislative body of the public employer within the meaning of RSA 273-A:1, IX and X.

The New Hampshire Supreme Court holds that:

The term “chief executive” is not defined in RSA chapter 273–A and again, we look to the plain meaning of the term. In Appeal of Westwick, 130 N.H. 618, 621, 546 A.2d 1051 (1988), when deciding whether the plaintiff was the chief executive officer of an administrative agency, we noted that “chief” means “being accorded highest rank, office or rating ... or one who is put above the rest.” Furthermore, we have interpreted this term to include high level positions such as city manager, university president, and mayor.

In re Town of Litchfield, 147 N.H. 415, 418 (N.H. 2002) (Internal citations omitted.) (Emphases added.)

Therefore, because Chief Carignan was appointed as the Nashua Police Chief by the Police Commission, he qualifies for the exception under RSA 273-A:1, IX(b).

In addition, the confidential relationship exception also applies under RSA 273-A:1, IX(c). The factor that determines whether an individual is a confidential employee is whether he/she has access to confidential information including, but not limited to:

1. Labor relations;
2. Negotiations; and/or
3. Significant personnel decisions.

In Appeal of City of Laconia, the New Hampshire Supreme Court held that City’s personnel director’s administrative secretary was a confidential employee under RSA 273-A:1, IX. See, Appeal of Town of Moultonborough, 164 N.H. 257, 262 (2012) (““Confidential employees” are those employees who have access to confidential information with respect to labor relations, negotiations, significant personnel decisions and the like.”) (Internal quotations omitted.). The Court noted that a city’s personnel director’s administrative secretary was a “confidential employee” and could not be included in a bargaining unit of other city employees

where the administrative secretary was privy to the personnel director's personal thoughts about the collective bargaining process. It would be unjust and unreasonable to require the city's personnel director to keep secrets from his secretary about a significant part of his work. Appeal of City of Laconia, 135 N.H. 421 (N.H. 1992).

The chief of a police department also would have access to such information given his/her administration of subordinate officers. “[E]ach chief of police [...] who is appointed rather than elected, shall have authority to direct and control all employees of his or her department in their normal course of duty and shall be responsible for the efficient and economical use of all department equipment.” RSA 105:2-a. See RSA 105:4 – Employment; and RSA 105:9-a – Employing Police. Given the supervisory and administrative responsibilities of a chief of police, the chief necessarily has access to confidential information such as personnel files, employment records, salary information, negotiations with police unions, as well as significant personnel decisions.

Indeed, the language of the City Charter as it pertains to the Police Commission and the job descriptions and duties of the chief and deputy chief demonstrate a “confidential relationship:” both are integral to the negotiation and execution of labor contracts and management of the Police Department’s labor force.

Additionally, considering that the Court has determined that an administrative secretary qualifies under this exception, a chief of police—and deputy who is the active negotiator on labor matters—must have the same, if not a higher level of confidential relationship with the Commission.

Therefore, it is clear that Chief Carignan does not constitute a “public employee,” within the meaning of RSA 273-A:1, IX(b), because of his appointment as chief by the Police Commission. Due to the unique structure of the Nashua Police Department and Police Commission—and the broad use of “appointment” in the charter—this Office is not making a determination as to whether Deputy Chief Testaverde qualifies under RSA 273-A:1, IX(b). However, that determination is unnecessary as both Chief Carignan and Deputy Chief Testaverde are not “public employees” within the meaning of RSA 273-A:1, IX(c) because their duties as police chief and deputy chief imply a confidential relationship with the Police Commission.

Relating to this final point, Chief Carignan mentioned in his interview with Investigator Tracy that his administrative assistant, Ms. Breslin, may have helped him post his July 23, 2021, letter on the Department Facebook page. If Ms. Breslin posted the letter, she appears to be an exempt employee consistent with Appeal of City of Laconia. Ms. Breslin’s duties include sitting in non-public sessions during meetings with the Police Commission where the Chief and commissioners talk about personnel matters and other sensitive and confidential topics.

Additionally, regarding the three officers who visited Ms. Prince’s residence on July 7, 2021, there is no indication that the dispatch was related to electioneering or Ms. Prince’s position on reform of the Police Commission. Indeed, the log entries show that the officers’ visit was in response to following up on threat allegations involving Ms. Prince. This Office has no

information supporting an allegation that election laws were violated by the dispatch of the three officers on July 7, 2021.

c. Structure of Nashua PD and police commission

The Nashua Police Commission is the chief executive or legislative body of the public employer within the meaning of RSA 273-A:1, IX and X. However, the structure of the Nashua Police Department and Police Commission is unique. Instead of a structure whereby only the head of a police department is appointed, under the language of the City Charter, the Nashua Police Commission “appoints” all officers in the Department based on input and recommendations from the police chief and deputies. While it could be possible to read RSA 273-A:1, IX(b) as designating *all* Nashua police officers, regardless of rank, as appointed individuals—and therefore exempt from the RSA 659:44-a electioneering prohibition—this Office is unwilling to imbue the City Charter’s use of “appoint” with an expansive meaning such that the combined operation of RSA 659:44-a and RSA 273-A:1, IX would be rendered moot.

It does not appear to be a reasonable outcome under the law to conclude that non-leadership police officers in the Nashua Police Department are entitled to electioneer under RSA 273-A:1, IX, based on the City Charter. However, that question is not presented at this time and this Office is instead only addressing the complaints related to Chief Carignan and Deputy Chief Testaverde.

Both Chief Carignan and Deputy Chief Testaverde are exempt from the electioneering prohibition by operation of RSA 273-A:1, IX(c) as they are “confidential employees” within the meaning of the statute. Additionally, the position of chief of police would fall into a traditional and widely applied reading of the RSA 273-A:1, IX(b) exemption as an employee appointed by the chief executive or legislative body of the public employer.

d. Use of Public Resources

While Chief Carignan does not constitute a public employee sufficient to trigger the electioneering prohibition under RSA 659:44-a, II, the use of a departmental resource—its Facebook page and the Department’s computer system—was improper. As a communication channel that was routinely utilized for sharing information with the public, the Department’s Facebook page is a resource closely tied to the non-exhaustive list of government property or equipment described in RSA 659:44-a. Posting the July 23, 2021, letter on the Department’s Facebook page was a use of police resources—public resources—to advocate against reform of the Police Commission.

This Office acknowledges the general principle that the government may use public funds to support its own measures. Epping Res. for Principled Gov. v. Epping School Bd. No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Mktg. Ass’n, 544 U.S. 550, 559 (2005). However, law enforcement agencies have an important role in their respective communities dependent on public confidence that cannot be jeopardized by the specter of impropriety or partisanship. Even while the Chief and Deputy Chief are exempt from the electioneering prohibition, your letter Facebook post could be—and has been—perceived as

the Nashua Police Department functioning as a political entity engaged in inappropriate electioneering.

When a police department is seen engaging in such conduct, which appears supportive of a candidate or measure, it is troubling, and draws significant questions about the agency's ability to enforce laws dispassionately. The Chief of the Nashua Police Department must exercise a higher degree of care and diligence to ensure that leaders and officers do not engage in conduct that gives rise to these questions of integrity, nor use Departmental resources in violation of RSA 659:44-a, II.

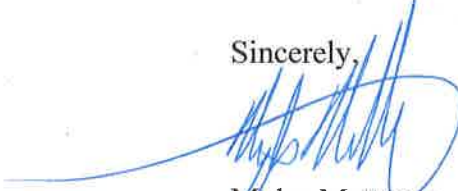
### III. CONCLUSION

Pursuant to RSA 659:44-a, II, and based upon the investigation conducted by our Office, you are hereby ordered to **Cease and Desist from the use of departmental resources for electioneering.**

The Nashua Police Chief shall submit to this Office a remediation plan outlining the steps the Nashua Police Department has already or will take to educate current and future personnel on the prohibitions in RSA 659:44-a, appropriate protocols to prohibit electioneering by Department employees, and measures to ensure departmental resources are not used for electioneering. The remediation plan and the social media policy shall be sent to us within 30 days of the date of this letter.

This matter will be closed contingent upon receipt, within 30 days, of an acceptable remediation plan. Actions conducted since you became aware of potential electioneering violations may satisfy elements of an appropriate remediation effort. Please contact me if you have any questions.

Sincerely,



Myles Matteson  
Deputy General Counsel  
Attorney General's Office

cc: Sonia Prince  
Nashua Chief of Police

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

December 22, 2022

Sonia Prince

[REDACTED]  
Nashua, NH 03064

**RE: Alleged Illegal Campaign Activity in violation of RSA 664:14**

Dear Ms. Prince,

On September 28, 2021, this Office received two complaints regarding a political advertisement advocating for the success of Nashua Ballot Question #2, and asking Nashua voters to vote "YES" on the Question. The text of the signs read, "LOCAL CONTROL VOTE 'Yes' On Question 2". The complaint alleged that the mailer failed to contain the identification information required under RSA 664:14. This Office concludes that the signs were not in compliance with RSA 664:14, but were later corrected to include the required information.

On October 6, 2021, Chief Investigator Richard Tracy spoke with you to discuss the signs in question. You indicated you were a member of the Nashua Citizens for Accountable Government, are the fiscal agent for the group, and verified that the organization created the political advertisement in question. You indicated that your group had placed 30 signs around Nashua. The signs did not originally include the identifying information required by RSA 664:14—information identifying who is responsible for the political advertisement—but after posting the signs your group placed stickers on each sign with disclosure information.

As your group's signs did not originally identify who was responsible for their content, we would like to take this opportunity to review the applicable statute governing the identification requirements for political advertisements, specifically RSA 664:14.

First, RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly advocates the success or defeat of any party, measure or person at any election.

With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term "implicitly" was unconstitutional. *Stenson v. McLaughlin*, No. CIV. 00-514-JD, 2001 WL 1033614, at \*7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term "implicitly" from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires that all political advertising must be signed with the name and physical or mailing address of a person responsible for the advertising. For groups, committees, or entities, the statute requires that an individual be named along with the entity responsible. Under RSA 664:14, II, the “name of the enterprise or organization shall be indicated, and the chairman or treasurer of the enterprise or organization shall sign his name and address.” An Internet address for a website is acceptable if the website immediately and prominently displays all of the disclaimer information required. That is, it must clearly identify the name of a contact person for the person responsible or the group responsible for the advertising and a physical or mailing address where the contact person can be located.

Based on the forgoing, the signs in question would constitute political advertisements as they expressly advocate for the success of a measure, in this case, Nashua Ballot Question #2. As such, the signs trigger the identification requirements under RSA 664:14.

We anticipate that Nashua Citizens for Accountable Government will adhere to all appropriate political advertising requirements in the future. To that end, this Office encourages you to review the above-referenced statutes.

This matter is closed. Thank you for your attention to this matter. Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,



Myles Matteson  
Deputy General Counsel  
New Hampshire Attorney General's Office  
(603) 271-3650  
Myles.b.matteson@doj.nh.gov

Copied to: Alex Comeau  
Laura Colquhoun  
Daniel Healy, City Clerk, City of Nashua

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

December 22, 2022

Wayne Welch, Moderator  
Alyssa Richard, Town Clerk  
Linda Hoelzel, School Clerk  
Jonathon Woods, School District Moderator

Town of Raymond  
4 Epping Street  
Raymond, NH 03077

**Re: Town of Raymond, Alleged Election Official Misconduct**

Moderator Welch, Clerk Richard, Clerk Hoelzel, and Moderator Woods:

In March 2022 this Office received multiple complaints related to the administration of the 2022 town election. These complaints referenced (1) two candidates for the Raymond selectboard that did not properly declare the office for which they were running; (2) the conduct of a school district recount; (3) failure to deliver an absentee ballot; and (4) untimely posting of the town warrant.

Attorney General Chief Investigator Richard Tracy was assigned to this investigation. After investigation and review, this Office concludes that the documentation completed by two candidates for the Raymond selectboard was sufficient to satisfy the requirements of RSA 669:19 though the clerk's office must review all submitted paperwork at the time of the filing. This Office identified no violations of election law as it relates to the school district recount. While ultimately a Raymond voter did not appear to receive his absentee ballot, this Office concludes that the town clerk took appropriate actions and mailed an absentee ballot per the requirements of the law. Finally, although the warrant for the March 8, 2022 town election had an untimely posting, town officials ratified the election results through a special meeting authorized under RSA 31:5-b, and this Office finds no election violation.

**DECLARATIONS FOR OFFICE**

On March 14, 2022, Scott Campbell contacted the Secretary of State's Office on information received that two candidates for the Raymond selectboard, Chris Long and Carlos Maldonado, did not properly declare the office for which they were running on their declaration of candidacy forms. The Secretary of State's Office referred the matter to this Office. On March



15, 2022, Kera Goldsmith emailed this Office with the same concerns. On March 23, 2022, Rockingham County Attorney Patricia Conway forwarded complaints made to her office from Anthony Clements and William Weldy alleging that candidates failed to comply with RSA 669:19 and declare the office for which they were a candidate. Messrs. Clements and Weldy were also candidates for the selectboard in the town election.

This Office reviewed the declaration of candidacy forms and other filing paperwork completed by candidates Long and Maldonado. In both cases, the candidates provided information in all available fields on the declaration of candidacy form except for the office for which they were running.<sup>1</sup> That field on both forms was blank. However, at the time of completing their declarations, they also indicated the office for which they were running and the exact form of their name to appear on the ballot on a form provided by Clerk Richard.

On March 28, 2022, Investigator Tracy spoke with Clerk Richard. She indicated that at the time they completed them, she did not notice that candidates Long and Maldonado had not written in the office they were seeking on the candidacy forms. However, they had provided that information while completing the form she provided at the same time to indicate the office for which they were running, the term, and the exact form of their name to appear on the ballot. Clerk Richard admitted that it was an oversight on her part to not ensure the candidacy forms were complete, but that she could determine the office and term by the information supplied by the candidates at the time of filing on the forms she required them to complete.

This Office accepts the statements made by Clerk Richard that the declaration documents consisted of two parts—the declaration form and the associated office, term, and name-on-ballot form. Therefore, there is sufficient evidence for this Office to find that information—provided on *both* forms submitted by candidates Maldonado and Long—was sufficient to satisfy the requirements of RSA 669:19. There is insufficient evidence for this Office to find a violation of law or misconduct on the part of the candidates or clerk.

That said, any process that has a candidate recording essential information without verification by the receiving clerk, and confirmation by the candidate that the information recorded on the filing form is correct and complete, is at risk of error. While the candidate is responsible for providing essential information to file for office, the clerk's forms must be drafted so that the candidate is required to select and provide that essential information, and that clerical staff verify this has been done before accepting a declaration of candidacy. The clerk's filing processes and verifications must ensure that avoidable errors are in fact avoided.

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<sup>1</sup> The content of a declaration of candidacy is specified in 669:19 Nominations; Nonpartisan Ballot System. It reads: "In a town which has adopted the nonpartisan ballot system as provided in RSA 669:13, all candidates shall file a declaration of candidacy with the town clerk during the filing period for town candidates. All candidates who file on the last day of the filing period shall do so in person before the town clerk. The filing period shall begin on the seventh Wednesday and end on the Friday of the following week before the town election. Such declaration of candidacy shall be prepared by the town clerk in substantially the following form: I, \_\_\_\_\_, declare that I am domiciled in the town of \_\_\_\_\_, and that I am a registered voter therein; that I am a candidate for the office of \_\_\_\_\_ and hereby request that my name be printed on the official nonpartisan ballot of the town of \_\_\_\_\_."

### **SCHOOL DISTRICT RECOUNT**

On March 17, 2022, Nancy Kindler contacted this Office with concerns about the school district recount process that took place in Raymond on March 16, 2022. She stated that there were “non-registered people” observing the process as well as being in too close a proximity to the ballots. Ms. Kindler also stated that she spoke with a woman named Linda who indicated that she would take the ballots home with her that evening. Ms. Kindler indicated that she told Linda that she could not do that, to which Linda responded that she would take the ballots to the police station instead.

On March 25, 2022, Investigator Tracy spoke with Ms. Kindler. She felt the observers at the school district recount were too close to those counting, that tally sheets were left on the counting tables unattended, and that she had to point out to the moderator and two counters that they had failed to sign the tally sheets that they used. Ms. Kindler stated that the observers she saw stood next to the individuals who were counting the ballots. She stated that she did not see any of the observers touch the ballots nor did they disrupt the counting process. Finally, she indicated that she raised concerns about the type of tape officials used to secure the ballot boxes at the end of the recount.

On March 29, 2022, Investigator Tracy spoke with School Clerk Linda Hoelzel. Clerk Hoelzel and School Board Moderator Jonathon Woods were responsible for the school district recount. Clerk Hoelzel indicated that she ordinarily brought the school district ballots home with her on the night of the election and then would deliver them to the SAU 33 administrative building the next morning. However, she indicated that if she believed there might be a recount she would deliver the ballots to the Raymond police department instead to be secured. Following the March 8 election, Clerk Hoelzel delivered the school district ballots to the Raymond police department. On the night of the recount, March 16, she picked up the three ballot boxes and brought them to the school for the recount. She returned the ballots to the police department after the recount, before delivering them to the SAU 33 administrative office the following day.

Investigator Tracy reviewed a video-recording of the recount posted publicly. Based on the information provided by Ms. Kindler and the video, this Office has identified no violations of election law. That said, it is essential to maintain the integrity of election and recount processes by ensuring that election materials, including ballots, boxes and tally sheets to record results, are secure and signed as required. Although it does not appear that any violations occurred in this instance, this Office expects election officials to ensure election materials are appropriately supervised and secured.

### **ABSENTEE BALLOT DELIVERY**

On March 21, 2022, Raymond voter Gary Brown submitted a complaint to the Secretary of State’s Office, stating that he had not received his requested absentee ballot for the town election. Mr. Brown believed that his failure to receive a ballot was intentional, indicating that it was retribution for exposing corrupt town officials. Mr. Brown also stated that the town election warrant posting was not timely and that some selectboard candidates failed to declare the office

for which they were running. The Secretary of State's Office referred Mr. Brown's complaint to this Office on the same day it was received.

An email correspondence chain documents the communications between Mr. Brown and Clerk Richard. Mr. Brown initiated the correspondence on Saturday February 5, 2022, requesting an absentee ballot. Clerk Richard acknowledged receipt of the request on Monday the 7<sup>th</sup>. On the 21<sup>st</sup> Mr. Brown asked when he could expect his ballot. On the 22<sup>nd</sup> and 23<sup>rd</sup> the two exchanged multiple emails. Clerk Richard explained that she would mail the ballot as soon as she received the ballots from the printer. Also on the 23<sup>rd</sup>, Clerk Richard contacted the Secretary of State's office to inquire as to any other solutions permitted by law to send a ballot to Mr. Brown in advance of receiving the ballots from the printer. The Secretary of State's Office instructed Clerk Richard that she could print and sign a copy of the ballot proof and send that to a voter. Clerk Richard did so and by her statement and State election database records she mailed the absentee ballot to Mr. Brown at his requested address in Hawaii on the 23<sup>rd</sup>. Also on the 23<sup>rd</sup>, she explained the process, the solution proposed by the Secretary of State's Office, and stated that Mr. Brown's ballot was mailed that day. Mr. Brown responded, "Don't need a dissertation on your job [sic] This is not how you respond to a concerned [sic] citizen you work for." Mr. Brown later wrote that he never received his absentee ballot.

In this circumstance, RSA 669:26 obligates the town clerk to provide absentee ballots for the town election, and RSA 657:15 governs the requirements for sending absentee ballots. Based on her own statements, the correspondence covered above, and the State's election database, Clerk Richard mailed—taking additional steps not required under the law to expedite the process in advance of receiving printed ballots—a ballot to Mr. Brown on February 23, 2022. This Office has no information to clarify why Mr. Brown did not receive a ballot. Based on the record available, Clerk Richard fulfilled her duties under the law and this Office finds no violation.

#### **TIMELINESS OF THE TOWN WARRANT POSTING**

Selectmen are responsible for posting the warrant at least 14 days before the town election. The warrant states the date of the election or town meeting, the location of the polling place, offices to be elected, the questions that will be on the ballot, and the polling hours. RSA 658:1; RSA 669:2. The town warrant for the March 8, 2022, town election was posted one day late.

Municipalities may correct minor procedural defects by calling a special town meeting to ratify their action pursuant to RSA 31:5-b. Per RSA 40:16, SB 2 municipalities may also utilize RSA 31:5-b to remedy procedural errors. The Raymond selectboard posted the warrant for the ratification of the March 8, 2022 town election results on March 15, 2022. Raymond held the required special meeting on April 2, 2022, and the ratification article passed 162-61.

While the failure to timely post the March 8, 2022 town election warrant was a procedural error, RSA 31:5-b provides the remedy. The town availed itself of this remedy and ratified the prior election results. As such, this Office finds no New Hampshire election law violations.

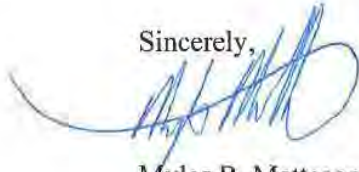
**CONCLUSION**

This Office received multiple complaints regarding the conduct of the March 8, 2022 town election in Raymond. As discussed above in more detail, this Office finds:

- (1) The totality of documentation completed by two candidates for the Raymond selectboard was sufficient to satisfy the requirements of RSA 669:19. There is insufficient evidence for this Office to find a violation of law or misconduct on the part of the candidates or clerk. However, the clerk's office must review all submitted paperwork at the time of the filing to ensure that candidates have accurately and completely filled out required filing paperwork, and that the supplied forms clearly request all information necessary under the law.
- (2) This Office identified no violations of election law as it relates to the school district recount. However, this Office expects election officials to ensure election materials are appropriately supervised and secured.
- (3) While ultimately a Raymond voter did not receive his absentee ballot, this Office concludes that the town clerk took appropriate actions and mailed an absentee ballot per the requirements of the law.
- (4) Although the warrant for the March 8, 2022 town election had an untimely posting, town officials ratified the election results through a special meeting authorized under RSA 31:5-b, and this Office finds no election violation.

This matter is closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
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CC: Anthony Clements  
William Weldy  
Scott Campbell  
Kevin Pratt  
Paul Ayers  
Chris Long  
Carlos Maldonado  
Kera Goldsmith  
Gary Brown  
Nancy Kindler  
Linda Hoelzel  
Jonathon Woods

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

December 22, 2022

[REDACTED]  
Weare, NH 03281

**Re: [REDACTED] Alleged Wrongful Voting**

On December 15, 2020, this Office received a notification from the Secretary of State's Office that records indicate that you voted twice in the November 3, 2020 General Election by voting in Goffstown as well as same-day registering and voting in Weare. After interviewing you and conducting an investigation, we are closing this matter as unfounded.

The Secretary of State's Office provided several documents concerning your voting history. We reviewed your Goffstown voter registration, dated March 9, 2009. We also reviewed the Town of Goffstown voter checklist page 676 from the November 3, 2020 General Election, on which your name is crossed off, indicating that an election official marked you as having voted on that day. Your sister's name, [REDACTED] also appeared on the checklist, though her entry had a checkmark next to her name but it was not crossed off—this marking is inconsistent with standard checklist marking procedure for recording a voter as having voted. Your November 3, 2020, Town of Weare voter registration indicated that you were formerly registered to vote in Goffstown. The Town of Weare's newly registered voters list contained your name—added on November 3, 2020.

Department of Justice Chief Investigator Richard Tracy spoke with Town of Goffstown Town Clerk Cathy Ball. She indicated that two ballot clerks handled the T-through-Z portion of the checklist for the November 3, 2020 General Election. Clerk Ball had no information as to why your sister's name had a checkmark next to it on the November 3, 2020 General Election checklist, but was not crossed off. Clerk Ball indicated that the moderator's report for the General Election indicated that 10,312 ballots were given to voters—a number derived from the checklist—and 10,312 votes were recorded, though the sealed ballot boxes recorded a total of 10,311 ballots contained therein.

On October 14 and 15, 2021, Investigator Tracy spoke with two ballot clerks responsible for the T-through-Z portion of the checklist at the November 3, 2020 General Election. Both have worked multiple elections as volunteer ballot clerks and described the standard procedures

for checking in voters on election day. Neither recalled confusion or errors relating to checking in voters on November 3, 2020, and neither were familiar with or remembered your name or the [REDACTED] last name.

On October 22, 2021, Investigator Tracy spoke with Goffstown Moderator Rodney Stark. Moderator Stark was not aware of any issues raised on November 3, 2020, relating to you or your name on the checklist, and had no knowledge or explanation as to why your name was crossed off on the checklist, but your sister's name only had a checkmark next to it on the checklist.

Investigator Tracy spoke with you on October 14, 2021, by phone. You stated that you registered to vote and voted in person in Weare on November 3, 2020. You additionally indicated that you had not voted in Goffstown since moving to Weare in 2014. You were adamant that you had not voted in Weare since that time.

On October 14, 2021, Investigator Tracy also spoke with your sister, [REDACTED] formerly [REDACTED] [REDACTED] stated that she did not vote in Goffstown on November 3, 2020, but same-day registered and voted in Concord on that day along with her husband, who accompanied her to the polls. [REDACTED] indicated that the last time she believed she voted in Goffstown was in 2018 prior to moving to Concord.

Investigator Tracy spoke to your parents, [REDACTED] [REDACTED]. Both were certain that you had not voted in Goffstown in 2020, and neither recalled what names the ballot clerk checked off on November 3, 2020, when they were checking in at the Goffstown polling place to vote.

Investigator Tracy contacted the two other voters listed on page 676 of the Goffstown checklist from November 3, 2020, whose names were not checked off as having voted. Both confirmed that they had not voted in Goffstown in that election.

Investigator Tracy procured and reviewed digital records to determine whether you were present at the Goffstown polling place on November 3, 2020. Those records do not appear to show that you were present at the polling place on election day.

RSA 659:34, I(b) prohibits voting more than once for any office or measure. Under the statute, voting twice in the same election is a felony offense. While your name is checked off on the November 3, 2020, Goffstown checklist, page 676 contains at least one error—the checkmark next to your sister's name without a corresponding line through her name—that is inconsistent with checklist marking practices. We note that there is no explanation for the error on the face of checklist page 676 relating to your sister's name. Additionally, this Office has been unable to identify information, other than that single checklist page with another acknowledged error, indicating that you voted in Goffstown in 2020.

Having reviewed relevant records and the interviews discussed above, this Office is satisfied that the evidence does not support the allegation that you voted both in Weare and Goffstown in the November 3, 2020 General Election.

As such, this matter is closed.

Sincerely,



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CC: Dave Scanlan, Secretary of State of New Hampshire  
Kathy Ball, Town Clerk, Town of Goffstown

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ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

January 5, 2023

Al Brandano  
[REDACTED]

Kensington, NH

**Re: Town of Kensington, Alleged Election Official Misconduct**

Mr. Brandano:

You have submitted multiple complaints and corresponded extensively with this Office alleging violations concerning Town of Kensington ballot counting device activity logs, compliance with RSA 91-A Right-To-Know requests, and voter suppression as it relates to your treatment by town officials. In summary, this Office: addressed your complaints regarding the ballot counting devices in a July 12, 2022, letter to Town Clerk Sarah Wiggin on which you were copied; has no enforcement authority with regard to the RSA 91-A violations you allege; and concludes that the allegations of voter suppression under RSA 659:40 do not meet the threshold necessary to constitute violations of the law.

**INVESTIGATION**

On January 19, 2022, you contacted this Office after you were referred by the Secretary of State's Office. You alleged that there were multiple violations in the Town of Kensington regarding the ballot counting device activity logs and that citizens are losing faith with the voting process. You followed up your initial phone call with multiple emails and requests for an in-person meeting. You met with several members of this Office on February 11, 2022.

On March 1, 2022, you sent a correspondence to the Town of Kensington styled as a "Notice of Trespass to Kensington Selectman Infringement on Constitutional Rights Unconstitutional Use of Electronic Voting Machines." You alleged official oppression, tampering with public records, and unlawful simulation of legal process. You cited reasons why the Kensington Board of Selectmen (BOS) had violated their oath of office by not treating you with "dignity and respect." Those include: the BOS not seconding motions for a hand count of ballots, the BOS allowing an election official's letter to be posted on the town website that you claim was disparaging to you, your RSA 91-A requests were not answered completely, you were not placed on the BOS agenda to address topics of concern to you, the BOS limited your time to speak when you were given the floor, and the Kensington town moderator did not permit a point



of order claim you raised at the February 9, 2022, deliberative session. You also sent the Town of Kensington a document styled as a "Memorial and Remonstrance."

On April 12, 2022, you sent this Office a letter that included a copy of a two-page outline requesting an investigation "into The Town of Kensington, Selectmen, and Town Moderator(s) for suppression and obstruction of my sovereign voting and civil rights" as they had violated their oaths of office by not acting in good faith on your concerns. On April 28, 2022, by certified mail, you requested a second meeting with this Office. The next day this Office responded that the Attorney General's Office is not the proper venue to address complaints of "being verbally chastised, being disparaged by another town resident, correcting town meeting minutes, enforcing Right to Know requests to town officials, you appearing on the selectboard's agenda, selectmen's refusal to second motions, or a denial of points of order during town public meetings." However, that correspondence noted that the ballot counting device logs and voter suppression matter was actively being reviewed by this Office.

In May and June, you and others copied this Office on correspondences and Right-To-Know requests. On May 5, 2022, you spoke with Attorney General's Office Chief Investigator Richard Tracy. You conveyed to Investigator Tracy that on March 8, 2022, the day of the Kensington Town Election, you had been at the polls most of the day. You explained that you spent the majority of the day in the electioneering zone supporting your article to have Kensington prohibit the use of ballot counting devices. You stated that you twice saw an election official leave the polling place building with official ballots, once to assist a voter with COVID who sat in his vehicle, and then later when an official went across the parking lot to the fire department with ballots.

You stated that sometime between 1PM and 3PM you entered the polls to vote, and that when you did so you saw Kensington Selectman Bob Gustafson near the entrance to the school gym where voting was taking place. You stated that you approached Selectman Gustafson and asked him if you would be able to have your ballot counted by hand and not the ballot counting device. You indicated that Selectman Gustafson told you that he did not think that was possible. Selectman Gustafson further explained to you that the town checked with the Secretary of State's Office, which told town election officials that if a town has elected to use ballot counting devices then all ballots will be counted by the machine. You stated that Selectman Gustafson told you that you should speak with the moderator, Harold Bragg.

You told Investigator Tracy that you saw Moderator Bragg in the hallway a short time later on March 8, 2022, and you asked Moderator Bragg if you could have your ballot counted by hand. You stated that Moderator Bragg responded, "Absolutely not." You stated that your questions were "very professional," and you were not looking to be disruptive. You told Investigator Tracy that you chose not to vote, as you did not believe the town should be using the ballot counting device, that you had filed a "remonstrance," and that you would be contradicting yourself if you allowed the ballot counting device to count your ballot.

You told Investigator Tracy that at the Kensington BOS meeting that you first brought up the idea of doing away with ballot counting devices and returning to hand counts, Selectman Joe Pace became very angry, started yelling at you, and you thought things were going to turn to "fist

a cuffs.” You stated that about one hour later, Selectman Pace gave a public apology to you. You indicated that you feel that certain town and election officials have created a “real hostile environment” because of your belief that the town should not use a ballot counting device in elections and should return to hand counting ballots.

You told Investigator Tracy that you thought you had a good working and cordial relationship with the town’s attorney, Charlie Bauer, until you received a copy of Attorney Bauer’s report indicating that Moderator Bragg would have allowed you to have your ballot hand counted if you had asked him, and denying memory of a conversation with you in the hallway. You stated that you have since stopped talking to Attorney Bauer.

**Charles Bauer – Town Counsel, Town of Kensington**

Attorney Bauer spoke with Investigator Tracy regarding the complaints and correspondences you sent Town of Kensington officials. He also provided a copy of the email describing the investigation he completed relating to your complaints about voting at the March 8, 2022, town election. In that email, sent to you, he noted:

A witness says that he seems to recall the Moderator made a reference that the Citizen requested a general hand-counting of ballots while the Moderator was outside, but the request was not for the Citizen's personal ballot. According to a different witness citizen, the Moderator went outside at about 3 PM or so to tell an individual with leaflets to get behind the fence. At that time, the Citizen was behind the fence area about 25 feet from the Moderator's interaction with that citizen. In conclusion, there was either miscommunication or misunderstanding on March 8 between the Citizen and the Moderator. There was no attempt or intent to deprive anyone from voting.

**Robert Gustafson – Kensington Selectman**

On June 2, 2022, Investigator Tracy interviewed Selectman Gustafson. Selectman Gustafson recalled that on March 8, 2022, at approximately 3PM you approached him and asked if you could have your ballot hand counted. Selectman Gustafson stated he did not believe that could occur, but directed you to speak with Moderator Bragg. Selectman Gustafson did not see you approach or speak with Moderator Bragg and does not know if you may have spoken with him at any other point in the day.

Selectman Gustafson stated that you and he have on several occasions spoken about your mutual concern about the use of ballot counting devices, and that you have been allowed to speak at BOS meeting on more than one occasion on the topic. He did not recall if you had a speaking time limit but remembered you speaking for two or three minutes each time you addressed the Selectboard at a BOS meeting.

**Dan Davis**

On June 20, 2022, Investigator Tracy spoke with Dan Davis. Mr. Davis spent hours with

you on March 8, 2022, in the electioneering zone outside the Kensington polling place. He indicated that he did not witness any conversations between you and Moderator Bragg, but that in the afternoon you told Mr. Davis that you had not voted as election officials stated they would not hand count your ballot. Mr. Davis also stated that he was aware that election officials had carried school ballots to the fire station to make copies as they were running out of ballots.

**Ben Cole – Kensington Assistant Moderator**

Investigator Tracy interviewed Assistant Moderator Cole regarding the March 8, 2022, town election. Assistant Moderator Cole stated that he manned the ballot counting device for much of election day, and occasionally placed ballots that could not be counted by the machine in the side ballot collection box compartment to be hand counted at the end of the night.

Assistant Moderator Cole also indicated that in the early evening election officials were running low on school ballots so he took a ballot to the fire department on two occasions and made a total of 20 copies. Town Clerk Wiggin also went to Town Hall and made school ballot copies—approximately 100 in total. He did not recall whether any election official signed or initialed the photocopied ballots.

Assistant Moderator Cole stated that a voter was parked in the parking lot asking to vote from his car as he had an active case of COVID. Assistant Moderator Cole obtained the voter's ID, verified he was registered, and brought ballots to the parking lot for him. The car was near the electioneering zone and Assistant Moderator Cole stated that he announced what he was doing in bringing voting materials to the voter. Assistant Moderator Cole brought the voter's ballots back into the polling place and cast them in the presence of Moderator Bragg and Clerk Wiggin.

Assistant Moderator Cole stated that he remembered seeing you inside the polling place once, near the entrance, in the vicinity of Selectman Gustafson and several police officers. He did not recall whether Moderator Bragg was also in the area. However, he did recall Moderator Bragg coming into the polling place from outside and stating that you wanted all ballots hand counted.

**Peter Merrill – Kensington Assistant Moderator**

Investigator Tracy interviewed Assistant Moderator Merrill. Assistant Moderator Merrill stated that he was not aware that you had requested to have your ballot hand counted on March 8, 2022. He did recall seeing you inside the polling place at one point. He also recalled that one voter asked to have his ballot hand counted, and that Assistant Moderator Merrill placed the ballot in the side compartment of the ballot collection box to be hand counted at the end of the night. Assistant Moderator Merrill stated that had you asked him to have your ballot hand counted, he would have ordered it placed in the side compartment for later hand counting.

**Sarah Wiggin – Kensington Town Clerk**

Investigator Tracy interviewed Clerk Wiggin. She stated that she was “shocked” that you complained that you were not able to vote on election day because your ballot was not able to be hand counted. She did not speak with you about the subject but noted that other voters had been permitted in the past to have their ballots cast in the side compartment of the ballot collection box to be hand counted at the end of the night.

Clerk Wiggin acknowledged that she and Assistant Moderator Cole copied school ballots when they were running low on inventory. She did not recall any election official signing or initialing the copied ballots.

**Harold Bragg – Kensington Moderator**

Investigator Tracy interviewed Moderator Bragg. Moderator Bragg indicated that he may have spoken with you on the afternoon of March 8, 2022, when he was in the electioneering zone speaking with Mr. Davis, but that he recalls that you may have asked, “Are you going to hand count ballots,” which he took to mean would election officials hand count *all* ballots. Moderator Bragg was certain that he had not had a one-on-one conversation with you at any point in the day regarding having your own ballot hand counted. Moderator Bragg stated that had you asked to have *your* ballot hand counted, he would have—as he did with other voters—instructed you to cast it into the side compartment of the ballot collection box to be hand counted at the end of the night. Moderator Bragg recalled several voters that cast their ballots in the side compartment on March 8, 2022.

**Additional materials**

You also submitted to this Office affidavits from other individuals speaking to the topics covered above. By affidavit, Valerie Watkins stated that she was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told her that Moderator Bragg would not hand count your ballot. By affidavit, J. David Bernardy attested to the same claim—that he was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told him that Moderator Bragg would not hand count your ballot. By affidavit, Dan Davis attested that he was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told him that Moderator Bragg would not hand count your ballot. By affidavit, Patricia DeCaprio attested that she was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told her that election officials would not hand count your ballot. By affidavit, Patrick Marr attested that he was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told him that Moderator Bragg would not hand count your ballot. By affidavit, Jennifer Marr attested that she was present in the electioneering zone at the Kensington polling place on March 8, 2022, and you told her that Moderator Bragg would not hand count your ballot.

## DISCUSSION

As noted earlier, this Office addressed your complaints regarding ballot counting device activity logs in a July 12, 2022, letter to Town Clerk Sarah Wiggin on which you were copied. Please refer to that letter for discussion regarding ballot counting device activity logs. Additionally, as conveyed to you previously, this Office has no enforcement authority with regard to the RSA 91-A violations you allege. Please refer to RSA 91-A:8 for any remedies that may be available for you to pursue relating to RSA 91-A compliance.

Regarding the photocopying of school ballots, the Election Procedure Manual speaks to the process required:

First use any remaining Absentee Ballots as election day ballots. Authenticate unused absentee ballots before using them as election official ballots. Best practice is for the clerk to draw a line through the word "Absentee" on the absentee ballot and then sign or initial the ballot. If the supply of absentee ballots is exhausted, use photocopies of the official ballot. Authenticate these unofficial ballots with the signature or initials of the clerk or a designee prior to issuing the ballots to voters. Authentication distinguishes extra ballots from any fraudulently created ballots added to the cast ballots. Authenticating absentee ballots converted to election day ballots allows matching the number of absentee ballots counted to the record of how many absentee ballots were marked as cast on the checklist during any post-election review. It is essential that the clerk and the moderator keep an accurate count of the number of absentee or photocopy ballots that are put into use as election day ballots. The total number of ballots used and issued to voters, must be reported to the Secretary of State. The total number of ballots used is an important number, because the moderator uses this number to compare with the total votes cast for particular offices or questions when reconciling the ballot count.

New Hampshire Election Procedure Manual 2022-2023, page 170. Moderator Bragg, Assistant Moderator Cole, and Clerk Wiggin admit that no election official signed or initialed the photocopied school ballots. That is inconsistent with proper procedure and Kensington election officials are hereby ordered—and have been instructed—to follow the signing or initialing procedure in the event they must make copies of ballots in the future.

As to your allegations of voter suppression under RSA 659:40, this Office finds that the facts do not support a conclusion that Kensington election officials' actions constitute violations of the law or were inappropriate based on the evidence available. RSA 659:40 makes it a criminal offense for any person to "use or threaten force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting" or to "knowingly attempt[] to prevent or deter another person from voting or registering to vote based on fraudulent, deceptive, misleading, or spurious grounds or information." RSA 659:40, II and III. The facts you allege, the affidavits you provided, and the information acquired through interviewing numerous individuals who were at the polls on March 8, 2022, do not establish the elements of this offense. It appears most likely that you inquired about hand counting and Moderator Bragg answered as to hand counting *all ballots*, stating officials would not do so. However, at least a few voters on March 8, 2022, who requested to have their ballots hand

counted when they approached the ballot counting device were instructed to cast their ballots into the side compartment of the ballot collection box to be hand counted at the end of the night.

For towns and cities using ballot counting devices, the presumption is that ballots will be counted by the device unless the law provides otherwise—such as for ballots with an overvoted office, Federal Office Only ballots, UOCAVA printed at home ballots, electronic accessible ballots printed at home, or ballots otherwise rejected by the device—or if, in the moderator’s discretion, it is appropriate to allow a ballot to be hand counted to avoid a disruption in the polling place by an insistent voter. From the information available, it appears that Kensington election officials were operating within the scope of the moderator’s discretion in how ballots were to be cast and counted.


## CONCLUSION

This Office addressed your complaints regarding the ballot counting devices in a July 12, 2022, letter to Town Clerk Sarah Wiggin on which you were copied. This Office has no enforcement authority with regard to the RSA 91-A violations you allege. Photocopied ballots need to be signed or initialed by the town clerk, and Kensington election officials are ordered to follow the procedures in the Election Procedure Manual.

Finally, your allegations regarding voter suppression appear to broadly concern your interactions with town officials and their unwillingness to adopt positions or policies for which you advocate. There is a difference under the law between declining to support proposed policies and threatening “force, violence, or any tactic of coercion or intimidation to knowingly induce or compel any other person to vote or refrain from voting.” *See* RSA 659:40. As such, this Office concludes that no violations of voter suppression under RSA 659:40 occurred with regard to you at the March 8, 2022, town election.

This matter is closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
(603) 271-1119  
myles.b.matteson@doj.nh.gov

CC: Charles Bauer, Kensington Town Counsel  
Sarah Wiggin, Kensington Town Clerk  
Harold Bragg, Kensington Moderator  
Robert Gustafson, Kensington Selectman  
Ben Cole, Kensington Assistant Moderator  
Peter Merrill, Kensington Assistant Moderator

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

January 5, 2023

Robert Hatcher

[REDACTED]  
Thornton, NH 03285

**Re: Thornton Central School Alleged Illegal Campaign Activity**

Dear Mr. Hatcher:

The Attorney General's Office received your complaint dated May 2, 2022, regarding the allegations that the Thornton Education Association was engaged in impermissible electioneering. Following review, this Office closes this matter and concludes that—acknowledging the personnel actions already taken—SAU 48 must reinforce the obligations of public employees regarding the handling or distribution of elections-related materials, particularly in any proximity to public property.

**I. FACTUAL BACKGROUND**

On May 2, 2022, you submitted a complaint that the Thornton Education Association sent home handouts with students regarding a ballot measure, and therefore engaged in impermissible electioneering by public employees or using public resources.

On May 9, 2022, Deputy General Counsel Myles Matteson called SAU 48 Superintendent Kyla Welch. The superintendent returned the call on May 10, 2022. Superintendent Welch acknowledged that several teachers—members of the Thornton Education Association—had produced handouts and had sent those handouts home with Thornton Central School students. Superintendent Welch indicated that while handouts are regularly sent home with students, they must be approved by school administrators. She further stated that the SAU had not determined whether any school resources were utilized in the creation of the handouts, but that the SAU responded to the handout distribution as a personnel matter, warning the involved teachers against further such action.

You produced a copy of these handouts to this Office. The handout contains a list of “voting days/meetings” upcoming as well as a statement that the “Thornton Education Association does not recommend this article” for a Town Meeting warrant article regarding the

public availability of teaching materials (emphasis in original). The Thornton Education Association is a union entity affiliated with the National Education Association-New Hampshire.

## **II. APPLICABLE LAW**

### Electioneering

Given its broad construction, and the potential First Amendment implications associated with this statute's regulation of speech, this Office has exercised its powers under RSA 7:6-c (authorizing the Attorney General to enforce election laws) to interpret RSA 659:44-a narrowly. Specifically, this office construes the term "electioneer" under RSA 659:44-a in conjunction with the definition of "electioneering" under RSA 652:16-h.

Although the language of RSA 659:44-a appears to have been constructed broadly, interpreting it in conflict with RSA 652:16-h would be in error.<sup>1</sup> The language of RSA 659:44-a was last updated on January 1, 2017. RSA 652:16-h was enacted on January 1, 2020. RSA 652:16-h defines "electioneering" as "visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted." (Emphasis added.)

"When interpreting two statutes which deal with similar subject matter, we will construe them so that they do not contradict each other, and so that they will lead to reasonable results and effectuate the legislative purpose of the statute. To the extent two statutes conflict, the more specific statute controls over the general." EnergyNorth Nat. Gas, Inc. v. City of Concord, 164 N.H. 14, 16 (2012).

Therefore, we conclude that to qualify as "electioneering" under RSA 659:44-a, the conduct in question must explicitly advocate for a question or office being voted upon consistent with RSA 652:16-h.

#### a. Electioneering by Public Employees

RSA 659:44-a provides that "[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering."

A public employee is defined as "any person employed by a public employer" with some limited exceptions. RSA 273-A:1, IX. Those exceptions are:

- (a) Persons elected by popular vote;
- (b) Persons appointed to office by the chief executive or legislative body of the public employer;

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<sup>1</sup> See also Stenson v. McLaughlin, 2001 WL 1033614 (D.N.H. Aug. 24, 2001) (Holding that statutes can regulate political communications without violating the First Amendment "only if the communications used explicit words of advocacy of election or defeat of a candidate.").



- (c) Persons whose duties imply a confidential relationship to the public employer; or
- (d) Persons in a probationary or temporary status, or employed seasonally, irregularly or on call. For the purposes of this chapter, however, no employee shall be determined to be in a probationary status who shall have been employed for more than 12 months or who has an individual contract with his employer, nor shall any employee be determined to be in a temporary status solely by reason of the source of funding of the position in which he is employed.

### **III. ANALYSIS**

In this case, the handouts contained express advocacy in the form of the statement that the “Thornton Education Association does not recommend this article” for a Town Meeting warrant article. Therefore, it was an electioneering communication.

RSA 273-A:1, IX makes clear that teachers at Thornton Central School are public employees that do not fall within one of the enumerated exceptions to the electioneering statute. Public employees are prohibited from electioneering while in the performance of their official duties—that is, engaging in express advocacy for a candidate or measure.

It is not clear that the involved teachers were operating in their official duties in the production of the handouts. Some activities and use of resources are permitted as union activities under New Hampshire labor laws. This Office makes no finding as to whether the creation of the handouts was in keeping with union obligations. However, even without that finding, this Office is concerned about the advocacy in opposition of a ballot measure taking place on public property, the very site that was an intended subject of the warrant article, and involving students carrying home the electioneering material. This at least gives the appearance of impropriety and partisanship by a public institution.

The handouts the teachers distributed, had they been posted on town property, would have been removed, as required by RSA 664:17. (“No political advertising shall be placed on or affixed to any public property”). While the evidence does not suggest the teachers posted their materials at the school, handing out these materials to students on public property was improper. Outside of the violation of SAU policies regarding handouts, even if the production of the handouts was a proper union activity, sending them home with students was in violation of the law. Beyond this instance, to avoid appearances of impropriety, we warn against advocacy that gives the appearance of public employees engaging in electioneering at the school, in support of school-related policies, while on duty as teachers during a school day.

SAU 48 Superintendent Welch is copied on this correspondence. Acknowledging the personnel actions already taken, this Office urges her to reinforce with SAU teachers and staff the obligations of public employees regarding the handling or distribution of elections-related materials, particularly in any proximity to public property. Public school employees must exercise a degree of care and diligence to ensure their conduct does not violate electioneering laws or raise questions of integrity and impropriety.

This matter is closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
(603) 271-1119  
myles.b.matteson@doj.nh.gov

CC: SAU 48 Superintendent Kyla Welch

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

January 5, 2023

Scott A. Morrow

[REDACTED]  
Sanbornton, NH 03269

**RE: Alleged Illegal Campaign Activity in violation of RSA 664:14 and 664:17**

Mr. Morrow:

On February 7, 2022, this Office received a complaint alleging that your candidate signs failed to contain the identification information required under RSA 664:14 and were placed on town property in contravention of RSA 664:17. This Office confirms that the signs are not in compliance with RSA 664:14, and that a sign was improperly placed on town property.

On February 8, 2022, Chief Investigator Richard Tracy spoke with you to discuss the signs in question. You indicated you were responsible for creating the political advertisements in question. You acknowledged that your signs did not include identifying information—although as a candidate sign they prominently featured your name—and also indicated that you were not aware of the requirements of RSAs 664:14 and 664:17. You agreed to remove your sign from the entrance of the town recycling center and that you would add the required identifying information to all of your displayed signs.

To supplement the discussion you had with Investigator Tracy, we will review the applicable statute governing the identification requirements for political advertisements, specifically RSA 664:14 and RSA 664:17.

First, RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly advocates the success or defeat of any party, measure or person at any election. The statute also uses the phrase “or implicitly advocates” which we cannot enforce. With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that enforcement against “implicit” political advertisement is unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at \*7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term “implicitly” from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and address of the candidate, persons, or entity responsible for the advertising. The relevant sections:

I. All political advertising shall be signed at the beginning or the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it. Said signature shall clearly designate the name of the candidate, party or political committee by or on whose behalf the same is published or broadcast. In the case of political advertising made on behalf of a political committee registered with the secretary of state pursuant to RSA 664:3 or a political advocacy organization registered with the secretary of state pursuant to RSA 664:3-a, the name and address on the advertisement shall match the name and address registered with the secretary of state.

II: Political advertising to promote the success or defeat of a measure by a business organization, labor union, or other enterprise or organization shall be signed. The name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address....

III. In the case of printed or written matter, the signature and address of signer shall be printed or written in a size of type or lettering large enough to be clearly legible.

RSA 664:14. Of note, not only must the *name* of the organization responsible for the political advertising be clearly identified, *an individual* must also be identified. Under RSA 664:14, I, that must be “names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for” the political advertising. Under RSA 664:14, II, the “name of the enterprise or organization shall be indicated and the chairman or treasurer of the enterprise or organization shall sign his name and address” (emphasis added).

Additionally, our Office interprets RSA 664:14, VIII as a website address on political advertising being acceptable as long as the website clearly identifies a contact person for the group responsible for the advertising and an address/phone number where the contact person can be located.<sup>1</sup>

The overarching obligations imposed by RSA 664:14 make clear that political advertising make readily apparent to the recipient the individual or group responsible, and how to contact that responsible party. For a group or organization, that includes the organization’s name as well as an individual in a senior position—the chairman or treasurer.

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<sup>1</sup> “VIII. Political advertising in the form of signs or placards may contain an Internet address in lieu of the signature and identification requirements of this section, if the Internet address is printed or written in a size of type or lettering large enough to be clearly legible and the website immediately and prominently displays all of the information required by this section through election day.” RSA 664:14, VIII

Scott Morrow

Page 3 of 3

RSA 664:17 states, in part: "No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent." As you admitted, one of your signs was posted on town property, which is improper under RSA 664:17. Subsequent to your conversation with Investigator Tracy, you removed the sign from public property.

Based on your communications with this Office, we anticipate that you will adhere to all appropriate political advertising requirements in the future. To that end, this Office encourages you to review the above-referenced statutes.

This matter is closed. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Myles Matteson", with a long horizontal flourish extending to the left.

Myles Matteson  
Deputy General Counsel  
New Hampshire Attorney General's Office

CC: Brandon Deacon

3524396

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

January 5, 2023

Jim Tetrealt, Town Clerk  
Town of Winchester  
PO Box 512  
Winchester, NH 03470

**Re: Town of Winchester, Alleged Election Official Misconduct**

Clerk Tetrealt:

On February 25, 2022, this Office received a complaint that Town of Winchester election officials inappropriately changed the filed term of Budget Committee Candidate Joanne Devost after the filing period and after a vote approving the warrant article at the town deliberative session.

Following an investigation and review, this Office accepts that Candidate Devost's original term was listed in error due to misinformation provided by the deputy clerk—an error by the clerk, not a scrivener's error—but conclude that the correction should have occurred prior to the deliberative session. This Office finds no misconduct on the part of Winchester election officials, however, we warn against opaque and untimely changes to ballots and the failure to properly inform voters of the change in the candidate slate and the reasons for the modification.

**INVESTIGATION**

On February 25, 2022, this Office received a complaint from Nathan Holmy, a candidate running for a 3-year term on the Town of Winchester Budget Committee. He alleged that on February 5, 2022, the voters at the Town of Winchester deliberative session voted to accept Town Warrant Article 1, which was the Article that listed all of the candidates running for various town offices. Mr. Holmy stated that when the ballot of candidates was read aloud at the deliberative session for those in attendance to hear, Joanne Devost was listed as being one of four candidates running for a 3-year term on the budget committee and that Max Santonastro was the only candidate running for the 1-year term on the budget committee. Mr. Holmy stated that he asked for and received from the town clerk's office on February 22, 2022, a copy of the sample ballot that listed the candidates on the ballot for the March 8, 2022, town election. Mr. Holmy noted that the sample ballot indicated that there were three candidates running for the 3-year term on the budget committee and two candidates for the 1-year term on the budget

committee, with one of the two being Joanne Devost. The sample ballot candidate lineup conflicted with the slate approved in Town Warrant Article 1.

Department of Justice Chief Investigator Richard Tracy investigated this complaint. He spoke with Mr. Holmy on May 18, 2022. Mr. Holmy further indicated that on the day of the election the sample ballots that were on display at the polls that he viewed had Ms. Devost listed as a 3-year candidate. However, the actual ballots that were handed to voters on election day had Ms. Devost listed as a 1-year candidate.

On May 18, 2022, Investigator Tracy spoke with Town of Winchester Moderator Denis Murphy. Moderator Murphy stated that he met with you at the Clerk's office on Friday, February 4, 2022, the day prior to the deliberative session to go over the ballot and warrant articles to assure they were accurate. On both February 4<sup>th</sup> and February 5<sup>th</sup>, the day of deliberative session, Ms. Devost was listed as one of four candidates running for the 3-year term on the budget committee.

Moderator Murphy further stated that sometime after the deliberative session he was in your office when you explained that there was a mistake, and that Ms. Devost wanted to run for the 1-year budget committee term and not the 3-year term. Moderator Murphy indicated that you said you called Elections Legal Counsel and Assistant Secretary of State Bud Fitch at the Secretary of State's Office and was told by Assistant Secretary Fitch that if a clerical mistake was made Winchester election officials could correct it. Moderator Murphy stated that you repeated that Assistant Secretary Fitch told him if a "legitimate mistake" was made then you could correct the mistake even if it was after the deliberative session.

Investigator Tracy asked Moderator Murphy about the sample ballot posted on the day of the election, and whether it listed Ms. Devost as a 1-year or 3-year candidate. Moderator Murphy stated that he posted two sets of sample ballots. One sample ballot listed Ms. Devost as a 3-year candidate and the other as a 1-year candidate. Moderator Murphy stated that he also called Assistant Secretary Fitch after learning that Ms. Devost had been switched to a 1-year candidate for the budget committee. According to Moderator Murphy, Assistant Secretary Fitch told him that if an "honest mistake" had been made then that mistake could be corrected.

Of concern to Moderator Murphy was that on the day of the deliberative session during a conversation, you informed him that Ms. Devost wanted to run for the 3-year term. Then some days later Ms. Devost was switched to the 1-year term. Moderator Murphy told Investigator Tracy that he questioned whether this was done to prevent 1-year candidate Max Santonastaso from running unopposed, which Moderator Murphy stated led in part to his decision to post both sample ballots on town election day—one that listed Ms. Devost as a 1-year candidate and the other as a 3-year candidate.

Investigator Tracy spoke with Ms. Devost on May 18, 2022. Ms. Devost stated that she went to the clerk's office where she filled out a filing form. Ms. Devost's recollection was that she circled the 3-year term listing, then realized she made a mistake, scribbled out 3-year term, and circled the 1-year term listing. Ms. Devost stated that she could not recall the female clerk's name that she dealt with when filing her paperwork, stating that she knows the female clerk

works with you. I questioned Ms. Devost as to whether she was sure that she circled the 3-year term first then crossed out the 3-year term and circled the 1-year term. Ms. Devost responded that that was the way she recalled it occurring.

Ms. Devost also stated that she had follow up communication with you on Facebook Messenger to clarify that she was running for the 1-year term. Ms. Devost provided Investigator Tracy with the Messenger exchange between you and herself. That exchange occurred on February 13<sup>th</sup>—two weeks after the close of the filing period and more than a week after the deliberative session. The exchange indicates that Ms. Devost reached out to you regarding the budget committee, you stated you had left her a message to clarify whether she intended to file for the 1-year or 3-year term, and that you could still fix the error if she could confirm the term for which she intended to file. Ms. Devost stated she was seeking the 1-year term, and you indicated that you would “fix it” with the printer the following day. Ms. Devost concluded the exchange stating that she had talked to a lady at the town office who had told her there was no such thing as a 1-year budget committee term.

On June 3, 2022, Investigator Tracy spoke with Ms. Devost again. Her recollection remained that she circled the 3-year term first, realized she made a mistake, crossed out the 3-year, and circled the 1-year term. Investigator Tracy had a copy of her filing paperwork and stated that it looked like the 1-year term was crossed out. Ms. Devost insist she circled the 3-year term first, crossed it out, then circled the 1-year, and handed the form to the female clerk who told her there was no 1-year term. Ms. Devost responded that she only wanted the 1-year term. Ms. Devost stated she did not make any additional changes after handing the form to the clerk.

On May 18, 2022, Investigator Tracy spoke with Deputy Clerk Danielle Roy. She recalled assisting Ms. Devost with her filing paperwork, but did not recall any of their conversation. Deputy Clerk Roy stated that she typically only handled candidate filings when you are not available. Deputy Clerk Roy reiterated that she had no recollection if she discussed the length of the term with Ms. Devost or not.

On May 19, 2022, Investigator Tracy spoke with Selectperson Natalie Quevedo—elected at the March 8, 2022 Winchester Town Election. Selectperson Quevedo verified that on January 28, 2020, the last day for filing period, she posted two items on Facebook. The first was a notice that the deadline to file was at 5pm on January 28<sup>th</sup>. Later that day, after the close of the filing period, Selectperson Quevedo posted the list of filings that she assembled herself based on reviewing scans of the filings themselves. Selectperson Quevedo listed Candidate Joanne Devost under the 1-year term for budget committee. Selectperson Quevedo explained that to her it looked like Ms. Devost attempted to erase the circle around the 3-year term because the circle around the 1-year term was darker. In addition, she and Ms. Devost only discussed Devost running for the 1-year term and never the 3-year term. Selectperson Quevedo also reviewed Facebook Messenger messages between herself and Ms. Devost that occurred prior to the deliberative session. In the exchange, Ms. Devost related that Deputy Clerk Roy had said there was only a 3-year budget committee term, and Selectperson Quevedo responded that was wrong and you needed to know “first thing” in the morning to make any necessary corrections prior to the deliberative session.



Selectperson Quevedo attended the deliberative session and recorded it. Both she and Investigator Tracy reviewed the recording. In it, Moderator Murphy clearly announced Ms. Devost for a 3-year term for budget committee. Selectperson Quevedo acknowledged that she did not catch that announcement. She did, however, review and confirm a Facebook Messenger exchange with you where she confirmed that Ms. Devost intended to run for the 1-year term, and you responded that her filing was unclear. Selectperson Quevedo responded in the exchange that Ms. Devost told her she had messaged you and sent a Facebook friend request.

On May 20, 2022, Investigator Tracy made contact with Budget Committee Chairman Brendan Hubbard. Chairman Hubbard explained that about 10 minutes prior to the start of the February 5<sup>th</sup> deliberative session he noted that Ms. Devost's name was listed as a candidate for the 3-year term on the budget committee. Chairman Hubbard recalled that he had seen a social media post on one of the town's Facebook pages where Devost was one of two candidates listed for the 1-year term on the budget committee.

Chairman Hubbard stated that he approached Moderator Murphy and you, where he described to you what he saw on the Facebook page about Ms. Devost running for the 1-year term. Chairman Hubbard stated that you said that Ms. Devost had made a mistake by circling the 1-year term, and that she really wanted to be a candidate for the 3-year term.

Chairman Hubbard stated that he was surprised on election day when he saw that Ms. Devost was listed as a candidate for the 1-year term. Chairman Hubbard spoke with Moderator Murphy who told Hubbard that the issue had been reported to the Attorney General's Office. Moderator Murphy further explained that he was told that you had the authority to correct ballot errors.

Investigator Tracy spoke with Assistant Secretary Fitch, who indicated that he recalled having a conversation with someone from Winchester about a filing issue, but believed it was while he was away from his desk and he did not have notes for the call. Assistant Secretary Fitch stated that he likely would have told the caller that they can correct clerical errors to reflect the intent of the person filing for office, but could not recall providing further clarification as it related to timing or the nature of the clerical error.

On May 18, 2022, Investigator Tracy spoke with you. You stated that you initially thought Ms. Devost was a candidate for the 3-year term for budget committee as on her filing paperwork she circled the 1-year term and appears to have also crossed it out and circled the 3-year term. You stated you were not aware at the time of the interview that Deputy Clerk Roy had allegedly told Ms. Devost that there was not a 1-year budget committee term for the 2022 town election. You explained that you and Deputy Clerk Roy each work a 4-day week. You work Monday through Thursday and Deputy Clerk Roy works Tuesday through Friday. Candidate Devost completed her candidate filing paperwork on Friday, January 28, 2022, when you were not in the office. You stated that if both you and Deputy Clerk Roy are working, you will normally handle candidate filing paperwork.

You explained that after the deliberative session on Saturday, February 5, 2022, Selectperson Quevedo approached you and told you that Ms. Devost was interested in running

for the 1-year term. That is when you stated you first heard that Ms. Devost had reportedly been told by Deputy Clerk Roy that there was no 1-year term budget opening on the 2022 ballot.

You said you began to think about your conversations with Selectperson Quevedo and others, as well as looking again at Ms. Devost's filing paperwork, which made you feel "uneasy." You stated that within a day or two of the deliberative session you left Ms. Devost a voicemail message asking that she call you to discuss the term for which she intended to file. On February 8<sup>th</sup>, a day or two after leaving Ms. Devost a message and not hearing back from her, you began to work with the printer on the ballot for the upcoming town election. On February 8, 2022, when speaking with the printer, you had Ms. Devost listed as a candidate for the 3-year term.

Sometime after February 8<sup>th</sup> but before February 13<sup>th</sup> you believe you "may have" reached out to Selectperson Quevedo or that she contacted you. You recalled that Selectperson Quevedo was adamant that Ms. Devost only wanted to run for the 1-year term position. You stated that you told Selectperson Quevedo that you had left Ms. Devost a message but she had not returned your call.

You told Investigator Tracy that on February 13<sup>th</sup> you heard from Ms. Devost, who expressed her interest in the 1-year term and not the 3-year term, and that Deputy Clerk Roy told her there was no 1-year term. You verified with Investigator Tracy the contents of the February 13, 2022, Facebook Messenger exchange with Ms. Devost.

You also stated that prior to taking any action to change the town election ballots you contacted Assistant Secretary Fitch. You told Investigator Tracy that you explained to Assistant Secretary Fitch that "our office made a mistake referencing the term of office and that I would like to make a correction." You relayed the Assistant Secretary Fitch told you if it was a "clerical error" you could make an "administrative correction." You stated that your clear impression from the call was that it was not too late at that point to make such an administrative correction to the ballot.

## CONCLUSION

This Office finds no violation of law. However, at a minimum, an error by the Deputy Clerk resulted in a candidate relying on faulty information, changing the seat for which she intended to run prior to the filing period ending, and ultimately a group of candidates not running against the slate listed at the close of the filing period and approved in Town Warrant Article 1 at the deliberative session. Although there is insufficient evidence to determine that this was anything other than an error by Deputy Clerk Roy, the error should have been corrected promptly, not after the deliberative session.

Neither the Attorney General nor the Secretary of State has the authority to alter the filing results or final outcome for the Winchester Budget Committee seats at issue. A candidate or election official is not permitted to change the race or term for which a candidate filed after the deadline has passed—such a change constitutes a filing submitted after the deadline and is invalid. *See* RSA 671:19 and RSAs 669:19-669:22. However, at issue here is whether an error by

the Deputy Clerk—in providing bad information to a candidate that resulted in an ambiguous filing form—may be changed after the filing deadline has passed.


Acknowledging the consistency of information provided by multiple parties, this Office has no grounds to find that the initial term-listing information on Ms. Devost's filing was brought about by anything other than an error by the Deputy Clerk. We would note here that we are differentiating between a "clerical error" and an "error by the clerk." The "clerical error" phrase used by Assistant Secretary Fitch almost certainly referred to a scrivener's error, that is, an error in recording information, not an error in the substantive information spoken by the Deputy Clerk. Keeping that difference in mind, it is far from clear that your communications with Assistant Secretary Fitch conveyed that distinction, which could have been material to the answer you received as to your ability to modify the ballots in question.

The procedural issue in this case is serious: after the filing period and the candidate slate had been approved as part of a warrant article at the deliberative session, you modified ballots by listing Candidate Devost for a different term. However, there is insufficient evidence for this Office to find a violation of law for your actions—changing the town ballots after the filing deadline and deliberative session approval—when it appears you did so in good faith and based on the feedback from the Secretary of State's Office, which appears to have been provided based on incomplete information as to the underlying facts.

Elections are public meetings and New Hampshire law makes clear that transparency is a vital concern. Even though the original error in this case was inadvertent, the ballot change process was not transparent nor communicated publicly to allow voters to understand the justification for a change post-filing period and post-deliberative session. That elected officials and candidates were surprised by the ballot slate on election day is unacceptable. As such, even if in good faith, we warn against opaque and untimely changes to ballots and the failure to adequately inform voters of the change in the candidate slate and the reasons for the modification.

This matter is closed.

Sincerely,



Myles Matteson  
Deputy General Counsel  
Election Law Unit  
Myles.b.Matteson@doj.nh.gov  
603-271-1119

CC: Nathan Holmy  
Denis Murphy, Moderator  
Danielle Roy, Deputy Town Clerk  
Natalie Quevedo, Selectperson  
Brendan Hubbard  
Joanne Devost  
Dave Scanlan, Secretary of State of New Hampshire

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

January 10, 2023

David Croft  
Merrimack County Sheriff  
[REDACTED]  
Boscawen, NH 03303

**Re: David Croft, Sheriff, Alleged Illegal Campaign Activity  
CEASE AND DESIST**

Sheriff Croft:

On June 20, 2022, this Office received an anonymous complaint alleging that you were engaged in electioneering through the Merrimack County Sheriff Facebook page. We spoke on June 22, 2022. You subsequently removed posts by “Elect David Croft – Merrimack County Sheriff” from the official Merrimack County Sheriff Facebook page. Acknowledging your immediate remediation, this Office orders you to cease and desist utilizing public resources for electioneering purposes and closes this matter.

On June 20, 2022, a caller to the Election Law Unit hotline stated that posts from “Elect David Croft – Merrimack County Sheriff” were being posted on the official Merrimack County Sheriff Facebook page, and that it should not be allowed. We viewed those Facebook posts, which by virtue of being your campaign Facebook account advocating for your reelection, are electioneering materials. I subsequently spoke with you on June 22, 2022. We discussed the posts, and the prohibition under New Hampshire law relating to the use of governmental resources—including official communications channels such as Facebook—for electioneering purposes. You remediated by removing the “Elect David Croft – Merrimack County Sheriff” posts from the official Merrimack County Sheriff Facebook page.

As an elected official, you fall into an exception under RSA 273-A:1, IX and are in a class of public employees that is not prohibited from electioneering under RSA 659:44-a. You are permitted to electioneer under the statute. At the same time, the action complained of—electioneering material on your agency’s official Facebook page—is prohibited under RSA 659:44-a, II: “No public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.”

As an official communication channel that is routinely utilized for sharing information with the public, the Merrimack County Sheriff Facebook page is a resource closely tied to the

David Croft, Sheriff, Alleged Illegal Campaign Activity  
Page 2 of 2

non-exhaustive list of government property or equipment described in RSA 659:44-a, II. Posting express advocacy material on the agency's Facebook page amounts to a use of agency resources—public resources—to advocate in support of a candidate.

This Office acknowledges the general principle that the government may use public funds to support its own measures. Epping Res. for Principled Gov. v. Epping School Brd. No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 559 (2005). However, public agencies have an important role in their respective communities dependent on public confidence that cannot be jeopardized by the specter of impropriety or partisanship. Even while you as an elected official are exempt from the electioneering prohibition, the electioneering Facebook posts could be—and were—perceived as your agency functioning as a political entity engaged in inappropriate electioneering.

### **Conclusion**

The Merrimack County Sheriff Facebook page is used as an official channel of communication and therefore constitutes a public resource that falls within the prohibition in RSA 659:44-a, II. You are ordered to **cease and desist** from using public resources for electioneering in violation of RSA 659:44-a, II. Given your immediate remediation of this issue when brought to your attention, this Office is taking no further action.

This matter is closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Election Law Unit  
(603) 271-1119  
myles.b.matteson@doj.nh.gov

# Note to File

---

Coos District 3 Election Officials in Colebrook, West      2022157863      1/18/2023      Note to File  
Stewardstown &      1:21:00 PM

Closeout Note

Following ELU discussion on 1/12/23, this matter is being administratively closed. Following investigation, no violations of state law found.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

January 30, 2022

Jean Simon, Zachary Tresp, Thomas Reed  
Supervisors of the Checklist  
Town of Conway  
23 Main Street  
PO Box 2680  
Conway, NH 03818

**Re: [REDACTED] Alleged Wrongful Voting**

Dear Conway Supervisors of the Checklist:

This Office received a complaint dated April 1, 2022, from the Conway Supervisors of the Checklist alleging a possible incident of Wrongful Voting. Specifically, the Supervisors indicated that [REDACTED] had registered to vote in Conway and the town manager had informed the Supervisors that the [REDACTED] listed address appeared to be a short-term rental. After investigation, this Office accepts the [REDACTED] domicile claim—they were properly domiciled and qualified voters in the Town of Conway.

The Supervisors referred this matter to this Office based on voter registrations being associated with a short-term rental property, in this case, one owned by [REDACTED]. The Supervisors attached the voter registration forms for both individuals. Both forms had been filled out by hand and listed [REDACTED] North Conway, 03860 as the voters' domicile.

Chief Investigator Richard Tracy ran a license and vehicle check on both individuals. Between them, they had [REDACTED] vehicles, a trailer, and a boat all registered at the [REDACTED] address as of October 4, 2022. Both individuals were issued a New Hampshire driver's license on October 21, 2021, that listed the [REDACTED] address. Both individuals surrendered driver's licenses from Massachusetts on that same date.

On October 6, 2022, Investigator Tracy spoke to Corie Hilton, the Conway Assistant Assessor. Ms. Hilton explained that the [REDACTED] purchased [REDACTED] as well as the vacant lot next to that property on October 8, 2021.

In New Hampshire, in order to vote in a town, ward, or unincorporated place a person must be domiciled there. A "domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a

single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I.<sup>1</sup> “A person has the right to change domicile at any time, however, a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.” Id.

Based on their purchase of these properties, and taking a number of other steps to establish a physical presence and show participation in North Conway life relevant to self-government, this Office is satisfied that [REDACTED] are properly domiciled at [REDACTED] in North Conway and they are therefore qualified voters.

This matter is closed. Please contact me if any of you have any further questions.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

cc: [REDACTED]

---

<sup>1</sup> Pursuant to an order issued by the Hillsborough Superior Court in the matter of League of Women Voters of New Hampshire, et al. v. William M. Gardner, et al., docket number 226-2017-CV-004433, in April of 2020, Laws of 2017, Chapter 205 (also known as “SB3”) was struck down. As a result, the version of RSA Chapter 654 used here is the one in effect in 2016.



**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

January 30, 2023

Nicole Merrill  
Windham Town Clerk  
3 North Lowell Road  
Windham, NH 03087

Peter Griffin  
Windham Town Moderator  
3 North Lowell Road  
Windham, NH 03087

**Re: Richard J. Cormier, Alleged Election Official Misconduct**

Dear Clerk Merrill and Moderator Griffin:

We write to conclude our review of the circumstances surrounding Supervisor Mashimo's complaint regarding Richard Cormier voting in the November 8, 2022 General Election. This Office investigated based on her report to this Office. We anticipate closing this matter after receiving confirmation that Windham election officials have received this letter and will ensure that the guidance in this letter will be followed in future elections. In summary, there are two individuals named Richard J. Cormier who have resided in Windham—one is now deceased and due to a mistake, the second inadvertently voted under the checklist registration of the deceased individual.

On November 29, 2022, Windham Supervisor of the Checklist Eileen Mashimo contacted this Office to report that Richard J. Cormier of 5 Mockingbird Road, Windham was checked off as having voted in the November 8, 2022 General Election despite the fact that he had passed away prior to the election. Supervisor Mashimo spoke with Chief Investigator Richard Tracy on that same date. Investigator Tracy checked state records and found that a second Richard J. Cormier with a different date of birth resided at 43 Beacon Hill Road in Windham. Supervisor Mashimo confirmed that she did not see the second Richard J. Cormier on the Windham voter checklist. Investigator Tracy was not able to find the second Richard J. Cormier in *ElectioNet*.

After speaking to Ms. Mashimo, Investigator Tracy called two separate phone numbers in state records associated with the Richard Cormier of Beacon Hill Road. Investigator Tracy left a voicemail explaining who he was, his purpose for calling, and asking for a return call.

On November 30, 2022, Investigator Tracy received a call from Richard Cormier. Mr. Cormier confirmed that he had voted in person at the November 8, 2022 General Election in Windham, New Hampshire. He stated that he had assumed he was registered to vote when he registered his vehicle and conducted other business at town hall after purchasing his home in Windham in 2020. Investigator Tracy explained that Mr. Cormier was neither on the checklist

nor on the Windham voter checklist. Mr. Cormier told him that Mr. Cormier showed his identification when he voted, he watched election officials cross out his name, and he voted. Investigator Tracy told him that there was another Richard J. Cormier living in Windham who happened to pass away earlier this year and, he gathered, the ballot clerk made a mistake when checking him in by not confirming the address of the individual at issue. Mr. Cormier agreed that he would register to vote promptly.

Investigator Tracy then called Supervisor Mashimo and left her a message explaining what he had learned and asking her to call back if she had any questions. He then called and left a message for Clerk Merrill, asking her to call him so that he could explain what had happened so that she would understand when Mr. Cormier went to register.

Clerk Merrill returned Investigator Tracy's call later that afternoon. Investigator Tracy explained what had been reported to this Office and what he had learned. Clerk Merrill agreed that it was likely that the ballot clerk had made a mistake. Investigator Tracy advised that this Office would be sending a letter and suggested that Clerk Merrill and Moderator Griffin use this letter for training purposes to follow all procedures under the law and recommendations for process in the Election Procedure Manual.

Though we appreciate that this circumstance is unusual—two unrelated individuals with identical names living in the same town—this matter could have been avoided if proper procedure had been followed in this case. The New Hampshire Election Procedure Manual: 2022-2023 outlines the ballot clerk election procedures for the primary and general elections on pages 409 and 412, respectively. Instructions call for the ballot clerk to ask the voter to announce their name and domicile address, then call for the ballot clerk to find the voter's name and address on the voter checklist and read that information aloud as it appears on the sheet.

Those actions did not appear to have occurred when Mr. Cormier voted on November 8, 2022. We trust that this instance illustrates the importance of these procedures. We expect that these procedures will be followed to avoid similar errors in the future.

This matter will be closed, please reach out to me if you have any questions.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: Windham Supervisor of the Checklist Eileen Mashimo  
Richard J. Cormier

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

June 10, 2022

Douglas Viger, School Moderator  
Town of Pelham  
[REDACTED]  
Pelham, NH 03076

Re: Douglas Viger, Pelham School Moderator, Alleged Election Official Misconduct

Dear Moderator Viger:

On March 8, 2022, the Town of Pelham conducted a town election at which two issues arose—two marked and cast ballots were inadvertently handed to voters instead of blank ballots, and election officials failed to count write-in votes following a ballot counting device diverter malfunction. This Office writes you to report on our investigation and request a remediation plan to protect against such errors in future elections.

**Distribution of marked ballots**

On March 10, 2022, the Secretary of State's Office referred to this Office an email correspondence from Pelham voter Michael Carter. Mr. Carter expressed concern that an unknown number of Pelham voters were handed school ballots that were already filled in at the March 8, 2022, election. On the same day, another Pelham voter, John Spottiswood, also contacted the Secretary of State's Office regarding the same issue and was referred to this Office.

Attorney General's Office Chief Investigator Richard Tracy spoke with both Mr. Carter and Mr. Spottiswood on March 10, 2022. Mr. Carter indicated that he voted in Pelham on March 8<sup>th</sup> and following the election saw a Facebook post by Kevin Edwards that Pelham election officials had handed him a school ballot that was already filled in instead of a blank ballot. Mr. Carter indicated that you responded to that Facebook post acknowledging that the error did indeed occur. Mr. Spottiswood made essentially the same complaint to Investigator Tracy regarding the marked ballots, and additionally expressed concerns about the lack of enforcement by Pelham election officials related to electioneering and manning political advocacy signs at the Pelham polling place in prior elections.

On March 10, 2022, Investigator Tracy spoke with Kevin Edwards. Mr. Edwards stated that he voted at the Pelham polling place at approximately 1pm on March 8, 2022. He indicated that an election official handed him town and school ballots, which he took to a voting booth.

Upon looking at the ballots in the booth, he noticed that the school ballot had already been marked and filled out. Mr. Edwards returned to the voting official to notify her that the ballot she had handed him was already marked. Mr. Edwards observed the official inspect the next five ballots in the distribution stack. All were also marked. A second official gave Mr. Edwards an unmarked school ballot. He returned to the booth, voted, cast his ballots in a ballot counting device, and left the polling place.

After returning home, Mr. Edwards stated that he became more upset about the incident and posted a message on Facebook describing what had happened. He indicated that you responded to the post acknowledging the ballot error, and that you were investigating the issue.

Investigator Tracy spoke with you on March 10, 2022. You admitted the ballot-handling error and stated that at least two previously filled out school ballots had been handed to voters. Based on your discussion with voters and election officials you believed that both voters received new unmarked ballots, no already-cast ballots were cast again, and all remaining marked ballots were collected and properly secured. The two voters receiving marked ballots notified the ballot clerks, and officials then identified a stack of 20-25 marked ballots that a ballot clerk had placed on the blank ballot distribution table. Officials made an announcement to all voters in the polling place asking them to check their ballots to ensure that they were not already marked. You indicated that there were few voters in the polling place at that point in the day and no additional voters indicated they had a marked ballot.

You described to Investigator Tracy what you believed happened. You indicated that you and the deputy clerk had emptied the school ballot counting device collection box and put the cast ballots into a plastic bin, then moved the ballots into a ballot box for storage. That ballot box of cast ballots was placed under a table—the same table on which blank ballots were being distributed. You stated that you normally would seal a box of cast ballots and tape a piece of paper on top of the box indicating “used ballots.” You said that you “dropped the ball” and did not do this in this instance prior to the box being placed under the table. That appears to have led to a clerk inadvertently opening the box and placing the marked ballots on the distribution table believing that they were blank, unused ballots.

#### **Failure to count write-in votes**

During your March 10, 2022, conversation with Investigator Tracy you also described how you discovered on election day that the ballot counting device diverter did not appear to be functioning correctly. If a ballot counting device detects a write-in vote or other markings on the ballot it will divert the ballot into a separate compartment in the ballot collection box. The ballot counting device records all of the non-write-in votes from the ballot, and also records a “write-in” entry that is reported as a total number of write-in votes recorded by race on the device results tape. As the results tape only indicates that a certain number of write-in vote were cast in a particular race, not for whom those votes were cast, election officials are responsible for inspecting those diverted ballots and hand-counting the write-in votes on those ballots.

You described how over the course of the day you could hear the diverter motor whirring, sounding as if it were moving to divert ballots into the diverter compartment, but that at the end

of the day there were no ballots in the diverter compartment. As such, you concluded that the diverter had malfunctioned. You told Investigator Tracy that on the night of March 8<sup>th</sup> you determined that the total number of write-in votes was not close as compared to the margin of victories, so you and other election officials intended to “tally” the write-in votes at 4:30 PM on March 10, 2022.

This Office contacted you again on the afternoon of March 10, 2022, and instructed you not to reopen any ballot boxes to tally votes. We noted that New Hampshire law permits the counting of ballots on election day, but does not provide for additional opportunities to tally votes outside of a requested race recount.

On March 11, 2022, we spoke with you again. We discussed the Pelham School District results. In the race for school board, there were three listed candidates for two three-year terms. The vote difference between the second vote-getter and third vote-getter was 136 votes. The number of recorded write-in votes was 170. Given the number of write-in votes was higher than the margin of victory, it is mathematically possible that the write-in votes could have been outcome determinative in the school board race. However, as noted above, while the total number was captured, none of those write-in votes was counted for any particular candidate due to the ballots not being diverted and instead ending up in the collection box with all cast ballots. We reiterated that Pelham election officials had no authority on their own to reopen ballot boxes to count ballots after election day, but should a court order a recount or should a candidate request a recount, the cast ballots with write-in votes could be counted.

On March 15, 2022, this Office spoke with you again. You informed us that you had prepared a remediation plan in anticipation of providing one following conclusion of this investigation. When asked, you also stated that all of the school board candidates were aware of the issue with the diverter and how the write-in votes were not counted. You stated that none of the school board candidates had requested a recount. As such, absent any petition to superior court for authority, there would be no counting of the uncounted write-in votes.

## **Conclusion**

We find that the distribution of marked and cast ballots to voters was an inadvertent error, but one brought about by inadequate ballot management. As Pelham’s chief election official,<sup>1</sup> you are responsible for ensuring that the handling of ballots—blank ballots and cast ballots—is transparent, clear to all election officials involved, and protective against errors. For example, segregating used and unused ballots physically and labelling all boxes is a reasonable and necessary step to avoid these types of inadvertent errors.

Additionally, we find that you failed to properly count write-in votes on election day following the diverter malfunction.<sup>2</sup> However, we accept that this failure to count write-in votes on election night was the result of a belief that such a count could be conducted at a later time, rather than any knowing or intentional failure to count validly-cast votes. As such, we find that

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<sup>1</sup> RSA 659:9 Moderator to Oversee Voting. – It shall be the duty of the moderator to secure the observance of the provisions of the following sections relating to the conduct of voting.

<sup>2</sup> 659:64-a Counting Write-In Votes.

no penalty provisions apply.<sup>3</sup> We anticipate that you will review these and related statutes to ensure that such errors do not occur in the future.

This Office requests that you submit a remediation plan within 30 days of receipt of this letter to address the two issues identified in this report—the improper distribution of cast ballots to voters and the failure to count write-in votes on election night following the diverter malfunction. We appreciate that you have indicated you have already drafted a remediation plan, and your cooperation in handling this matter.

Upon review of a satisfactory remediation plan this matter will be closed.

Sincerely,



Myles B. Matteson  
Deputy General Counsel  
Attorney General's Office  
(603) 271-1119  
myles.b.matteson@doj.nh.gov

CC: Michael Carter  
John Spottiswood  
Kevin Edwards  
Troy Bressette (school board candidate)  
Joshua Glynn (school board candidate)  
G. David Wilkerson (school board candidate)

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<sup>3</sup> See RSA 659:77, I: If any moderator shall intentionally neglect to cause an accurate count to be made of the votes cast as required by law, for which no other penalty is provided, he or she shall be guilty of a violation. See RSA 666:2 Official Malfeasance. A moderator, supervisor of the checklist, selectman or town clerk shall be guilty of a misdemeanor if at any election:... II. He shall knowingly omit to receive and count any legal vote...

Douglas Viger, Pelham, NH School Moderator  
[REDACTED]  
Pelham, NH 03076

February 4, 2023

Attorney General Department of Justice  
33 Capitol Street  
Concord, NH 03301

### **Election Remediation Plan**

As detailed under state statute, the below bullet points will be followed;

- Official school ballots will only be handled by the School District Clerk, Elections Officials appointed by the School Moderator, and the School Moderator
- All unused ballots will remain in their original sealed boxes until they are hand delivered to the ballot clerks.
- Original ballot boxes will be resealed after ballots are distributed to the ballot clerks.
- All sealed unused ballot boxes will be stored together in a secure location in the polling place.
- All marked ballots will remain in the ballot box until such a time the ballot box needs to be emptied.
- Counted ballots removed from the ballot box will be placed in separate plastic tote that is secured and stored separately of the unmarked ballots
- Any counted ballots that may need to be hand counted will remain in the ballot box until the close of the polls.
- All counted ballots will be placed into their original boxes, sealed and signed at the time of the polls closing.
- All counted ballots remaining in the ballot box that need to be hand counted will be removed and put into groups of 25.
- All hand counted ballots will be counted the same day of the election.
- All hand counted ballots will be in a separate sealed box.
- All ballots will be stored at the SAU in the secure ballot closet until a recount is requested or such time for request passes

*Douglas E. Viger*

Douglas E. Viger School Moderator

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

February 6, 2023

Douglas Viger, School Moderator  
Town of Pelham  
[REDACTED]  
Pelham, NH 03076

Re: Douglas Viger, Pelham School Moderator, Alleged Election Official Misconduct

Dear Moderator Viger:

On March 8, 2022, the Town of Pelham conducted a town election at which two issues arose—two marked and cast ballots were inadvertently handed to voters instead of blank ballots, and election officials failed to count write-in votes following a ballot counting device diverter malfunction. On June 10, 2023, this Office wrote you to report on our investigation and request a remediation plan to protect against such errors in future elections. After a subsequent correspondence from our Office in January, you supplied a remediation plan on February 4, 2023.

The remediation plan is acceptable. This matter is closed.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Conley".

Matthew Conley  
Attorney  
Election Law Unit  
(603) 271-6765

CC: Michael Carter  
John Spottiswood  
Kevin Edwards  
Troy Bressette (school board candidate)  
Joshua Glynn (school board candidate)  
G. David Wilkerson (school board candidate)



**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

February 10, 2023

[REDACTED]  
Chester, NH 03036

Re: **CEASE AND DESIST ORDER**  
[REDACTED] Alleged Wrongful Voting

Dear [REDACTED]

On May 6, 2022, this Office received a complaint alleging that you had been engaging in a pattern of unlawful voting in the Town of Chester since May of 2015. This investigation followed. This Office concludes that you did engage in a pattern of illegal voting. However, this Office further acknowledges that you were provided with faulty and conflicting information by Chester town officials who reviewed your voter registration and your subsequent efforts to confirm your qualifications to vote. Therefore, this Office concludes this matter with this Order that you refrain from voting in the State of New Hampshire so long as you are not a United States citizen.

**I. FACTUAL BACKGROUND**

a. Initial Complaint and Contact with Dianna Charron

On May 6, 2022, Dianna Charron, a Chester Supervisor of the Checklist, contacted the New Hampshire Attorney General's Office Election Law Unit and spoke to Investigative Paralegal Jill Tekin. Ms. Charron reported that she recently discovered that you had registered to vote, you had voted multiple times in the Town of Chester, and that you may not be a United States citizen.

That same day, Deputy General Counsel Myles Matteson reached out to Ms. Charron to obtain additional information. Ms. Charron indicated that you were a [REDACTED] employee who had registered to vote, voted in the May 12, 2015 Town of Chester election, and had voted multiple times since. You did not present a birth certificate or a U.S. passport when registering to vote, but signed an affidavit. Ms. Charron further explained that you recently contacted her because of an immigration matter. She explained that you sounded distressed, stating, "I guess I didn't understand what I was signing" and "I thought I could vote if I wasn't a U.S. citizen."

On June 28, 2022, Chief Investigator Richard Tracy contacted Ms. Charron. She further indicated that it was her signature on your voter registration from 2015 but that she did not specifically recall registering you to vote in 2015. Ms. Charron clarified that she contacted this Office after you reached out to her for a copy of your “original voter registration card” and voting history. You insisted that Ms. Charron did not tell you in 2015 that you needed to be a U.S. citizen in order to register to vote.

Ms. Charron explained that she has a “standard spiel” that she tells everyone who wants to register to vote who does not have a birth certificate or U.S. passport with them at the time of registering that they still may register to vote by filling out an affidavit and swearing that they are a U.S. citizen. Ms. Charron stated that you kept insisting that she did not tell you that. Ms. Charron stated that she has worked as a Supervisor of the Checklist for 20 years and “that’s my speech” that she gives to everyone who does not have proper documentation with them.

In your recent conversation with her, you told her that you had an immigration proceeding and that you needed an affidavit from Ms. Charron and Leslie Packard, the other Supervisor of the Checklist who signed your registration form. You told her in conversations at that time that you would not have registered to vote had you known of the citizenship requirement.

In reviewing your voter registration form, Ms. Charron noted that it appeared that she wrote “Boston” on your form where it asked for a “Place of Naturalization.” Without being able to recall a specific memory, Ms. Charron surmised that after you filled out the registration form and walked away from the table, she noted that section was not filled out. Ms. Charron explained that she would not have been able to enter your information into *ElectionNet*, the state voter registration system, without your place of naturalization. Ms. Charron stated that either you told her “Boston” or she wrote “Boston” with the intention of confirming that with you later. She repeated that she no longer had any recollection of that transaction.

On July 1, 2022, Ms. Charron provided Investigator Tracy with notarized copies of the following documents:

- A letter from Ms. Charron outlining what may have happened on May 12, 2015, when you registered to vote;
- Your May 12, 2015 voter registration form;
- Your May 12, 2015 qualified voter affidavit;
- An Election Day New Voter Log, dated May 12, 2015, that contains your name;
- Chester Town Election Voter Checklist, dated May 10, 2016, with your name checked off (page 210);
- Chester Town Election Voter Checklist, dated May 14, 2016, with your name checked off (page 210);
- Chester Town Election Voter Checklist, dated May 9, 2017, with your name checked off (page 227);
- Chester Town Election Voter Checklist, dated May 13, 2017, with your name checked off (page 227);

- Chester Town Election Voter Checklist, dated May 8, 2018, with your name checked off (page 225);
- Chester State Election Voter Checklist, dated November 6, 2018, with your name checked off (page 221);
- Chester Town Election Voter Checklist, dated May 14, 2019, with your name checked off (page 226);
- Chester Presidential Primary Election Voter Checklist, dated February 11, 2020, with your name checked off (page 231);
- Chester Town Meeting Voter Checklist, dated March 14, 2020, with your name checked off (page 235);
- Chester Town Meeting Voter Checklist, dated June 20, 2020, with your name checked off (page 235);
- Chester State Election Voter Checklist, dated November 3, 2020, with your name checked off (page 243);
- Chester Town Election Voter Checklist, dated May 11, 2021, with your name checked off (page 254);
- Chester Town Election Voter Checklist, dated March 8, 2022, with your name checked off (page 222);
- Chester Town Election Voter Checklist, dated March 10, 2022, with your name checked off (page 222);

b. Contact with Michael Oleson

On July 20, 2022, Investigator Tracy reached out Michael Oleson. Mr. Oleson explained that he had been a road agent in Chester for about 16 years and had regular contact with you ██████████. Mr. Oleson recalled you telling him at some point that a supervisor of the checklist told you that you could vote. He recalled that, although he was surprised to learn that you were voting in federal elections, you told him that you truly believed you could legally vote in Chester because that is what you had been told by local election officials. Mr. Oleson was not surprised to learn that you were voting in town elections as you were a tax paying resident of the town. Mr. Oleson was firm in stating that you were not being deceptive and that you truly believed that you were allowed to vote in Chester.

c. Contact with Stephan Landau

On July 21, 2022, Investigator Tracy reached out to Chester Selectman Stephan Landau. Mr. Landau said that he knew you very well, he was familiar with you as a resident ██████████. Mr. Landau was aware that you were registered to vote in town and believed it was one of the two former town clerks who told him that. He further explained that he thought it was Barbara Gagnon who had told him and, as the town clerk, Ms. Gagnon was a stickler for the rules. Mr. Landau believed that you were legally allowed to vote in town elections, but not in state and federal elections.

Mr. Landau also told Investigator Tracy that ██████████, is an English citizen who has not applied for American citizenship. At some point after learning that you were

registered to vote in town and were voting, Mr. Landau told ██████████ that he believed ██████████ could vote in town elections. ██████████ told Mr. Landau that he did not believe that to be the case. Mr. Landau did not feel that it was his place to inquire further.

Mr. Landau confirmed that, after speaking with other residents of the town, everyone that he spoke to seemed to believe that you were allowed to vote and that you were not doing anything illegal. Mr. Landau felt strongly that you did not try to deceive anyone and this was the result of some kind of mix up or miscommunication.

d. Contact with ██████████

On July 21, 2022, Investigator Tracy reached out to ██████████ explained that she was aware that you had previously spoken to Investigator Tracy and that you were “mortified” when you found out that you should not have been voting. She explained that you believed that you had the right to vote right up until you had your interview with immigration officials. ██████████ recalled that you and she had spoken about whether you could vote before you registered to vote. She recalled that, when the two of you went to vote on May 12, 2015, ██████████ received her ballot while you told the ballot clerk that you were not a citizen but you were a resident of the town and wanted to know if you could vote. ██████████ could not recall if you filled out all the paperwork right then or if you took it home first to fill it out and then returned later to vote.

While not providing a specific date, ██████████ recalled another occasion where the two of you went to vote and you told the ballot clerk that you were not a citizen but a resident of the town. The ballot clerk checked the list and noted that your name was on it as an registered voter, allowing you to vote.

██████████ stated that you never lied and did not understand why they would allow you to register if you were not allowed to vote when you called to election officials’ attention that you were not a U.S. citizen. ██████████ also noted that you were honest with immigration officials when they asked if you had ever voted in the United States because you truly thought you had the right to vote.

e. Contact with Barbara Cannon

On July 26, 2022, Investigator Tracy spoke to Chester Deputy Town Clerk Barbara Cannon. Ms. Cannon explained that she had not heard about this investigation before that point. She explained that she had been working in the Chester Town Clerk’s office since June of 2015 before becoming the Deputy Town Clerk in January of 2016. She further stated that no one had ever questioned her about your right to vote and this was the first she had heard of any problems.

f. Contact with you

On July 15, 2022, Investigator Tracy met with you for a recorded conversation at the New Hampshire Department of Justice in Concord, New Hampshire. You told Investigator Tracy how you moved to the United States in 2010 and were living here on a green card. Prior to 2015,

you spoke to various individuals about voting with some of them telling you that you should be allowed to vote as you are a tax-paying resident of Chester.

You confirmed that you went to the May 12, 2015 town election with ██████████. You recalled that you told the clerk handing out ballots who you were and asked if you were eligible to vote. You said the clerk directed you to another table to ask the same question of the supervisor of the checklist. Rather than giving you an answer, they gave you two forms which you filled out and returned to the same table.

Investigator Tracy went over the forms that you filled out with you and you acknowledged the sections that you filled out. You were adamant that you did not fill in the "Place of Naturalization" on either form as you had never been naturalized. Where the forms read "Boston" as the "Place of Naturalization," you indicated that it was not written in your handwriting and you did not check off that you were a citizen on the Qualified Voter Affidavit. You did not know who wrote this on the forms.

You confirmed that while your phone number did appear on the document, it was also not in your handwriting and you believed that had been written after you turned in the forms and walked away from the registration table. You stated that no one from the Town of Chester had ever asked you if you had been naturalized, if you had a passport, or if you had a birth certificate. You admitted that you had not thoroughly read the affidavit sections of the Qualified Voter Affidavit or the voter registration.

You indicated that you predominantly vote in town elections and that you voted in the General Election in 2018 as a result of staying on top of current affairs.

You further explained that, after learning you were a registered voter, Mike Oleson questioned you about your eligibility to vote and you told him that you filled out the relevant forms and no one ever told you that you could not vote, even after you specifically brought to election officials' attention your foreign citizenship.

## **II. APPLICABLE LAW & ANALYSIS**

Under RSA 654:12, election officials are required to verify that individuals are citizens of the United States, among other requirements, before they may be allowed to register to vote. Those who vote while not qualified to do so as required by RSA 654 are subject to criminal liability under New Hampshire law and are also subject to a civil penalty of up to \$5,000. RSA 659:34.

It is clear that you voted numerous times in violation of state law. This is readily confirmed by the records provided to this Office and by your own statements. It is equally clear, however, that the election officials in the Town of Chester should not have accepted your registration in the first place, particularly after your own statements about being a foreign national and asking if you were eligible to vote. In reviewing your own account of events as well as all other witnesses interviewed in the course of this investigation, there is no indication that

you had any intention to deceive. Due in part to the errors by election officials, we have determined that in this circumstance further investigation or charges are inappropriate.

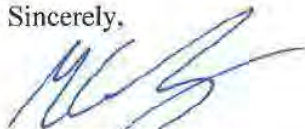
However, you have now been informed by this Office that since you are not a United States citizen, you are not eligible to vote in any local, state, or federal election. We have also notified the Town of Chester that you are not a United States citizen and advised election officials that you should be removed from the voter checklist unless and until you obtain citizenship.

### **III. CONCLUSION**

We conclude that you were not a citizen when you voted in the Town of Chester. Be advised that your actions are inconsistent with the requirements of RSA 659:34, I(e) which prohibits "vot[ing] for an office or measure at an election if such person is not qualified to vote as provided in RSA 654." A violation of this law constitutes a class B felony if the person acts knowingly or purposely. RSA 654:34, II. We find that you did not act knowingly or purposely.

Pursuant to Part I, Article 11 of the New Hampshire Constitution, RSA 659:34, and RSA 654:1, and based upon the investigation conducted by this Office, you are hereby ordered to **Cease and Desist from voting in New Hampshire unless and until you establish United States citizenship in addition to satisfying the other qualifications to vote in this State.** Failure to comply with this Cease and Desist Order may result in this Office pursuing criminal prosecution or civil penalties.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

CC: Chester Town Clerk Elizabeth Lufkin  
Chester Supervisors of the Checklist Chair Dianna Charron  
Chester Board of Selectmen  
Chester Town Moderator Michael Scott

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

February 10, 2023

Erika Robinson, Town Clerk  
Town of Epping  
157 Main Street  
Epping, NH 03042

Katherine Cooper, Town Moderator  
Town of Epping  
157 Main Street  
Epping, NH 03042

Re: Town of Epping - Use of Replacement Ballot Counting Device at the March 8,  
2022 Town Election

Dear Clerk Robinson and Moderator Cooper:

We have completed our review of the use of a replacement ballot counting device (BCD) during the March 8, 2022, Epping Town Election. This Office conducted an investigation and, based on that investigation, we find that election officials did not follow required procedures in the 2022 Epping Town Election by failing to properly test a replacement BCD before it was used in that election.

**Investigation**

Epping Selectman John Cody called this Office on March 9, 2022, asking questions regarding the use of a replacement BCD during the election. Based on the facts he alleged, we opened an investigation. During that investigation we spoke with both of you, Town Administrator Gregory Dodge, Selectman John Cody, and Jeff Silvestro, President of LHS Associates.

***Initial Contact and Follow Up Interview with John Cody***

On March 9, 2022, Selectman Cody called our Office to discuss the procedure for replacing a BCD during an election. He spoke with Associate Attorney General Anne Edwards explaining that he was a selectman in Epping and that, prior to the March 8, 2022, election, the Town Clerk and the Moderator had run test ballots through the two BCDs that Epping owns. One of the BCDs failed the test and was not used during the election. The other one passed the testing protocol and was used in the election. Selectman Cody did not know if a zero tape was printed on election day from the BCD that was used, but stated that he had not seen one.

Mid-afternoon on election day, the BCD being used at the polling place failed. Selectman Cody was not clear if the rollers in the BCD failed or if it was the memory card but thought that the rollers had failed. LHS Associates (LHS), the company contracted to maintain BCDs in New Hampshire, brought a replacement BCD to the polling place. Selectman Cody said it looked like Epping election officials and the LHS representative used the second memory card for the replacement BCD. Election officials re-ran all of the previously-cast ballots through the replacement BCD to achieve a then-current vote tally, and the BCD was used through the remainder of election day. The tally from the replacement BCD was used for the final counts for the election. Selectman Cody indicated that no race was close, that they had 1,334 voters voting four ballot pages each, and that it took election officials from about 4:00 pm to after 7:00 pm to re-run all of the ballots in the replacement BCD.

Selectman Cody confirmed that they did not run any test ballots in the replacement BCD or a print a zero tape from the machine. AAG Edwards informed Selectman Cody that, while LHS may have had some information on the replacement BCD and its status, our Office and the Secretary of State's Office require that at least twenty-five marked ballots, using all four ballot pages, in all four different orientations (right-side up, upside down, bottom of the page first, and top of the page first), which essentially is the pre-election testing protocol, be run through the replacement BCD to ensure that it worked correctly before it was brought into use. Selectman Cody was further informed that a zero tape should have been run when the replacement BCD was put into election mode.

Selectman Cody indicated that it was not until people began asking questions about the BCDs at the end of the night that he started becoming concerned and wanted to be certain that things had been done correctly. AAG Edwards told him that the matter would be reviewed.

On May 11, 2022, Attorney General's Office Investigator James Hodgdon conducted an interview with Selectman Cody, who provided additional information. Selectman Cody confirmed that he contacted this Office on March 9, 2022, regarding the March 8, 2022, election. On March 8, 2022, Selectman Cody was present at Town Hall along with other Epping election officials, prior to the polls opening, and indicated that one BCD failed the preliminary testing and a second, backup BCD passed the protocols and was used during the election. The polls opened at 7:00 a.m. at the Epping Middle School with Selectman Cody in attendance along with other members of the Board of Selectman, Town Administrator Gregory Dodge, Town Clerk Erika Robinson, and Town Moderator Katherine Cooper.

Later that morning, the BCD began having sporadic problems with feeding ballots into the machine. It would take a couple of attempts to feed a ballot in before it was accepted by the BCD. The Town Clerk and Moderator discussed obtaining a replacement BCD from LHS after the BCD at Epping Middle School stopped accepting ballots altogether.

While officials waited for a replacement BCD, voters were still able to cast their votes. Ballots were stacked on a table by the BCD in public view and, when the replacement BCD arrived, an alignment card was run through it by the Moderator and a new memory card was used. Selectman Cody indicated that there was no adequate testing of this replacement BCD by



running test ballots as was done for the BCDs prior to the election. Selectman Cody did not address his concerns with the Town Clerk or Moderator during or after the election.

Investigator Hodgdon followed up with Selectman Cody on August 9, 2022. Selectman Cody confirmed that Town Clerk Erika Robinson told him that the testing procedure was conducted prior to the election with one of the BCDs failing the test. He was told this on the day of the Epping Town Election.

#### ***Interview with Jeff Silvestro***

On May 10, 2022, Investigator Hodgdon conducted an interview of Jeff Silvestro, President of LHS Associates. Mr. Silvestro confirmed that LHS provides support for BCDs in the Town of Epping in the form of programming the BCDs for the elections, providing ballots, performing preventative maintenance, and responding to calls for maintenance during elections. Once a year, LHS conducts a full inspection on Epping's BCDs that includes calibrating, cleaning, checking batteries, and running diagnostic tests of ballots. On March 8, 2022, LHS logged a call from Epping regarding an issue with a BCD. Epping requested a replacement BCD be delivered and a technician brought a BCD to Epping. The technician met with the Town Clerk or Moderator when they arrived with the replacement BCD. Mr. Silvestro confirmed that the technician stood by while the replacement BCD was set up for use, but that it is not the technician's job to advise election officials how to follow procedures required by New Hampshire law.

Mr. Silvestro believes that the BCD that failed remained in the custody of Epping. That BCD remains in the custody of Epping following diagnostic testing by LHS. The replacement BCD has been returned to LHS.

#### ***Interview with Erika Robinson and Katherine Cooper***

On May 12, 2022, Investigator Hodgdon conducted a joint interview with Epping Town Clerk Erika Robinson and Epping Town Moderator Katherine Cooper. Clerk Robinson indicated that Epping has two BCDs, one that is used during elections and one that is kept as a backup. LHS had provided three memory cards to use in the BCDs for the March 8, 2022 Town Election. Clerk Robinson ran a test on both BCDs the Wednesday before the election to ensure that the memory cards and machines were accurate. In each test, Clerk Robinson used twenty-five test ballots and ran them through the BCDs. One of the BCDs was off by one vote in the test and, therefore, was not used on election day. All three memory cards, provided by LHS, were tested at that time.

On election day, the BCD used in the election was plugged in and a zero tape was printed. At some point between 9:00 a.m. and 10:00 a.m., a ballot jammed in the BCD and LHS was called. LHS provided instructions as to how to proceed and the jam was resolved. Afterwards, Moderator Cooper was running the BCD and observed issues with the rollers jamming, sticking, and kicking back ballots. This issue continued to get worse until election officials called LHS again. LHS staff indicated that they would deliver a replacement BCD. While awaiting the replacement BCD, voters were informed of the situation, continued to vote,

and were informed that they could either remain with their ballots until the issue was resolved or stack them beside the inoperable BCD, in public view, until the replacement BCD was delivered. Epping Police Chief Michael Wallace was contacted and stood guard over the stacked ballots until the replacement BCD arrived.

LHS arrived with a replacement BCD within an hour and a half after they had indicated that a replacement BCD would be delivered. As the replacement BCD was set up, the inoperable BCD was left untouched. Moderator Cooper stated that, upon the LHS technician's arrival, "there was a discussion" between at least her and the LHS technician because "technically you are not supposed to start a new election and I'm saying quote/unquote a 'new election' by having a new machine and card, et cetera." Given this exchange, it appears there was some concern as to whether testing should have occurred at the time the new BCD was installed. Moderator Cooper did not have confidence in the inoperable BCD and the numbers of votes it contained at that point. This prompted the LHS technician to contact and inform the New Hampshire Secretary of State's Office of a "no-confidence situation." According to Moderator Cooper, the Secretary of State's Office instructed election officials to remove all ballots from the inoperable BCD and feed them into the replacement BCD in order to verify the total votes cast in the election.

Moderator Cooper and Clerk Robinson understood that the replacement BCD had been tested and calibrated prior to its delivery by the LHS technician. Clerk Robinson took her third, previously tested memory card and placed it in the replacement BCD. Following the call with the Secretary of State's Office, all ballots were removed from the inoperable BCD and run through the replacement BCD. Clerk Robinson did not believe that it was necessary to run a test with the new BCD because the memory card had already been tested and had proven accurate the Wednesday before the town election. The issue, she indicated, with the inoperable BCD was a mechanical problem with the machine itself, not the memory card.

Following the close of the polls, election officials ran the BCD reports, read the preliminary numbers to the public, and inventoried by hand all cast ballots to compare that inventory to the total ballot count from the BCD for accuracy. The inventory was off by two votes compared to the BCD count.

As of the date of the interviews, all three BCDs were in the custody of the Town Clerk's Office. All memory cards remained in their respective BCDs with the seals intact. All three BCDs were awaiting maintenance by LHS.

Investigator Hodgdon followed up with Clerk Robinson on August 9, 2022. Clerk Robinson indicated that she spoke to Debra Unger of the Secretary of State's Office to express her concerns about the BCD issues from the March 8 election. Clerk Robinson explained that Patricia Piecuch of the Secretary of State's Office later contacted her regarding these issues but was uncertain of the exact date, only that it occurred after speaking with Investigator Hodgdon on May 12, 2022. Clerk Robinson stated that she had contacted LHS on the day of the election, the replacement machine was delivered, and the spare memory card was placed in the replacement machine. Clerk Robinson then went through her recollection of the events of March 8, 2022, as she had on May 12, and further provided Investigator Hodgdon with a copy of the zero tape report for the LHS replacement BCD, the Epping BCD Activity logs, the Epping work

order for LHS repairs to the BCD that failed during the election, and the Epping test results report.

***Contact with the Secretary of State's Office***

On May 31, 2022, Investigator Hodgdon reached out to the Secretary of State's Office to verify that the LHS technician had reached out to their Office during the March 8, 2022, Epping Town Election. Attorney Orville Fitch indicated that he contacted the State Election Director, Patricia Picuch, who stated that, after speaking with her staff, no one remembered receiving a phone call from LHS or from the Town of Epping on the day of the election relative to their BCD. Given the volume of calls received by the Secretary of State's Office on any election day, the fact that staff do not recall any contact regarding the issues with the Epping BCD on election day, this Office accepts the claim that such contact occurred.

Director Picuch followed up with Clerk Robinson after May 17, 2022. Clerk Robinson had spoken to Debra Unger at the Seacoast Regional Meeting informing Ms. Unger that Clerk Robinson was expecting a visit from the Attorney General's Office over what had happened on election day. When Director Picuch returned from vacation, Ms. Unger relayed her conversation with Clerk Robinson to Director Picuch. Director Picuch then reached out to Clerk Robinson directly to discuss what had occurred with the BCD on election day as Clerk Robinson had expressed concern about this Office's Investigation to Ms. Unger. According to Director Picuch, Clerk Robinson explained that the BCD stopped working and she called LHS who, in turn, brought in a replacement BCD. Clerk Robinson explained that the memory card that she used in the replacement BCD was her spare card that had been tested pre-election and she had proof that it had been tested.

On August 17, 2022, Investigator Hodgdon spoke with Director Picuch who could not confirm the date she spoke with Clerk Robinson, only that it was sometime after May 17.

***Contact with the LHS Associates Technician***

On August 16, 2022, Investigator Hodgdon conducted a digitally recorded interview with Michael Carlson, LHS Associates Technician. Mr. Carlson explained that he responded to Epping, on March 8, 2022, and brought Epping a replacement BCD. Upon arriving in Epping, Mr. Carlson met with the Town Clerk and the Moderator in the parking lot and had a conversation with them about what was going on with the BCD. Mr. Carlson explained that the read head was probably the issue and that he had a spare machine with him. Mr. Carlson explained to the Town Clerk and the Moderator the following procedure for the existing memory card:

1. Verify the count on the BCD based on the reading on the memory card;
2. Break the seal and remove the memory card with the power off;
3. Remove the tabulator from the ballot storage box;
4. Take the spare machine out of the bag and put on the ballot storage box; and
5. Reinsert the memory card and reseal.

It was at that point that the Clerk and the Moderator explained that they were not confident the existing memory card would have the correct count. Mr. Carlson then called the LHS office and explained the situation. His office provided instructions to execute the following procedure:

1. Zero out the machine;
2. Empty the ballot storage box;
3. Re-feed the ballots to recreate the election.

Mr. Carlson asked the Clerk if she had a backup memory card and explained that, if that were the case, they could do the following with the new BCD:

1. Insert the third memory card;
2. Zero out the machine;
3. Sign in;
4. Take all the ballots from the ballot storage box systematically;
5. Re-feed all of the ballots into the replacement BCD with the third memory card.

This procedure was agreed to by all and followed. Mr. Carlson observed this procedure being followed and then waited in the school's cafeteria in case there was an issue with the replacement BCD. No issues were reported and Mr. Carlson eventually left.

### Law and Authority

RSA 656:42, II requires, in relevant part, that “[e]ach [ballot counting] device shall be tested after installation and prior to each election. RSA 656:42, VIII(e)(5) explicitly requires that “[t]he town or city clerk shall run each of the test ballots through the counting device in the following orientations: Top first with side one face up, bottom first with side one face up, top first with side one face down, and bottom first with side one face down.” Finally, RSA 556:42, VIII(e)(10), (11) reads:

[t]he clerk shall test **all** electronic ballot counting devices and memory devices in the possession of the town or city. Prior to placing the electronic ballot counting device or any memory device into service in an election, the moderator shall certify that there is evidence that pre-election testing was conducted on each electronic ballot counting device and each memory device in the town or city clerk's possession, and that these ballot counting devices and memory devices have passed the test.

(Emphasis added.)

These legal requirements are also reflected in the Election Procedure Manual (EPM) published by the Secretary of State. In “Duties of Moderators,” Chapter IX of the EPM, the EPM states: “Certify that all electronic ballot counting devices and memory cards passed testing requirements and deposit evidence of testing in the front pocket of the canvas bag for the device.” **Do not put a ballot counting device into use that has not been properly tested or**

which is not properly sealed. p. 135 (2020-2021 ed.). The Duties of Moderator's Checklist of Responsibilities repeat these requirements of the law. p. 163 (2020-2021 ed.) (emphasis added).

The "Election Day – Moderator" section reiterates the duty of the moderator to "certify that there is evidence at the polling place that pre-election testing was conducted on each electronic ballot counting device and each memory device in the town or city clerks' possession, and that these ballot counting devices and memory devices have passed the test." p. 319 (2020-2021 ed.).

### **Conclusions**

New Hampshire law specifically defines two applicable obligations relating to BCDs. First, BCDs used in an election must go through mandated testing procedures before being used in an election. Second, it is the responsibility of the town clerk and the moderator, working in tandem, to personally ensure that these testing procedures are done and that both the memory cards and BCDs have passed the tests defined in law.

The memory card used in the replacement BCD had been previously tested and passed the testing protocols according to law. However, Epping election officials did not perform the required testing on the replacement BCD on election day in March 2022. Both Moderator Cooper and Clerk Robinson admitted that they relied on representations from LHS that the replacement BCD had been properly maintained and neither of them personally tested the replacement BCD, with the third memory card in it, with test ballots before it was used in the Epping election despite the requirements of New Hampshire law.

This Office recognizes that Epping election officials had a desire to act in a way that would maintain the security of the election while conducting it in an efficient manner. We also acknowledge the cooperation of Epping election officials during our investigation and their explanations related to why they believed they had complied with the law before using the replacement BCD. Obviously, following the required testing process for a replacement BCD using test ballots would have caused a delay in achieving a final vote count on election day. Even with that understanding, the BCD testing procedures serve important purposes such as guaranteeing that a BCD can read a ballot regardless of orientation and ensuring that a BCD and memory card accurately count test ballots so as not to compromise the results of the election. While LHS plays a critical role in maintaining and programming BCDs and memory cards, it is ultimately the responsibility of the election officials to ensure that our elections are free, fair, accurate, and executed in accordance with New Hampshire law.

Our Office finds that election officials did not follow required procedures in the 2022 Epping Town Election by failing to properly test the replacement BCD with the third memory card in it prior to its use in that election. Epping election officials are directed to carefully review the applicable laws and sections of the Election Procedure Manual regarding use and replacement of ballot counting devices. We stress to all election officials the need to follow the guidance of the Election Procedure Manual and to consult with either the Secretary of State's Office or the Attorney General's Office if any questions or concerns arise on election day.

Town of Epping, Ballot Counting Device  
Page 8 of 8

This matter is concluded.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MGC', is written over the typed name.

Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

cc: Selectman John Cody

Jeff Silvestro, President, LHS  
David Scanlan, Secretary of State

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

February 10, 2023

Keith Stanton

[REDACTED]  
Fremont, NH 03044

**Re: Fremont Education Association, Alleged Illegal Campaign Activity**

Dear Mr. Stanton:

In response to a complaint this Office received, on March 18, 2022, regarding allegations that the Fremont teachers' union, the Fremont Education Association (FEA), violated RSA 659:44-a which prohibits public employees from engaging in electioneering. We understand that there may be confusion regarding the issue of which public officials are allowed to electioneer and what, if any, public resources can be used by them while electioneering. We conclude that the FEA members who participated in electioneering were not doing so in the course of their official duties as public employees and the FEA did not use any public resources in mailing out the flyers.

**I. FACTUAL BACKGROUND**

On March 18, 2022, this Office received a telephone call from the Fremont Police Chief John Twiss relaying that at the March 15, 2022, Fremont School Board meeting, an individual made claims of election fraud and other issues against the town administrator. Later that same day, Attorney General's Office Chief Investigator Richard Tracy spoke with Chief Twiss who explained that you had alleged voter fraud at the recent School Board meeting. You stated that you received a flyer from the local teachers' union asking for your support on a ballot measure and you were upset by the content of that flyer. Chief Twiss stated that you told him that you then went to the Fremont Post Office and spoke with the Fremont Postmaster who told you that Town Administrator Heidi Carlson dropped off the flyers at the Post Office. You alleged that town resources were used to mail the flyers.

Chief Twiss then told Investigator Tracy that he spoke with Administrator Carlson who denied mailing the flyers, stating that it was likely the president of the teachers' union that had gone to the Post Office. Investigator Tracy asked for a link to the video of the School Board meeting, a copy of the flyer, and contact information for the FEA President, all of which Chief Twiss provided on March 21, 2022.

On April 4, you filed a written complaint with this Office. In that complaint, you indicated that the Town of Fremont spent town funds promoting a raise in salaries for “the teachers, counselors, and librarians” by using a town postage permit to mail out over 1,200 flyers to everyone in town while making it appear that it was mailed by the FEA. These flyers urged Fremont voters to vote “Yes” on School Article 2. You attached a detailed account of your concerns, in which you explained that Article 2 concerned a “raise in salaries for all teachers, librarians, and counselors.” You wrote that the return address for the flyers at issue read “Fremont Education Association, 432 Main Street, Fremont, NH 03044.” That address, you indicated, is the address of the Ellis School, Fremont’s Pre-Kindergarten through Grade 8 school. You indicated your concern with the FEA using the school address for electioneering.

You believed the flyers were mailed through a Fremont town account by Administrator Carlson after you had spoken with the Fremont Postmaster. You pointed out that there was no postal permit number on any of the flyers. You believed that many voters in town felt that they had been misled believing that the FEA was a citizen’s group advocating for increases in pay and that many people would not have voted for the measure if they had known that the Town of Fremont had played a role in the electioneering. You believed that the citizens deserved to re-vote Article 2. You also attached a copy of an email you sent to the Secretary of State’s Office, dated March 17, 2022, explaining your grievances, a sheet of paper labeled “Q’s Asked to School Board, 03/15/2022”, and a copy of the front and back of the flyer at issue.

On May 18, I emailed FEA President Dana Crowell. Ms. Crowell called me back that day and left a voicemail. The following day, Ms. Crowell replied to my email, leaving her cell phone number, explaining that the flyer was produced, printed, and paid for by the FEA and that she could provide receipts from Staples for the printing and the reimbursement check from the FEA for the purchase. She wrote that the FEA used the “Every Day Direct” mailing process to bulk mail the flyers, meaning that there was no need for a postal permit number and there would be no permit number on the flyers themselves. Ms. Crowell further wrote that the cost of the mailing was paid by check from the FEA to the Fremont Post Office and the Raymond Post Office and the flyers were delivered there by a member of the FEA Communications Committee. The use of the school’s address as the return address was justified under a union contract provision that allows the FEA to use the school facilities for activities. The FEA’s mail is delivered to the Ellis School and has been for years. Ms. Crowell explicitly represented that no school or town funds were used for the flyer and no school or town officials were part of the development, processing, or mailing of the flyer.

On May 19, I spoke to Ms. Crowell on the phone and she confirmed that Jamie Bolduc, a music teacher at the school and a member of the FEA, delivered the flyers to the Post Offices to be mailed. Ms. Crowell was aware of your complaints after your appearance at the School Board meeting. She indicated that Chief Twiss had all of the receipts to which she had referred, although Chief Twiss would later state that he did not possess them.

On May 20, Ms. Crowell emailed me and attached a written, notarized statement from Jamie Bolduc. In that statement, Ms. Bolduc certified that she, as a member of FEA’s Communication Committee, delivered the flyers related to the March, 2022 Town Election. She recounted that she first went to the Raymond Post Office and met with the Postmaster to mail the



majority of the flyers. She then went to the Fremont Post Office and spoke with the clerk on duty, specifically noting that it was not the Postmaster, and submitted roughly 100 flyers for Post Office mailboxes. The Fremont postal clerk called the Raymond Postmaster to get advice on how to process the paperwork. Ms. Bolduc's statement is notarized.

On August 10, Investigator James Hodgdon spoke to Chief Twiss who indicated that he did not have the receipts. On that same date, Investigator Hodgdon contacted Ms. Crowell who responded that she was no longer associated with the FEA and reiterated what she had communicated to me. On August 11, Investigator Hodgdon received two separate emails from Ms. Crowell with attached copies of the following documents:

- 1) A Staples receipt, dated February 6, 2022, for the purchase and payment of 950 flyers in the amount of \$298.30. The transaction was conducted using Ms. Crowell's personal credit card;
- 2) A check, dated February 10, 2022, for \$298.30 from the FEA to Ms. Crowell as reimbursement;
- 3) Two checks, dated February 23, 2022, for \$358.20 and \$20.60 from the FEA payable to the Raymond Post Office and the Fremont Post Office, respectively;
- 4) Receipts from the Raymond Post Office and the Fremont Post Office, dated March 3, 2022, in the amount of \$358.20 and \$20.60, respectively, for the payment and delivery of the flyers;
- 5) A USPS Every Door Direct Mail Retail form from the Raymond and Fremont Post Offices with Ms. Crowell's signature as the mailer or agent.

On August 15, Ms. Crowell clarified that the two checks to the Post Offices were written before the February school vacation week and the Union withheld the mailing until the Thursday of school vacation week.

## **II. LAW & ANALYSIS**

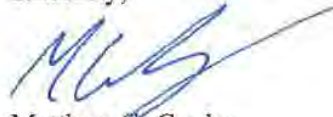
Under New Hampshire law, "[n]o public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties." RSA 659:44-a, I. Further, "[n]o public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers for electioneering." RSA 659:44-a, II. For the purposes of this analysis, it is sufficient to note that a "public employee" is defined as "any person employed by a public employer," which state and local school systems are. RSA 273-A:1, IX, X.

RSA 273-A:1, IX makes clear that the Fremont teachers are public employees who do not fall within one of the enumerated exceptions to the electioneering statute. Public employees are prohibited from electioneering while in the performance of their official duties—that is, engaging in express advocacy for a candidate or measure while the teachers are performing their official public duties of teaching. In this case, the flyers contained express advocacy in the form of the statements in support of a Town Meeting warrant article. Therefore, it was an electioneering communication.

However, some activities and use of resources are permitted as union activities under New Hampshire labor laws. In this instance, the FEA may send and receive mail using the Ellis School's mailing address. From the facts gathered in this investigation, there is no indication that any public resources were used or that any electioneering occurred in the course of a public employee's official duties. The flyers themselves were purchased from Staples, a private entity. That purchase was made ultimately using funds from the FEA. The FEA then paid the cost to the Post Offices for the flyers to be distributed. Ms. Crowell was able to provide documentation of all of this. We therefore find that no unlawful activity occurred on the part of the FEA in this matter.

This matter is closed. Please contact me if you have any questions or concerns.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: David Scanlon, Secretary of State  
Chief John Twiss, Fremont Police Department  
Fremont Education Association

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

February 10, 2023

Tricia Thompson

Salisbury, NH 03268

**Re: Tricia Thompson - Alleged Illegal Campaign Activity**

Dear Ms. Thompson:

This letter is in response to a complaint this Office received on February 13, 2022, regarding allegations that signs had been put up in Salisbury, New Hampshire that violated RSA 644 by not listing an address or fiscal agent. We conclude that the signs posted did violate RSA 644. This matter has been resolved to this Office's satisfaction and no further action will be taken in this case with the understanding that future violations will be met with criminal prosecution or civil penalties.

**I. FACTUAL BACKGROUND**

On February 13, 2022, Brett Walker of Salisbury submitted a complaint to this Office with an attached photograph. The complaint alleged that signs to elect Tricia Thompson for Selectman had been placed in Salisbury without language required by RSA 644. The photograph was a clear, center-frame picture of a red, white, and blue sign that read, "Elect Tricia Thomson Selectman." The sign contained no other language or lettering of any kind related to a paid-for disclaimer or other identifying information such as contact information or a website.

On May 17, 2022, Investigator Allison Vachon communicated with Mr. Walker by email. Mr. Walker explained that the signs had been taken down.

On May 31, 2022, Investigator Vachon reached out to you directly. Investigator Vachon explained the nature of the complaint to you and what was required under RSA 664:14. You told her that you were not aware that you needed to include that information and that you paid for the signs yourself and did not have a fiscal agent. You indicated that you purchased the signs at "Big Daddy's" in Laconia and that you paid for them. Investigator Vachon asked for your email address so that she could email you RSA 664:14 directly.

## **II. ANALYSIS**

RSA 664:14, I reads, in relevant part, that “[a]ll political advertising shall be signed at the beginning or the end with the names and addresses of the candidate, his fiscal agent, or the name and address of the chairman or the treasurer of a political committee, or the name and address of a natural person, according to whether a candidate, political committee, or natural person is responsible for it.”

It is clear from this Office’s review that the signs at issue did not conform to this standard. Upon contacting you, you made it clear that you were not previously aware of the statutory requirements. In the future, this issue can be corrected in one of two ways. First, the signs can be printed with the information when they are created. If, for whatever reason, this information is not included, it may later be handwritten on or a sticker with the information may be applied to the sign, so long as it is large enough to be clearly legible. RSA 664:14, III.

## **III. CONCLUSION**

While this behavior does constitute a violation of RSA 664:14, you cooperated with this investigation and were made aware of the deficiency with your signs after they were taken down. Therefore, this Office will take no further action on this matter. We anticipate that any future election signs will have the proper information on them as required by New Hampshire law. Otherwise, you may be subject to additional enforcement action.

This matter is closed.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

cc: Brett Walker

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

March 10, 2023

Donna Decotis, Town Clerk  
Rye Town Hall  
10 Central Road  
Rye, NH 03870

Robert Eaton, Town Moderator  
Rye Town Hall  
10 Central Road  
Rye, NH 03870

Re: Donna Decotis, Alleged Election Official Misconduct

Dear Clerk Decotis and Moderator Eaton:

This Office received a complaint regarding Rye's ballot counting device (BCD) activity logs being incomplete. Following interviews, reviews of the logs and associated documents, and Clerk Decotis' statements, we find that a number of Rye's BCD activity log entries are not compliant with RSA 656:42 by virtue of failing to ensure the appropriate number of witness signatures. This Office directs you to ensure that, as required under RSA 656:42, the activity logs are completed with all required signatures.

**INVESTIGATION**

On January 19, 2022, Al Brandano contacted this Office after being referred by the Secretary of State's Office. Mr. Brandano alleged that there were multiple violations in the Town of Kensington regarding the BCD activity logs and that citizens were "losing faith" with the voting process. Mr. Brandano followed up his initial phone call with multiple emails and requests for an in-person meeting. Mr. Brandano, Michael Bean, and Joseph Torelli met with several members of this Office on February 11, 2022.

Mr. Bean provided Chief Investigator Richard Tracy with copies of BCD activity logs for Rye going back to 2010 that Mr. Bean obtained via a Right-to-Know request. Mr. Brandano and Mr. Bean pointed out what they believed were several errors and deficiencies in how those logs had been kept, including a lack of required signatures.

Investigator Tracy reviewed those logs and found that the activity logs did not have the required number of signatures in several locations. Specifically, he noted that there was only one witness where there should have been three. He also noted that the logs did not always include the security seals' serial numbers as they should have. On October 15 and October 23, 2020, there was only one signature, that of the Rye Town Clerk, Donna Decotis.

On February 8, 2023, Investigator Tracy contacted Clerk Decotis as he had communicated with her in the past on other election related matters. He explained why he was calling, and Clerk Decotis stated that she was familiar with Mr. Bean as they had graduated high school together and they were unaware that they both lived in Rye until “they ran into each other” a few years ago. Clerk Decotis recently had a conversation with Mr. Bean about elections but could not recall any conversation about activity logs. However, she did recall that he filed a Right-to-Know request seeking copies of the BCD’s logs.

Clerk Decotis acknowledged that she did not always have all witness signatures. She questioned whether this was mandated as she did not always have someone available to be a witness. Investigator Tracy told her that going forward she needed to assure that she had at least three people to sign the activity log each time a seal is removed and added, even if that meant getting someone from another office or a citizen doing business at the clerk’s office at the time. Clerk Decotis stated that she understood and would take care of it. She was adamant that nothing nefarious took place and that, in most cases, they simply did not have enough people present to get all witness signatures.

Investigator Tracy asked her about the October 15 and October 23, 2020, activity log entries as she was the only one who signed on those dates. Clerk Decotis explained that the October 15 entry, marked “Send to LHS to program”, is when she sent that BCD’s memory card to LHS to be programmed for the upcoming November election. Clerk Decotis indicated that the October 23 entry marked “Unlock bag to test machine” is the date the machine was tested for the upcoming General Election. She stated that only her signature appeared in these places because, due to the COVID-19 pandemic, there was limited access to the building, and town employees were practicing social distancing to prevent catching the disease.

Investigator Tracy reminded Clerk Decotis of the vital importance of following election rules and guidelines in order to instill as much trust in the election process as possible. Clerk Decotis assured Investigator Tracy that going forward she would make sure to have two additional witnesses observe the breaking of any seal and sign each entry on the log. Clerk Decotis assured Investigator Tracy that she was not trying to deceive anyone or commit any type of election fraud.

#### **APPLICABLE LAWS**

The New Hampshire Ballot Law Commission has authorized the use of the AccuVote BCD—the only BCD authorized for use in New Hampshire—under RSA 656:40. As referenced previously, RSA 656:42 outlines the rules concerning BCDs, including the following obligation:

No person shall break a counting device seal without the presence of 2 witnesses. Upon breaking such seal, the person responsible shall update the activity log, obtain the signatures of each witness, record the reason for breaking such seal, ensure that it is resealed with a new seal immediately, and properly record the new seal number in the activity log.

RSA 656:42, VIII(d)(3).

The moderator is empowered to refrain from using a BCD in an election if he or she “notifies that any seal on the counting device appears tampered with or broken without an adequate record in the activity log...” RSA 656:42, VIII(d)(5). This is consistent with a prior subparagraph whereby the moderator makes a pre-election assessment as to whether “any seals which have been broken have been promptly resealed and the activity log properly recorded and signed.” RSA 656:42, VIII(d)(4). Election officials are also responsible for conducting a pre-election test to confirm that a BCD returns a vote tally consistent with the marked test ballots. RSA 656:42, VIII(e).

A BCD may be used on election day if it passes the test protocol under RSA 656:42, VIII(e) and the moderator is satisfied, under RSA 656:42, VIII(d)(5), that the BCD has not been tampered with.

#### ANALYSIS

While Town of Rye activity log entries have not all been compliant with RSA 656:42, VIII(d)(3)—in that the logs did not always contain the required number of witness signatures—it was within the Moderator’s discretion to use the BCD in an election if it otherwise passed the pre-election test protocol.

It is undisputed that the logs that Investigator Tracy discussed with Clerk Decotis did not comply with New Hampshire law. Clerk Decotis and other Rye election officials are hereby ordered—and have been instructed—to have two witnesses view the removal of any seal and have those witnesses sign the log alongside the individual removing the seal as the law requires.

#### CONCLUSION

Although RSA 656:42 requires that activity logs contain the signatures of three witnesses each time a seal is broken, it is within the discretion of the moderator to use a BCD if the moderator is satisfied that the BCD has not been tampered with. Rye election officials are hereby ordered to ensure that their BCD activity logs will be complete and compliant with the law henceforth.

This matter is closed.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

Donna Decotis, Alleged Election Official Misconduct  
Page 4 of 4

cc: Al Brandano  
Michael Bean  
Joseph Torelli

3891461



**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

March 10, 2023

Sally Kellar, Town Clerk  
Town of Bedford  
24 North Amherst Road  
Bedford NH 03110

Re: [REDACTED] Alleged Wrongful Voting

Dear Clerk Kellar:

On November 10, 2022, you notified this Office of a possible incident of voter fraud. We investigated the matter and find that no willful violations of New Hampshire law occurred as the issues raised resulted from a clerical error. We are copying Moderator Brian Shaughnessy on this letter so he can direct election officials to take greater care in marking the checklist and complying with New Hampshire election protocols in the future to avoid similar errors.

**I. FACTUAL BACKGROUND**

On November 10, 2022, I spoke with you and you stated that Bedford's supervisors of the checklist had been updating their voter lists in the ElectioNet system when they came across one individual who would not scan in because his name had already been scanned in Goffstown, New Hampshire. That individual was [REDACTED]. You noted that the person just above [REDACTED] had the last name [REDACTED] and the person below him was his daughter who had the same last name. You told me that she did not vote in this election as far as you knew because she was away at college. You indicated that you would ask around for more information and get back to me if you found anything.

On December 5, Investigator Daniel Mederos reached out to you for more information. You gave him documentation of [REDACTED] voting in Bedford as well as contact information for the supervisors of the checklist and the Bedford Moderator. You told Investigator Mederos that you would be able to recognize [REDACTED]'s daughter, but you did not see her on election day. [REDACTED]'s registration indicated that he registered to vote in Bedford on October 26, 2020.

On December 6, Investigator Mederos reached out to the Goffstown Town Clerk seeking similar documentation and information. Goffstown Town Clerk Cathy Ball provided, among

other information, ██████████'s Goffstown voter registration which had been completed on November 8, 2022. That registration showed that ██████████ had identified himself as a "New Registration" rather than a "Transfer" or "Name Change Address Update" despite being registered to vote in Bedford.

On December 6, Bedford Supervisor of the Checklist Barbara Chagnon sent Investigator Mederos a copy of the voter checklist page on which ██████████'s name was crossed off as having voted on November 8, 2022. Immediately below his name, Investigator Mederos observed the name ██████████, ██████████'s daughter on the list. Over the next several days, Investigator Mederos made contact with Bedford Supervisor of the Checklist Rebecca Kuhns, Bedford Town Moderator Brian Shaughnessy, and Goffstown Election Volunteer Deborah Schulte. None could recall observing or interacting with ██████████ on November 8.

On January 10, 2023, Investigator Mederos contacted ██████████ who confirmed that he had voted in Goffstown on November 8 but denied voting in Bedford on that same date. He confirmed that his daughter, ██████████ resided in Bedford and voted there on November 8. His daughter, ██████████ happened to be present with ██████████ when he spoke with Investigator Mederos and Mr. Censabella handed the phone to ██████████ explaining who Investigator Mederos was and that he wanted to ask her about her voting. ██████████ indicated that she voted in Bedford, on November 8, 2022, after registering there several weeks earlier. After their conversation, Investigator Mederos confirmed that ██████████ had registered to vote in Bedford on October 19, 2022.

On March 1, 2023, Investigator Mederos spoke with Moderator Shaughnessy who confirmed that ballot clerks are trained to cross names off the checklist using a straight edge after stating out loud the name of the voter and the address on the checklist. When Investigator Mederos pointed out that this error could have potentially been caught if the address had been read to ██████████, Moderator Shaughnessy indicated that this very issue would be discussed at a meeting of Bedford's election officials during the week of March 6 in anticipation of the upcoming town election.

## II. ANALYSIS

The New Hampshire 2022-2023 Elections Procedure Manual contains a checklist detailing the responsibilities of ballot clerks on and before election day. That checklist specifically requires ballot clerks to, "[a]fter the voter's address and identity has been verified, at the moment when the voter will be issued a ballot, draw a single thin line through the voter's last name using a ruler or other straight edge." P. 141.

As Investigator Mederos explained, this procedure, specifically verifying Logan Censabella's address, would likely have caught the error that occurred in this situation. The procedure is specifically designed to minimize errors in general. We direct Bedford to reinforce the training of their ballot clerks to use a straight edge when reading a voter's name and address back to them out loud and then use that straight edge to cross off the name.

**III. CONCLUSION**

The facts show that ██████████ voted in Bedford while ██████████ voted in Goffstown, during the 2022 General Election, and ██████████'s name was incorrectly crossed off the Bedford checklist. We find, therefore, that no unlawful conduct occurred. In the future, Bedford's ballot clerks are directed to take greater care, to read the names and addresses of voters out loud using a straight edge, and then to use that straight edge to cross of the name.

This matter is closed.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: Secretary of State of New Hampshire  
██████████  
Moderator Brian Shaughnessy  
Bedford Supervisors of the Checklist

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

March 10, 2023

Vicky McAlister  
Canaan Town Clerk  
365 Ibey Road  
Canaan, NH 03741

Re: [REDACTED] Alleged Wrongful Voting

Dear Clerk McAlister:

On November 22, 2022, Canaan Supervisor of the Checklist Maegan Ellis reached out to this Office to notify us of a possible incident of voter fraud. We investigated and find that no willful violations of New Hampshire law occurred as the issues resulted from a clerical error. We are copying Moderator Dale Barney on this letter so he can direct election officials to take greater care in marking the checklist and complying with New Hampshire election protocols in the future to avoid similar errors.

**I. FACTUAL BACKGROUND**

On November 22, 2022, Supervisor Ellis contacted our Office and stated that she encountered a voter who had voted in Canaan but appeared to have voted in another town on election day. When she was updating Canaan's voter checklist in ElectioNet, following the November 8, 2022, election, to include [REDACTED] as having voted in Canaan, she discovered that [REDACTED] had voted on the same day in the Town of Enfield, New Hampshire. Supervisor Ellis indicated that [REDACTED] had been registered in Canaan prior to the November 8 election.

On November 23, Chief Investigator Richard Tracy reached out to Enfield Town Clerk Wendy Huntley who was able to provide copies of documents related to [REDACTED] voting in Enfield on November 8, including a Qualified Voter Affidavit, a New Hampshire Voter Registration form, and the Enfield voter checklist that included [REDACTED]'s name.

Investigator Dan Mederos later checked ElectioNet and found that [REDACTED] registered to vote in Enfield on November 8, 2022. On December 2, Investigator Mederos spoke with you

and you confirmed the location of the Canaan polling station, but you indicated that you were not familiar with ██████████

On December 5, Investigator Mederos contacted Supervisor Ellis who provided him with a copy of ██████████'s previous New Hampshire Voter Registration Form showing that ██████████ registered to vote in Canaan in 2014. Supervisor Ellis stated that the other supervisors of the checklist had been unable to corroborate that ██████████ voted in Canaan on November 8, 2022. She was unable to verify who would have checked ██████████ off the checklist as election officials had been consistently rotated during the election.

On December 7, Investigator Mederos contacted Enfield Supervisor of the Checklist Shirley Ryea. Supervisor Ryea was unable to specifically recall registering ██████████ but explained that her normal procedure was to positively identify the individual using their driver's license and record the driver's license number on their registration form.

That same day, Investigator Mederos spoke with ██████████. ██████████ confirmed that he only cast a vote in Enfield on November 8, 2022. He explained that he had originally gone to Canaan to vote as he had traditionally voted there prior to moving to Enfield. He said that he presented his driver's license and told the ballot clerk that he had a change in address. He was directed to another clerk to provide this update and this second clerk asked him if he was a Canaan resident. ██████████'s replied that he was not and he was told that he would need to vote in Enfield where he currently lived. He left without ever receiving or casting a ballot. He was unaware of the names of the clerks who assisted him but he was able to describe them physically. He was not aware that either ballot clerk had checked off his name on any list.

After speaking with ██████████ Investigator Mederos called you to discuss ██████████'s explanation. Also present with you were Canaan Supervisors of the Checklist Maegan Ellis and Janet Grecsek. You and the Supervisors of the checklist were unable to specifically recall ██████████ based on what he had told Investigator Mederos. You and the Supervisors indicated that election day had been very busy at certain times. You did confirm that ██████████'s description of what occurred at the Canaan polls matched the set up and procedures followed during the November 8 General Election and that ██████████'s account was plausible. After listening to Investigator Mederos, you and the Supervisors believed this was most likely an error on the part of Canaan's election officials.

## II. ANALYSIS

The 2022-2023 New Hampshire Election Procedure Manual contains a checklist detailing the responsibilities of ballot clerks on and before election day. That checklist specifically requires ballot clerks to, "[a]fter the voter's address and identity has been verified, at the moment when the voter will be issued a ballot, draw a single thin line through the voter's last name using a ruler or other straight edge." P. 141.

██████████'s account of events is uncontested by anything found in this investigation. While Canaan election officials had no specific memory of him coming to the polling place to vote, you and the Supervisors confirmed that his explanation of what occurred at the Canaan

polls matched the set up and procedures followed by Canaan election officials during election day. We direct Canaan officials to reinforce the training of their ballot clerks to not check off a voter from the checklist until they have been found qualified to vote in Canaan *and* issued a ballot. This situation could also have been avoided if the ballot clerks had communicated with each other and made a notation on the checklist indicating that ██████████'s name should not have been crossed off.

### III. CONCLUSION

The facts show that ██████████ only voted in Enfield during the 2022 General Election and his name was incorrectly crossed off the Canaan checklist. We find, therefore, that no unlawful conduct occurred. In the future, Canaan's ballot clerks are directed to take greater care and to cross off a voter's name only after they have been found qualified and issued a ballot.

This matter is closed.

Sincerely,



Matthew G. Conley  
Attorney  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

cc:

██████████  
Secretary of State - Elections Division, Secretary of State  
Canaan Supervisors of the Checklist  
Canaan Moderator Dale Barney

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

Hillsborough Superior Court Southern District  
30 Spring Street  
Nashua NH 03060

Telephone: 1-855-212-1234  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**RETURN FROM SUPERIOR COURT – HOUSE OF CORRECTIONS**

Case Name: **State v. Michael Drouin**  
Case Number: **226-2022-CR-00615**

Name: **Michael Drouin**, [REDACTED] Merrimack NH 03054  
DOB: [REDACTED]

Charging document: Indictment

<b>Offense:</b> False Documents, Names or Endorsement	<b>GOC:</b>	<b>Charge ID:</b> 2008235C	<b>RSA:</b> 666:6	<b>Date of Offense:</b> April 13, 2021
-------------------------------------------------------------	-------------	-------------------------------	----------------------	-------------------------------------------

Disposition: Guilty/Chargeable By: Plea

**A finding of GUILTY/CHARGEABLE is entered.**

Conviction: Misdemeanor

Sentence: see attached

April 24, 2023  
Date

Hon. Jacalyn A. Colburn  
Presiding Justice

Amy M. Feliciano  
Clerk of Court

J-ONE:  State Police  DMV

C:  Dept. of Corrections  Offender Records  Sheriff  Office of Cost Containment  
 Prosecutor Myles Brand Matteson, ESQ; Matthew Gregory Conley, ESQ  Defendant   
Defense Attorney Eleftheria S. Keans, ESQ  
 Sex Offender Registry  Other \_\_\_\_\_  \_\_\_\_\_ Dist Div. \_\_\_\_\_

**THE STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
<http://www.courts.state.nh.us>

Court Name: Hillsborough Superior Court Southern District  
Case Name: State v. Michael Drouin  
Case Number: 226-2022-CR-615 Charge ID Number: 2008235C  
(if known)

**HOUSE OF CORRECTIONS SENTENCE**

Plea/Verdict: <b>Guilty</b>	
Crime: <b>False Documents, Names, Endorsement</b>	Date of Crime: <b>04/13/2021</b>

A finding of GUILTY/TRUE is entered.

**CONVICTION**

This conviction is for a Misdemeanor

- A. The defendant has been convicted of Domestic Violence contrary to RSA 631:2-b or of an offense recorded as Domestic Violence. See attached Domestic Violence Sentencing Addendum.
- B. The defendant has been convicted of a misdemeanor, other than RSA 631:2-b or an offense recorded as Domestic Violence, which includes as an element of the offense, the use or attempted use of physical force or threatened use of a deadly weapon, and the defendant's relationship to the victim is:

OR The defendant is cohabiting or cohabited with victim as a \_\_\_\_\_  
OR A person similarly situated to \_\_\_\_\_

**CONFINEMENT**

- A. The defendant is sentenced to the House of Corrections for a period of 90 days.  
Pretrial confinement credit is \_\_\_\_\_ days.
- B. This sentence is to be served as follows:
- Stand committed  Commencing \_\_\_\_\_
- Consecutive weekends from \_\_\_\_\_ PM Friday to \_\_\_\_\_ PM Sunday beginning \_\_\_\_\_
- All** \_\_\_\_\_ of the sentence is suspended during good behavior and compliance with all terms and conditions of this order. Any suspended sentence may be imposed after hearing at the request of the State. The suspended sentence begins today and ends 2 years from  today or  release on charge ID number \_\_\_\_\_.
- \_\_\_\_\_ of the sentence is deferred for a period of \_\_\_\_\_.
- The Court retains jurisdiction up to and after the deferred period to impose or terminate the sentence or to suspend or further defer the sentence for an additional period of \_\_\_\_\_.
- Thirty (30) days prior to the expiration of the deferred period, the defendant may petition the Court to show cause why the deferred commitment should not be imposed. Failure to petition within the prescribed time will result in the immediate issuance of a warrant for the defendant's arrest.
- Other: \_\_\_\_\_
- C. The sentence is  consecutive to case number and charge ID \_\_\_\_\_  
 concurrent with case number and charge ID \_\_\_\_\_
- D. The court recommends to the county correctional authority:
- Work release consistent with administrative regulations.
- Drug and alcohol treatment and counseling.
- Sexual offender program.
- \_\_\_\_\_



Case Name: State v. Michael Drouin

Case Number: 226-2022-CR-615

HOUSE OF CORRECTIONS SENTENCE

If required by statute or Department of Corrections policies and procedures, the defendant shall provide a sample for DNA analysis.

**PROBATION**

A. The defendant is placed on probation for a period of \_\_\_\_\_ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer.

Effective:  Forthwith  Upon release from \_\_\_\_\_

The defendant is ordered to report immediately, or immediately upon release, to the nearest Probation/Parole Field Office.

B. Subject to the provisions of RSA 504-A:4, III, the probation/parole officer is granted the authority to impose a jail sentence of 1 to 7 days in response to a violation of a condition of probation, not to exceed a total of 30 days during the probationary period.

**Violation of probation or any of the terms of this sentence may result in revocation of probation and imposition of any sentence within the legal limits for the underlying offense.**

**FINANCIAL OBLIGATIONS**

A. **Fines and Fees:**

Fine of \$ 250.00, plus a statutory penalty assessment of \$ 60.00 to be paid:

Today

By 90 days

Through the Department of Corrections as directed by the Probation/Parole Officer. A 10 % service charge is assessed by DOC for the collection of fines and fees, other than supervision fees.

\$ \_\_\_\_\_ of the fine and \$ \_\_\_\_\_ of the penalty assessment is suspended for \_\_\_\_\_ year(s).

**A \$25.00 fee is assessed in each case file when a fine is paid on a date later than sentencing.**

B. **Restitution:**

The defendant shall pay restitution of \$ \_\_\_\_\_ to \_\_\_\_\_

Restitution shall be paid through the Department of Corrections as directed by the Probation/Parole Officer. A 17% administrative fee is assessed for the collection of restitution.

At the request of the defendant or the Department of Corrections, a hearing may be scheduled on the amount or method of payment of restitution.

Restitution is not ordered because: \_\_\_\_\_

C. **Appointed Counsel: NOTE:** Financial Obligations, Section C is NOT a term and condition of the sentence.

The Court finds that the defendant has the ability to pay:

counsel fees and expenses in the amount of \$ \_\_\_\_\_

payable through \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ per month.

The Court finds that the defendant has no ability to pay counsel fees and expenses.

\_\_\_\_\_  
\_\_\_\_\_

Case Name: State v. Michael Drouin

Case Number: 226-2022-CR-615


HOUSE OF CORRECTIONS SENTENCE

**OTHER CONDITIONS**

- A. The defendant is to participate meaningfully and complete any counseling, treatment and educational programs as directed by the correctional authority or Probation/Parole Officer.
- B. The defendant's \_\_\_\_\_ in New Hampshire is revoked for a period of \_\_\_\_\_ effective \_\_\_\_\_
- C. Under the direction of the Probation/Parole Officer, the defendant shall tour the \_\_\_\_\_
- D. The defendant shall perform 250 hours of community service and provide proof to State within 12 months of today's date.
- E. The defendant is ordered to have no contact with \_\_\_\_\_ either directly or indirectly, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or third parties.
- F. Law enforcement agencies may  destroy the evidence  return evidence to its rightful owner.
- G. The defendant is ordered to be of good behavior and comply with all the terms of this sentence.
- I. Other:

**The defendant shall lose the right to vote in New Hampshire pursuant to Part I, Article 11 of the New Hampshire Constitution.**

For Court Use Only



Honorable Jacalyn A. Colburn  
April 24, 2023

**THE STATE OF NEW HAMPSHIRE  
 JUDICIAL BRANCH**  
 http://www.courts.state.nh.us

Court Name: Hillsborough Superior Court Southern District  
 Case Name: State v. Michael Drouin  
 Case Number: 226-2022-CR-615 Charge ID Number: 2008235C

**COMPLAINT/INDICTMENT AMENDMENT FORM**

- The offense degree is amended to:
  - Violation Misdemeanor  Class A  Class B  Unclassified (non-person)
  - Felony  Class A  Class B  Special  Unclassified (non-person)

- The RSA name and RSA reference are amended as follows in order to make the complaint compliant with the Uniform Charge Table:

RSA name (UCT Descriptor): \_\_\_\_\_

RSA: 666:6

- The complaint narrative is unchanged.
- Scrivener's error – amended as follows (no defense signature required):

- The complaint narrative is amended as follows:

**Michael R. Drouin, without authority, falsely represented that any other had written any letter or document, knowing such representation to be false, for the purpose of influencing votes. To wit; Michael R. Drouin created a Craigslist advertisement on election day purported to have been written by William Boyd that listed William Boyd's cell phone number for the purpose of interfering with William Boyd's efforts to communicate using his cell phone to coordinate election efforts on election day.**

If applicable, the inchoate reference is  unchanged;  amended to read:

If applicable, the extended term is  unchanged;  amended to read:

04/21/2023  
 Date

/s/ Matthew Conley  
 Signature of Prosecuting Attorney

04/21/2023  
 Date

/s/ Eleftheria Keans  
 Signature of Defendant/Attorney for Defendant

THE STATE OF NEW HAMPSHIRE  
INDICTMENT

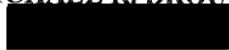
HILLSBOROUGH SOUTH, SS.

NOVEMBER TERM, 2022

At the Superior Court, holden at Nashua, within and for the County of HILLSBOROUGH, upon the 17th day of November, in the year of our Lord two thousand and twenty-two

THE GRAND JURORS FOR THE STATE OF NEW HAMPSHIRE, upon oath, present that

MICHAEL R. DROUIN



226-2022-CR-615

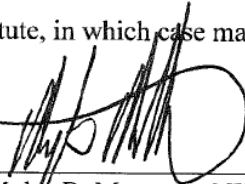
2008235C

of Merrimack, New Hampshire, on or about April 13, 2021, New Hampshire in the County of Hillsborough, did commit the crime of


INTERFERENCE WITH COMMUNICATION  
RSA 659:40-a

in that, Michael R. Drouin, on the day of an election, knowingly blocked the access of a candidate's communications equipment or services with the intent of interfering with campaign activity.

Said acts being contrary to the form of the Statute, in which case made and provided, and against the peace and dignity of the State.

  
Myles B. Matteson, NH Bar #268059  
Assistant Attorney General

This is a true bill.

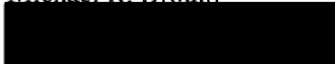



Plea of Guilty as amended. See  
Complaint/Indictment Amendment form.



Foreperson

Amy M. Feliciano, Clerk of Court

Name: Michael R. Drouin  
DOB:   
Address:  Merrimack, NH 03054  
RSA: RSA 659:40-a  
Offense level: Class B Felony; 3 1/2 - 7 years, \$4,000 fine, or both  
Dist/Mun Ct: N/A  
Docket No.: 226-2022-CR-00615  
Charge ID: 2008235C

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

May 31, 2023

[REDACTED]  
Epsom, NH 03234

Re: [REDACTED] Chichester Domicile Issue, Alleged Wrongful Voting

Dear [REDACTED]

On May 26, 2022, Attorney Michael P. Courtney of Upton & Hatfield, LLP, contacted our Office seeking guidance, on behalf of the Town of Chichester, regarding an individual who was claiming to live in Chichester in a camper but who had no other connections to the town. Attorney Courtney indicated that you were the individual and that you wanted to register to vote. Then-Deputy General Counsel Myles Matteson communicated with Attorney Courtney and directed him to pages 45 and 46 of the Election Procedure Manual which describe the law as it relates to domicile of homeless individuals and the duties of the Supervisors of the Checklist in those instances.

You filed your registration to vote, in Chichester, on May 30, 2022. On August 1, 2022, Attorney Courtney reached out to us again by email, explaining that on June 27, 2022, Chichester had filed an action in the Merrimack County Superior Court against you as you were using your property in violation of local zoning law. You filed an answer in that case claiming that "for no reason should anyone believe that [REDACTED]" You filed this answer with the Court on July 31, 2022.

Attorney Courtney also noted that that in July of 2022, you advised the Merrimack County Superior Court by telephone that you would not be served with a complaint because you lived in Florida and were not planning on coming back anytime soon.

Attorney Courtney asked, in light of all of this, if the Town should remove you from the checklist, and if our Office would be investigating you for any criminal conduct.

Our Office opened an investigation based on Attorney Courtney's August 1, 2022, email and asked Attorney Courtney if Chichester had sent you a 30-day letter in accordance with RSA

654. On September 28, 2022, Attorney Courtney confirmed that Chichester sent you a 30-day letter on August 31, 2022, and had received no reply.

On November 8, Attorney Courtney informed then-Deputy General Counsel Matteson (“DGC Matteson”) that you were removed from the voter checklist as you had never responded to the 30-day letter. However, you submitted a voter registration form and voted in the General Election on November 8, 2022. ElectionNet records show that you voted in person in Chichester on November 8, 2022. You had not voted in Chichester before nor have you voted after that date. Chief Investigator Richard Tracy has not found any evidence that you voted in any other state on November 8, 2022.

On November 14, Attorney Courtney followed up with DGC Matteson and sent him a copy of your registration form, a Challenged Voter Affidavit, a Domicile Affidavit, a Qualified Voter Affidavit, and a Permit to Kindle Fire. You filed the Challenged Voter Affidavit and the Voter Registration form on November 8, 2022. You filled out the remaining documents in May of 2022.

On December 14, Attorney Courtney wrote to DGC Matteson again to inform him that a preliminary injunction hearing in the Town’s action against you was held in Merrimack County Superior Court on December 13. At that hearing, you made a number of representations about your domicile and your rationale for filling out your voter paperwork. Attorney Courtney attached an order from the Court, dated December 14, in which the Court found that “[t]he defendant, Shaun Fife, maintains he has not slept in the camper since July 1, 2022. Further, he states that the camper is no longer on his property but is currently legally on a road abutting his property.”

On May 15, 2023, Investigator Tracy spoke with you by phone. The two of you spoke about your litigation with Chichester and you stated that you did not believe you were domiciled anywhere else. You explained that you were divorced from your first wife who lived in Lakewood, Colorado with your two children. You stated that you were in the process of divorcing your second wife who lives in West Palm Beach, Florida. You explained that you have lived in multiple locations since you separated from your second wife and that, from 2020 to the present, you have lived in Key West, Florida; Weare, New Hampshire; Pittsfield, New Hampshire; Loudon, New Hampshire; Sebastian, Florida; and “the Keys” in Florida. You noted that you have not lived in any one place very long and the only property that you consider to be anything close to permanent is the lot you own in Epsom and Chichester.

Finally, you explained that you have been unable to obtain a driver’s license, register a vehicle, obtain a hunting license, or register to vote in New Hampshire because the Town of Chichester would not issue an address for your Chichester property. You said that you learned that you had been removed from the voter checklist in Chichester, on November 8, 2022, because you had not responded to a letter that Chichester officials had mailed to you. You stated that some Chichester election officials spoke with Karen Ladd at the New Hampshire Secretary of State’s Office while other Chichester officials spoke with New Hampshire Secretary of State David Scanlan and Assistant Secretary of State Orville Fitch regarding your circumstances. They coordinated with this Office and ultimately informed Chichester town officials that you should

be allowed to register and vote in the November 8, 2022, General Election. This Office and the Secretary of State determined that you were not domiciled anywhere else at the time and that your property in Chichester was your only known property.

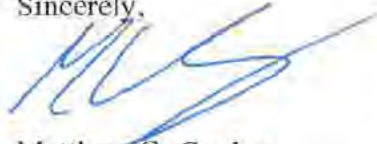
If Judge Kissinger’s decision in favor of the Town of Chichester stands and you are not permitted to live on the Chichester property, be advised that, in New Hampshire, in order to vote in a town, ward, or unincorporated place, you must be domiciled there. A “domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government.” RSA 654:1, I.

A resident does not lose their place of domicile during a temporary absence if they intend to return to their place of domicile. *See* RSA 654:2, I. The plain and ordinary meaning of the word “temporary” means “[l]asting for a time only; existing or continuing for a limited (usually short) time.” BLACK’S LAW DICTIONARY (8<sup>th</sup> ed. 2004). However, a voter must establish a domicile before they can be temporarily absent. And, a “voter can only have one domicile for voting purposes.” RSA 654:2, I.

Considering the evidence and statements you have made regarding your current living situation, this Office does not reject your claim of domicile as it relates to the two instances where you registered to vote in Chichester. However, in the future, you must determine whether Chichester continues to be your domicile, as defined above in RSA 654:1, I, if you are not allowed to live on your property. Any future failure to comply with election and domicile laws may result in a Cease and Desist order, enforcement action, and/or criminal prosecution.

We hope this information will be useful to you as you determine your domicile. This matter is closed. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Matthew G. Conley  
Assistant Attorney General  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: Jodi Pinard, Chichester Town Administrator  
Chief Patrick Clarke, Chichester Police Department  
Attorney Michael Courtney, Upton & Hatfield, LLP.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

June 22, 2023

Roger Sylvestre  
[REDACTED]

Clarksville, NH 03592

Re: **CEASE AND DESIST ORDER**  
Roger Sylvestre, Alleged Illegal Campaign Activity

Dear Mr. Sylvestre:

On October 27, 2022, this Office received a complaint alleging that you were running for Coos County Attorney without having the qualifications that office requires under New Hampshire Law. This investigation and litigation followed. This Office concludes that you sought an office for which you did not have the required qualifications under New Hampshire law. However, it is unclear if you had the requisite intent to commit a criminal violation of RSA 641:3 – Unsworn Falsification. Therefore, this Office concludes this matter with this Order that you refrain from running for State offices for which you do not have the required qualifications.

**I. FACTUAL BACKGROUND**

On October 27, 2022, the Office of the New Hampshire Secretary of State contacted this Office and explained that Coos County Attorney John McCormick, who was seeking re-election at the time, contacted the New Hampshire Secretary of State's Office regarding your qualifications to be the Coos County Attorney. Specifically, County Attorney McCormick learned that, although you were on the ballot following a write-in campaign, you were not an attorney. The Office of the Secretary of State explained its belief that you were therefore not qualified to be the Coos County Attorney and requested that this Office take action. Later that day, Assistant Secretary of State Orville Fitch sent this Office your Declaration of Candidacy for Coos County Attorney that you filed on September 26, 2022. In that document, you indicated your intention to seek the Office of Coos County Attorney and signed that document below the words "I further declare that, if nominated as a candidate for said office, I will not withdraw; and that, if elected, I will be qualified for and will assume the duties of said office."

On that same date, Deputy General Counsel Myles Matteson and I called you and left you a voicemail explaining the nature of the complaint that we had received and that we wanted to speak with you regarding what we had learned.



On that same date, I reached out to Michele Gilbert, Member Records Coordinator for the New Hampshire Bar Association. Ms. Gilbert confirmed over the phone that she had no record of anyone by your name as a member or past member of the New Hampshire Bar Association. Ms. Gilbert later sent this Office a notarized letter confirming her findings.

By October 31, 2022, we had not heard from you. On that same date, we drafted a letter to you explaining the nature of the complaint against you and our attempts to contact you. We asked you to contact us by November 1, 2022 to explain your actions in this matter so that we could determine what steps should follow. That letter was hand delivered to you by the New Hampshire State Police on October 31, 2022.

On November 1, 2022, I called County Attorney McCormick. I indicated that I was calling about you and I wanted to follow up on what his understanding of the situation was. County Attorney McCormick stated that you had gotten in on a write-in campaign and you were not an attorney in New Hampshire. I asked him how this came to his attention and he said that he checked the New Hampshire Bar Association Member Directory out of curiosity and did not see you listed there. County Attorney McCormick indicated that he was not able to find any evidence of you being an attorney in this or any other state and clarified that "he was not trying to start anything," but he had reached out because he was not sure what was going on.

On that same date, you called me and left me a voicemail while I was on the phone with County Attorney McCormick. In your voicemail, you indicated that you had received our letter and left a phone number to call you back. I returned your call after speaking with County Attorney McCormick.

I asked you if you were an attorney in New Hampshire. You stated that you believed I already knew the answer to that question. I told you that I wanted to know what your understanding was. You clarified that you were not a member of the New Hampshire Bar. You confirmed that you were not an attorney in any state. You stated that you were not aware that you had to be an attorney. You confirmed that you had signed a declaration of candidacy. On that declaration, you indicated that you believed "qualified" was a more generic term and that the County Attorney was a more administrative position. You believed that the County Attorney simply hired other attorneys to do the work of the county. You told me that when you voted in the September 2022 Primary, the Republican field for County Attorney was blank so you wrote yourself in and then told a few friends about it. You explained that it was not your intention to put a "bind on the system" and you were not able to return my call the week prior because your phone system was "all screwed up" and you got side-tracked after getting the message over the weekend.

You asked if there was anything you could do to withdraw your candidacy. I told you that it was my understanding that the withdrawal date had passed. You asked if there was anything we could do on that day, saying you would even be willing to drive down to Concord. I told you it was unlikely anything could be accomplished that day but I would reach back out if I was mistaken. You asked me if there would be any prosecution. I told you that I was not commenting on that one way or another at the moment and my team and I needed to work on next steps. You

asked if you could call Secretary of State David Scanlan. I told you that you were more than welcome to but I was uncertain what, if any, additional information you would get.

On that same date, this Office filed an Emergency *Ex Parte* Petition for Writ of Mandamus with the Coos Superior Court. That Petition asked for several things including that the court recognize that you were not qualified to hold the Office of Coos County Attorney. The petition further requested that this Office be authorized to work with local election officials to strike your name from the November 8, 2022 General Election Ballots, that this Office be authorized to work with local election officials to not tally, record, or certify votes cast for you for Coos County Attorney, and that the court hold an immediate hearing on the matter.

On November 3, 2022, the Coos Superior Court held a hearing on this matter. You were served notice of the hearing in hand by the Coos County Sheriff's Office on November 2, 2022. You did not appear for the November 3 hearing. At that hearing, the Court ruled in this Office's favor and granted the requested relief.

## **II. APPLICABLE LAW & ANALYSIS**

Under New Hampshire law, every county attorney "shall be a member of the New Hampshire bar[.]" RSA 7:33. This qualification is central to being a County Attorney. In your Declaration of Candidacy, you made the representation that you would be qualified if elected. Between the records provided by the New Hampshire Bar Association and your own admissions, there is no question that you were not and are not qualified to hold the Office of Coos County Attorney.

Under RSA 641:3, I(b)(1), "[a] person is guilty of a misdemeanor if with a purpose to deceive a public servant in the performance of his or her official function, he or she makes any written or electronic false statement which he or she does not believe to be true." There is no question that the statement that you made indicating that you were qualified was false. There is no question that this false statement resulted in public servants placing your name on an official ballot when it should not have been there. However, it is not clear that you had an intent to deceive. Therefore, we have determined that criminal charges are inappropriate in this circumstance.

However, you have now been informed by this Office that since you are not an attorney, you cannot seek the Office of County Attorney in any of New Hampshire's counties. Should you ever become a New Hampshire attorney, this will change.

## **III. CONCLUSION**

We conclude that you were not qualified to hold the Office of Coos County Attorney when you represented that you were. While your intent in this circumstance is unclear, further attempts to pursue that Office would violate RSA 7:33 and RSA 641:3.

Pursuant to RSA 7:33 and RSA 641:3, and based upon the investigation conducted by this Office, you are hereby ordered to **Cease and Desist from pursuing the Office of Coos**

Roger Sylvestre, Alleged Illegal Campaign Activity

Page 4 of 4

**County Attorney unless and until you become a member of the New Hampshire bar and satisfy all other qualifications for that office under New Hampshire law.** Failure to comply with this Cease and Desist Order may result in this Office pursuing criminal prosecution.

Sincerely,



Matthew G. Conley

Attorney

Civil Bureau

(603) 271-6765

[matthew.g.conley@doj.nh.gov](mailto:matthew.g.conley@doj.nh.gov)

CC: John G. McCormick, Esquire, Coos County Attorney's Office  
Secretary of State - Elections Division, Secretary of State

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 10, 2023

Jeffrey M. Kratovil

[REDACTED]  
New Durham, NH 03855

**Re: Stephanie MacKenzie, New Durham Town Clerk, Alleged Election Official  
Misconduct**

Dear Mr. Kratovil:

On September 14, 2022, you sent an email to this Office asking us to investigate the conduct of the Former New Durham Deputy Town Clerk Stephanie MacKenzie (this letter will refer to "Deputy Clerk Mackenzie" for the sake of brevity). This letter is to inform you that, following investigation, this Office finds that no violations of New Hampshire election law occurred.

**INVESTIGATION**

Chief Investigator Richard Tracy reached out to you a few days after we received your message and spoke with you. You explained that you are a former selectman and former member of the planning board in New Durham. You thought that you always got along well with Deputy Clerk MacKenzie until the last two times that you went to vote, first in 2020 and then more recently in the State Primary on September 13, 2022. You indicated that on both occasions Deputy Clerk MacKenzie questioned your domicile and insisted that you no longer lived in New Durham. You explained that you went through a separation and divorce that was finalized on September 11, 2020, and your ex-wife, Karen Litchfield, now lives in Rochester with a partner.

You stated that in July of 2020 you were speaking with a friend who lived in Alton about your situation at the time. That friend offered you a place to stay in Alton from August 24, 2020, to November 6, 2020. You moved back to New Durham to share a residence with Ms. Litchfield on November 6, 2020. You lived there until January of 2021 when David Bickford, another former New Durham selectman, told you that his father had passed away and you were welcome to live in the now-empty home. You signed a lease to do so and lived there until June of 2021 when you moved back to your original home in New Durham and Ms. Litchfield moved to Rochester. You reiterated that August 24, 2020, to November 6, 2020, was the only period that you have lived outside of New Durham.

In your email to this Office, you indicated that you were stopped in the New Durham Elementary School when you went to vote in November of 2020. You wrote that you presented a New Hampshire driver's license and you were approached by Deputy Clerk MacKenzie. You state that within earshot and sight of a number of other people Deputy Clerk MacKenzie claimed to have heard that you were not living in New Durham. When you corrected her, Deputy Clerk MacKenzie told you that she would check on this before ultimately "let[ting] it go."

In your conversation with Investigator Tracy, you described your interaction with Deputy Clerk MacKenzie on September 13, 2022. You explained that you handed the ballot clerk your driver's license and she verified you were on the checklist. At that point Deputy Clerk MacKenzie in a raised voice asked you when you had moved back into town. You tried to explain that, with the exception of a very brief period of time, you had always lived in New Durham and Deputy Clerk MacKenzie responded, "Nope, nope, you don't live here anymore." You told Deputy Clerk MacKenzie that you could show her your divorce decree and you asked if this had anything to do with the position that you took as a member of the Board of Selectmen when Deputy Clerk MacKenzie's husband was trying to get a contract to "fix up town hall." You stated that this question seemed to strike a nerve and Deputy Clerk MacKenzie allowed you to vote. You indicated that you did not know the names of the two ballot clerks who assisted you, but you were able to physically describe them. You also indicated that a ballot clerk, Cathy Orlowicz, and a police officer, were present that day who should have been able to observe the interaction.

On December 7, 2022, Investigator Tracy reached out to you to ask if you had any issues voting on November 8, 2022. You indicated that you voted without issue, and you did not see Deputy Clerk MacKenzie at the polls. On that same date, Investigator Tracy verified that your driver's license and vehicle registration listed your New Durham address and that your voting record shows that you have voted exclusively in New Durham approximately 30 times since 2006.

On December 8, 2022, Investigator Tracy contacted New Durham Town Moderator Linda Callaway. Moderator Callaway indicated that she was not surprised by the contact and indicated that you had called her on her personal phone number, which she had not given you, after the September Primary. She stated that you asked to meet her in person, which she declined, explaining that any concerns could be discussed over the phone. She indicated that you explained how Deputy Clerk MacKenzie approached you at the Primary and that you had reached out to the Attorney General's Office. Moderator Callaway then called Deputy Clerk MacKenzie and told her about your conversation with her. Moderator Callaway indicated that Deputy Clerk MacKenzie expressed that she felt strongly that you had moved out of New Durham. Moderator Callaway confirmed that she was present for both interactions between you and Deputy Clerk MacKenzie. She indicated that in both instances neither of you were loud but neither were you quiet. In both instances, no one was willing to sign an affidavit stating that you no longer lived in New Durham.

On December 9, 2022, Deputy Clerk MacKenzie spoke with Investigator Tracy. Deputy Clerk MacKenzie acknowledged both interactions with you and believed that you had moved to Rochester as a result of your divorce two or four years ago. She recalled that you were allowed

to vote on both occasions. She referred Investigator Tracy to speak with former Selectman Terry Jarvis and Chair of the Supervisors Pat Grant as both individuals were present for the September incident.

That same day, Investigator Tracy reached out to Supervisor Grant. Supervisor Grant recalled the September interaction and explained that she only heard parts of the interaction. What stood out to her was when you began yelling and stating things about Clerk MacKenzie's husband that had nothing to do with elections—as she recalled it was something about work at town hall. Supervisor Grant believed it was clear that it was you raising your voice that upset Deputy Clerk MacKenzie and others in the room. She further explained that she had asked Deputy Clerk MacKenzie if she wanted to report the issue. Deputy Clerk Mackenzie declined and Supervisor Grant took it upon herself to call New Hampshire Secretary of State David Scanlan to explain the situation. Secretary Scanlan told Supervisor Grant that based on what she told him, you were properly domiciled in New Durham and should vote there.

On December 19, 2022, Investigator Tracy spoke with Ballot Clerk Catherine Orlowicz, a witness that you identified in your initial complaint. Ballot Clerk Orlowicz recalled that Deputy Clerk MacKenzie began to call out to you from across the room and ask you whether you lived in town or not. Ballot Clerk Orlowicz stated that this was the start of a verbal exchange that made for an “unpleasant and uncomfortable” atmosphere. She believed it would have been more appropriate for Deputy Clerk MacKenzie to approach you and speak with you discretely. Ballot Clerk Orlowicz could not recall all the conversation, but did say that it was about your domicile, that no one ultimately challenged your domicile, and the exchange ended when Deputy Clerk MacKenzie stated something to the effect of, “Alright, I’ll let it go.” Ballot Clerk Orlowicz recalled that you were both equally loud and that this was an unpleasant experience that should not have happened.

## CONCLUSION

This Office concludes that there was no violation of New Hampshire election law in either incident. You indicated that you were allowed to vote on both occasions. Multiple witnesses confirmed this as did your voting history. It appears that you were properly domiciled in both instances. It does not appear that Deputy Clerk MacKenzie acted unlawfully even if she acted indiscreetly. Deputy Clerk MacKenzie raised concerns regarding your domicile, concerns that were not entirely unfounded by your own admission but did not act improperly based upon the facts she had available prior to your statements to her at the polling place. In fact, following your statements as to your current domicile, it appears that there were no election officials were willing to sign an affidavit stating that you no longer lived in town.

Following the September 2022 incident, New Durham officials reached out to the Secretary of State to clarify their obligations and actions under the law. This course of action is encouraged for all election officials with doubt regarding the execution of their duties.

As this Office finds no violations of law, this matter is closed. Please reach out to me if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MGC', is written over a light blue circular stamp.

Matthew G. Conley

Attorney

Civil Bureau

(603) 271-6765

matthew.g.conley@doj.nh.gov

CC: New Durham Town Clerk Alicia Housel  
New Durham Town Moderator Linda Callaway  
Secretary of State Dave Scanlan  
Former New Durham Deputy Town Clerk Stephanie MacKenzie

Unidentified Individual, Town of Danville, Alleged Illegal Campaign Activity  
(Susan Overstreet, Complainant)

To: File  
From: Brendan O'Donnell  
Re: Alleged Illegal Campaign Activity-Unidentified Individual-Town of Danville  
Date: 2023 08 14

**Complaint:** This matter involved a complaint from Susan Overstreet regarding alleged electioneering in the no-electioneering corridor at a special election in Danville on July 13, 2021.

**Background:**

On July 13, 2021, the Town of Danville held a special election for Selectman. Several out-of-town individuals came to support write-in candidate Scott Borucki. On that day, this Office received a separate, similar complaint regarding electioneering in the no-electioneering zone. Danville police were notified and reportedly addressed the issue.

On July 14, 2021, Susan Overstreet reported that an individual holding a campaign sign within the electioneering zone stepped in front of her as she was about to enter the Danville Community Center to vote and attempted to give her a pamphlet. Ms. Overstreet provided a photograph of the individual.

This Office investigated but was not able to identify the individual, who may have come from out of town.

On February 24, 2023, Investigator Tracy followed up with Ms. Overstreet, who stated that she has voted three times since the July 13, 2021, special election and has not experienced any further issues entering the polls. Ms. Overstreet also stated that the Town has a new moderator, who reconfigured the no-electioneering corridor such that the corridor is now clearly marked and prevents electioneers from impeding voters' free space to enter the polls. Ms. Overstreet stated that she had not seen the unidentified individual since the July 13, 2021, special election.

The poll inspector checklist for Danville for the November 2022 election did not report any issues regarding the no-electioneering corridor.

**Conclusion:** Following an investigation, this Office was not able to determine the identity of an individual alleged to have committed an isolated incident of illegal campaign activity by electioneering in the no-electioneering zone. See RSA 659:43. Therefore, this matter is now closed.



To: File  
From: BAO  
Re: Closure of Talcott Matter  
Date: August 28, 2023

This Office received a complaint alleging that Alexander Talcott declared his candidacy for New Hampshire State Representative for the Town of Conway and registered to vote in Conway, despite Mr. Talcott not being domiciled in Conway. See RSA 655:28 (a candidate must swear an affidavit covering their qualifications as to domicile); RSA 659:34 (providing penalties for purposely or knowingly making a false material statement regarding qualifications as a voter when registering to vote). This Office opened an investigation into this matter, and this Office was in the process of finalizing the results of its investigation and taking action regarding the allegations against Mr. Talcott when Mr. Talcott died on or about August 26, 2023. Because Mr. Talcott is deceased, this Office cannot resolve this matter with criminal charges.

Therefore, this matter is now closed.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 29, 2023

Sharon Wilson  
Carroll County Republican Committee  
White Mountain Highway  
Conway, NH 03818

Re: Donna Veilleux and Granite State Matters, Alleged Illegal Campaign Activity

Dear Ms. Wilson:

We write to conclude our review of two complaints that you made to this Office. Your first complaint involved allegations of sign theft by Donna Veilleux. Following an investigation, this Office concludes that no unlawful conduct occurred because Ms. Veilleux had permission from the property owner to remove and lay down the signs. Your second complaint involved certain signs not containing identifying information as required by RSA 664:14. Following an investigation, this Office concludes that these signs, posted by Granite State Matters ("GSM"), did not violate RSA 664:14 because the content of the signs did not constitute "political advertising." See RSA 664:2, VI. Furthermore, GSM was not required to register as a political committee because the organization's signs did not promote the success or defeat of a candidate or candidates or measure or measures. See RSA 664:3, I

**Facts**

On October 26, 2022, you called this Office and spoke with Investigative Paralegal Jill Tekin. You told Paralegal Tekin that Carroll County Republican Committee (CCRC) had approximately 20 senate and house representative signs stolen which had been reported to Madison Police Chief Robert King.

On November 1, you called this Office along with Nicole Norland. You again spoke with Paralegal Tekin to report that over 50 signs had been stolen. You and Ms. Norland asked whether or not: 1) you were allowed to publicize the images of the individual taking down the signs that you had obtained, 2) there was a difference in charges or penalty for moving a sign into the woods versus vandalizing a sign, and 3) "extremist" signs without identification may be removed by anyone if they were not designated as political signs.

On November 2, Chief Investigator Richard Tracy spoke to you and Ms. Norland. He advised you that he had reached out to Chief King to request the police reports and video recordings related to the theft of political signs in Madison. Investigator Tracy asked you to email him a list of locations where signs had been stolen and the cost of those signs. You told him that you would do that and further explained that several signs had been defaced on top of the more than 50 signs that were stolen.

You asked Investigator Tracy if you could post the photo of the “guilty” person caught on camera who stole the signs. He explained that no one had been found guilty yet and this Office would not give you permission to do that. He asked you and Ms. Norland to send him whatever you had for evidence and information related to the theft of the political signs and that this Office would look into the matter.

On that same day, Investigator Tracy spoke with Chief King. Chief King explained that Donna Veilleux admitted to taking the signs. Chief King represented that he had a recording of this, and he hoped that speaking with her had put a stop to the theft of political advertisements in Madison. He told Investigator Tracy that he set up a game camera near where some of the signs were stolen and he had a recording of Ms. Veilleux removing the signs from Route 41 and piling them up in the woods. Investigator Tracy asked Chief King to email the police reports and associated recordings to him.

On November 10, you sent Investigator Tracy an email noting the location of where several of the signs had been taken. Most were signs for Don Bolduc and Karoline Leavitt, and you estimated that the CCRC had lost 85-95 signs. You identified the woman caught on camera removing signs and tossing them into the woods as Ms. Veilleux. You noted that, although you could not prove that Ms. Veilleux took or damaged all of the signs, you wanted Ms. Veilleux prosecuted for the signs that she was on camera removing.

You explained that Ms. Veilleux had only removed signs that were on conservancy land, the Pine Barrens Preserve, and that Ms. Veilleux had Democrats remove signs from the same location. You questioned why Ms. Veilleux did not call the CCRC to remove the signs like she had done with the Democrats. Based on these representations in your email, Investigator Tracy inferred that either you or someone else had spoken to Ms. Veilleux regarding these allegations.

Between November 14 and December 12, Chief King provided Investigator Tracy with documents and video related to this matter. A cell phone camera recording showed Chief King speaking with Ms. Veilleux. Photographs from a game camera showed a light-colored Subaru station wagon and a female that Chief King identified as Ms. Veilleux. Additional photos showed political signs that had been stacked on the ground at the edge of the woods. Chief King observed a white Subaru in Ms. Veilleux’s driveway when he spoke with her.

On December 13, Investigator Tracy interviewed Ms. Veilleux. She indicated that before she removed the four to six Republican signs from the ground and laying them in the woods nearby, she had driven past that same spot and noticed seven to eight Democratic candidate signs. She called someone who she knew might be responsible for placing the Democratic signs and explained to them that the signs were on Nature Conservancy land, and they should not be

there. That person, she said, removed the signs almost immediately. It was one or two days later that Ms. Veilleux saw the Republican signs. Ms. Veilleux did not want to provide the name of the individual who placed the Democratic signs as she is elderly, and Ms. Veilleux did not want her to be upset or involved. Investigator Tracy asked Ms. Veilleux to contact this individual and ask her to contact him.

On the same day, Investigator Tracy received an email from Margaret Merrill who identified herself as a colleague of Ms. Veilleux. Ms. Merrill acknowledged that Ms. Veilleux had called her in the fall to discuss signs that Ms. Merrill had unknowingly placed on the conservation property.

On December 13, Investigator Tracy spoke with Jeff Lougee, Director of Land Management with the Nature Conservancy. Director Lougee confirmed that Ms. Veilleux had texted him on October 26, and he gave her permission to remove the signs from the Pine Barrens Preserve.

You also reported a second issue involving signs that you believed to be in violation of RSA 664:14. Those signs read “NO Extremists. Let’s take back our state! Nov 8.” The signs contained a QR code in the lower right-hand corner. Investigator Tracy followed the QR code and found that it led to [granitstatematters.org](http://granitstatematters.org). Investigator Tracy eventually found a contact email address, [admin@granitstatematters.org](mailto:admin@granitstatematters.org), and sent an email to that address on January 27, 2023. Jeanne Dietsch received the email and spoke with Investigator Tracy on January 30. Ms. Dietsch explained that she had already spoken with Attorney Myles Matteson about the signs and her website. She stated that she added the appropriate contact information to the website and took it down when the election was over. Attorney Matteson noted that Ms. Dietsch did not know where all of the signs were in order to properly update them with required disclosure information.

### Law and analysis

Regarding Ms. Veilleux’s actions, RSA 664:17 reads, in relevant part, [n]o political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent.” Under RSA 664:2, VI, political advertising is “any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly<sup>1</sup> advocates the success or defeat of any party, measure or person at any election.”

There is no question that the removed signs were placed on the Pine Barrens Preserve – Nature Conservancy property – without Director Lougee’s permission. Director Lougee authorized Ms. Veilleux to take down signs on his behalf, and therefore she did not violate the State’s election laws. *See* RSA 664:17 (“No person shall remove ... any political advertising which is placed on or affixed to ... any private property except for removal by the owner of the property, persons authorized by the owner of the property, or a law enforcement officer removing improper advertising” (emphasis added)).

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<sup>1</sup> The language regarding “implicit advocacy” has been recognized by courts as being unconstitutional. *See Buckley v. Valeo*, 424 U.S. 1 (1976). *See also Stenson v. McLaughlin*, 2001 WL 1033614, 3 (D.N.H. Aug. 24, 2001).

Regarding the GSM signs, RSA 664:14, I, provides disclaimer requirements that must be included on “political advertising,” which RSA 664:2, VI defines as “any communication ... which expressly or implicitly advocates the success or defeat of any party, measure or person at any election requires.” The GSM signs did not identify or expressly advocate for any specific party, candidate, or measure; therefore, the signs do not constitute political advertising under RSA 664:2, VI and are not subject to the disclosure requirements of RSA 664:14.

Under RSA 664:3, I, “[a]ny political committee, except the political committee of a political party, shall register with the secretary of state as provided in this section.” RSA 664:2, III(a) reads that a political committee is “[a]ny organization of 2 or more persons that promotes the success or defeat of a candidate or candidates or measure or measures, including the political committee of a political party.”

GSM’s advertisements did not expressly advocate for the success or defeat of any specific party, candidate, or measure. Because GSM’s communications did not constitute political advertising, we find that GSM was not an organization of at least two persons that was promoting the success or defeat of a candidate or measure. Therefore, we find that GSM was not required to register as a political committee with the New Hampshire Secretary of State.

This matter is closed. Please reach out to me if you have any questions or concerns.

Sincerely,



Matthew G. Conley  
Assistant Attorney General  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: Donna Veilleux  
Chief Robert King, Madison Police Department  
Nicole Norland  
Director Lougee  
Jeanne Dietsch

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 30, 2023

Roberta Boudman  
123 Warren Sands Road  
Wolfeboro, NH 03894

Re: Theft of signs

Dear Ms. Boudman:

I write in response to the complaint that you filed on October 5, 2022, regarding theft of political signs. Unfortunately, this Office's investigation was not able to identify any person responsible for the theft of your signs. Please see the enclosed memo explaining that we are closing our investigation into this matter. If you find any new information regarding the theft of your signs, please don't hesitate to reach out, and we will review that information.

Sincerely,

/s/ Brendan O'Donnell  
Brendan A. O'Donnell  
Assistant Attorney General  
Election Law Unit

BAO/jt  
Enclosure

Alleged Illegal Campaign Activity-Removal of Political Advertising  
(Roberta Boudman, Complainant)

To: File  
From: Brendan O'Donnell  
Re: Alleged Illegal Campaign Activity-Removal of Political Advertising  
Date: 2023 08 22

**Complaint:** This matter involved a complaint from Roberta Boudman regarding the theft of her campaign signs in Wolfeboro, Tuftonboro, and Ossipee during the 2022 General Election cycle.

**Background:**

On October 10, 2022, Ms. Boudman reported that over 100 of her political signs had been stolen by one or more unknown persons from various locations in Wolfeboro, Tuftonboro, and Ossipee. Several signs of the signs had been along Route 171, Mountain Road, in Tuftonboro. In some cases, Ms. Boudman replaced the signs only to have the replacement signs stolen as well.

This Office reviewed the information Ms. Boudman submitted and conducted an investigation. However, the investigation was not able to reveal the identity of any individual who may have stolen Ms. Boudman's campaign signs.

On November 21, 2022, Ms. Boudman reported that approximately 250 signs had been stolen during that election cycle.

**Conclusion:** Based on the evidence Ms. Boudman submitted and following an investigation, this Office was not able to determine the identity of any individuals who were responsible for stealing Ms. Boudman's campaign signs. See RSA 664:17. Therefore, this matter is now closed.

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

August 31, 2023

**SENT VIA EMAIL ONLY**

Ken Eyring  
Government Integrity Project  
[REDACTED]

Re: Campaign Finance Registration and Reporting Information

Dear Mr. Eyring:

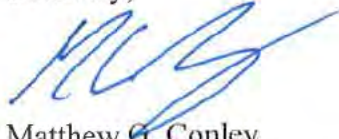
On June 25 and 26, 2021, this Office received two complaints about the involvement of a group allegedly supporting a candidate for Danville's July 13, 2021, town election. Specifically, the two complaints questioned the legality of a group soliciting contributions for and spending money to host events in support of a Danville candidate. After further inquiry, we identified the group as the Government Integrity Project. This group has a webpage on the "GiveSendGo" fundraising website, titled "Government Integrity Project," and indicating that the "Campaign [was] Created by: Ken Eyring." The website explained that it was in support of the write-in campaign for former Selectmen Scott Borucki. This Office reached out to you multiple times in relation to this inquiry. While this Office subsequently engaged with you in other settings and on different topics, this matter was never raised following our initial outreach.

RSA 664:1 states that the only campaign finance laws that apply to city, town, village district and school district elections are those set forth in RSA 664:14 through RSA 664:22, which relate to political advertising. By contrast, the entirety of RSA Chapter 664, which includes registration requirements for political committees, applies to all state elections. Under our campaign finance laws, a group or organization that advocates for or against a candidate or measure in a town election is not required to register as a political committee or report its receipts and expenditures. Therefore, Government Integrity Project was not required to register as a political committee for its activities related to the Danville town election. If the Government Integrity Project were to issue mailers or email promoting election related events such as fundraising events for elections for a city, town, school district, or village district election, it would need to comply with the political advertising requirements set forth in RSA 664:14 through 664:22. Further, if the Government Integrity Project engages in conduct promoting the success or defeat of candidates or measures for state or federal elections, then it must: (1) register as a political committee with the Secretary of State; and (2) report any receipts and expenditures.



We hope this information proves useful to you. This matter is closed.

Sincerely,



Matthew G. Conley  
Assistant Attorney General  
Election Law Unit  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

September 8, 2023

Brigitte Codling  
Haverhill Town Manager  
2975 Dartmouth College Highway  
North Haverhill, NH 03774

Re: Haverhill Fire Chief Phil Blanchard, Alleged Illegal Campaign Activity

Dear Manager Codling:

This letter addresses several complaints stemming from the March 14, 2023 Haverhill Town Elections have been filed with this Office.

On March 17, 2023, Ed Ballam contacted this Office to report his concern that Phil Blanchard was elected to a three-year term as Haverhill Selectman on March 14. Specifically, Mr. Ballam indicated that Selectman Blanchard's new position was an incompatible office under RSA 660:7. This complaint followed a February 21, 2023 complaint by Jay Holden that raised the same issue.

This Office received a subsequent complaint from Mr. Ballam and the Haverhill Moderator, Gary Hebert, alleging that Selectman Blanchard had been improperly electioneering.

Finally, this Office received several complaints from Katie Williams regarding several political mailers that went out to Haverhill residents in advance of the March 18, Haverhill Town Meeting. Ms. Williams alleged that these mailers did not contain proper identifying information under RSA 664:14.

This Office investigated these three complaints and finds that Selectman Blanchard's position does not constitute an incompatible office under New Hampshire Law, his conduct did not constitute improper electioneering under RSA 659:44-a, and that while the mailers at issue did not contain appropriate identifying information under RSA 664:14, they are exempt from that statutory requirement under federal case law.

## **I. FACTUAL BACKGROUND AND INVESTIGATIONS**

### **a. Incompatibility of Offices**

On February 21, 2023, Mr. Holden called this Office to clarify whether Mr. Blanchard could properly run for Office or if the positions of Selectman and Fire Chief would cause a conflict of interest. On that same date, I reached out to you. You explained that you were aware of a number of complaints on this issue and that Selectman Blanchard was a part-time employee. You informed me that the town had reached out to their town counsel on this question and verified that Selectman Blanchard could legally run as he was a part time employee. You forwarded the written communications that you had with the town counsel on this subject to this Office. Those records included an appointment letter for Selectman Blanchard as Fire Chief that verified what you had told me on the phone.

On February 28, 2023, I relayed the communications that I had with you to Jay Holden, explaining that we had not found any violation of New Hampshire law in what had been shown to us.

On March 17, 2023, Mr. Ballam emailed this Office to indicate that, on March 14, 2023, Phil Blanchard was elected to the Haverhill Selectboard. He pointed out that Selectman Blanchard is also the Fire Chief of the Haverhill Fire Department. That position, Mr. Ballam wrote, is an appointment made by the Haverhill Town Manager. Conversely, he wrote that “an untenable situation” had been created because the selectboard has the power to hire and fire the town manager. Mr. Ballam called for this Office to disqualify Selectman Blanchard and to overturn his election.

On that same date, I wrote back to Mr. Ballam, indicating that, based on our review, there had been no violation of New Hampshire’s election laws that this Office could enforce and that any action would require either a change in law from the New Hampshire legislature or the enforcement of local policy by the courts and Haverhill officials.

### **b. Improper Electioneering**

On March 20, 2023, Moderator Hebert emailed Chief Investigator Richard Tracy. The email was a forward of an email thread between Moderator Hebert and Mr. Ballum regarding Selectman Blanchard’s conduct, specifically referencing the beginning of the forwarded thread.

The first email in the thread was a message from Selectman Blanchard to a Google Group<sup>1</sup>, “Town of Haverhill Fire Department”, dated March 17, 2023. In that message, Selectman Blanchard explained that there would be “a few important items” being voted on in the March 18 Haverhill Town meeting including an article for the “immediate termination of the town manager” and “[f]unding of [W]oodsville fire and road crew.” Selectman Blanchard wrote of the former, “I personally would love to see way more no votes and this article to fail. This

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<sup>1</sup> A Google Group is a service from Google that allows individuals to communicate using threaded discussions. A note in the message sent by Selectman Blanchard confirms that one would have to have subscribed to the Google Group “Town of Haverhill Fire Department” to receive messages sent to that group.

article gets brought up almost every year and being that its non-binding it just creates even more divide in our town.” Of the latter, he wrote “I do not support a fire budget that is larger than ours passing and having no say on how the money is spent. I do want to support the districts in town, just want it to be fair.” There is no indication that Selectman Blanchard sent this email to anyone outside of the Haverhill Fire Department.

**c. Illegal Mailers**

On March 10, Katie Williams emailed this Office a photo of a mailer that had gone out to Haverhill residents that she alleged to be in violation of RSA 664:14. The mailer specifically asked residents to “Vote No on Article 10 and 11” at Haverhill’s Town Meeting on March 18. The mailer contained no identifying information beyond a postage stamp that did not identify any organization or individual.

On March 11, Ms. Williams emailed this Office a photo of a second mailer that had gone out to Haverhill residents that she alleged to be in violation of RSA 664:14. This mailer read “It’s Time to Shine the Light on Haverhill’s ‘Shadow Government’” and called on residents to “VOTE **NO** ON ARTICLES 10 & 11”. The mailer contained no identifying information beyond a postage stamp that did not identify any organization or individual.

On March 17, Ms. Williams emailed this Office a photo of a third mailer that had gone out to Haverhill residents that she alleged to be in violation of RSA 664:14. This mailer discussed the consequences of Article 10 and Article 11 if they were to pass but did not expressly indicate how residents should vote on them. The mailer contained no identifying information.

Investigator Tracy found that the postal permit that had been used to send out the first two mailers was owned by Spectrum Marketing. This Office ultimately subpoenaed Spectrum Marketing and found that a company called Strategic Alchemy had ordered the mailers to be printed and mailed using Spectrum Marketing.

On May 25, Investigator Tracy contacted the owner of Strategic Alchemy, Periklis Karoutas. Mr. Karoutas explained that “an individual” had hired Strategic Alchemy and that it was his understanding that the identity of an individual did not need to be disclosed in this situation. On June 8, Mr. Karoutas sent this Office a signed and sworn-to affidavit in which he swore that his client was an individual acting on their own and that it was his understanding that the identify of his client was not required to be disclosed under the law.

**II. LAW AND ANALYSIS**

**a. Incompatibility of Offices**

Under New Hampshire law,

No person shall at the same time hold any 2 of the following offices: selectman, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway

agent. No person shall at the same time hold any 2 of the following offices: town treasurer, moderator, trustee of trust funds, selectman and head of the town's police department on full-time duty. No person shall at the same time hold the offices of town treasurer and town clerk. **No full-time town employee shall at the same time hold the office of selectman.** No official handling funds of a town shall at the same time hold the office of auditor. No selectman, moderator, town clerk or inspector of elections shall at the same time serve as a supervisor of the checklist. No selectman, town manager, school board member except a cooperative school board member, full-time town, village district, school district except a cooperative school district, or other associated agency employee or village district commissioner shall at the same time serve as a budget committee member-at-large under RSA 32.

RSA 669:7, I (emphasis added).

The facts of this case show that, while Selectman Blanchard is the Haverhill Fire Chief, that is a part-time employment. Therefore, his acting as selectman does not constitute any violation of RSA 669:7.

This does not prevent the Town of Haverhill from enacting their own ethical codes or standards for office as long as those standards and codes do not conflict with New Hampshire law. However, this Office is not the proper enforcement authority for such municipal standards. Further, and notwithstanding statutorily incompatible offices, conflicts of interest requiring recusal may still arise. We urge Haverhill officials to be aware of these potential conflicts and to be aware of their responsibility to recuse themselves when such conflicts arise, which in turn will help maintain the confidence of the people of Haverhill.

#### **b. Improper Electioneering**

To constitute an electioneering violation under RSA 659:44-a, I, the following facts must be established: (1) a public employee, (2) that is not exempt under RSA 273-A:1, IX, (3) must electioneer, (4) while in the performance of his or her official duties.

RSA 652:16-h, which was enacted on January 1, 2020, defines "electioneering" as "information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted." RSA 652:16-h. (Emphasis added.)

RSA 659:44-a prohibits "public employees," as defined under RSA 273-A:1, IX, from engaging in electioneering while in the performance of their official duties. RSA 273-A:1, IX identifies specific exceptions of persons who do not constitute "public employees." Relevant here, "[p]ersons elected by popular vote" and "[p]ersons appointed to office by the chief executive or legislative body of the public employer" are excluded from the definition of "public employees". RSA 273-A:1, IX(a).

RSA 659:44-a prohibits any "use of government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering."

Selectman Blanchard does not constitute a public employee sufficient to trigger the electioneering prohibition under RSA 659:44-a, II in his capacity as selectman or as fire chief. Additionally, Selectman Blanchard's comments were in a private Google Group.

This Office acknowledges the general principle that the government may use public funds to support its own measures.<sup>2</sup> However, fire departments have an important role in their respective communities dependent on public confidence that cannot be jeopardized by the specter of impropriety or partisanship. Even while Selectman Blanchard is exempt from the electioneering prohibition, his message could be—and has been—perceived as inappropriate electioneering by an individual holding a position of considerable public responsibility in Haverhill.

When such an individual is seen engaging in such conduct, which appears supportive of a candidate or measure, questions reasonably arise regarding that person's ability to execute their duties dispassionately. Selectman Blanchard must exercise a higher degree of care and diligence to ensure that he and community leaders do not engage in conduct that gives rise to these questions of integrity, nor use governmental resources in violation of RSA 659:44-a, II.

### **c. Illegal Mailers**

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and addresses of the candidates, persons, or entity responsible for it. RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly<sup>3</sup> advocates the success or defeat of any party, measure, or person at any election.

Federal case law creates a limited exception to this requirement where an individual is the party responsible for political advertising.

Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent. Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their idea from suppression – at the hand of an intolerant society.

*McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 357 (1995) (citations omitted). Individuals using their own funds to distribute political speech are therefore a limited exception

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<sup>2</sup> Epping Res. for Principled Gov. v. Epping School Brd., No. 05-E-0094, Pg. 2 (N.H. Super. Ct. June 15, 2005). See also Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 559 (2005).

<sup>3</sup> With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term "implicitly" was unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at \*7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term "implicitly" from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

to statutory political advertisement disclosure requirements. Following this Office's investigation, we are satisfied that the party responsible for the mailers at issue here falls into this narrow exception.

### III. CONCLUSION

Following an investigation, this Office finds that Selectman Blanchard is not statutorily prohibited from holding both positions, that Selectman Blanchard's messages did not violate RSA 659:44-a, and that the mailers regarding Articles 10 and 11 were violative of RSA 664:14 but fall into a narrow exception created by federal law.

We encourage Haverhill officials to exercise the highest degree of care and diligence to ensure that community leaders do not engage in conduct that gives rise to questions of integrity, nor use of public resources in violation of the laws, standards, and responsibilities outlined in this letter.

This matter is closed.

Sincerely,

/s/ Brendan A. O'Donnell  
Brendan A. O'Donnell  
Assistant Attorney General  
Civil Bureau  
(603) 271-3658  
Brendan.a.odonnell@doj.nh.gov

cc: Haverhill Board of Selectman  
Haverhill Moderator Gary Hebert  
Ed Ballam  
Katie Williams

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

September 13, 2023

Rick Becksted

Portsmouth NH 03801

Paige Trace

Portsmouth NH 03802

Peter Whelan

Portsmouth NH 03801

Esther Kennedy

Portsmouth NH

**Re: Portsmouth Election Alleged Campaign Finance Violation Concerning Robo-texts**

Mr. Becksted, Mr. Whelan, Ms. Trace, and Ms. Kennedy:

On December 23, 2021, this Office received a multi-part complaint about an “attempted manipulation of the [Portsmouth City Council] Election and the business of the Portsmouth City Council before and after the election” from complainants Rick Becksted, Peter Whelan, Paige Trace, and Esther Kennedy. The complaint alleged, in part, that a series of calculated actions by individuals or entities with financial interests in Portsmouth were attempting to influence the election through the use of “fake malicious websites created anonymously” along with anonymous flyers and text messages. Specifically, the complaint identified four sets of communications that were alleged to be unlawful:

- (1) “Preserve-Portsmouth.com,” a website that essentially spoofed a “PreservePortsmouth.com” website;
- (2) “beckstedfive.com,” another website related to City Councilors;
- (3) December 15 and 16, 2021, robo-text messages sent to Portsmouth residents with links to a video critical of the complainants; and
- (4) anonymous handbills.

The first issue with regard to “Preserve-Portsmouth.com” was previously addressed under separate cover on October 6, 2022. The fourth issue identified above is being addressed in a separate letter being issued today. This letter solely addresses the second and third issues.

The texts in question were sent in December, 2021, following the November 2, 2021, Portsmouth city election. These texts contained the following content:



In the final days in office, the Becksted Five are taking revenge on Portsmouth voters by handing out city appointments to cronies and making decisions that could cost taxpayers tens of millions. Tell the Becksted Five to leave the decisions to the City Council Portsmouth elected. Learn more: [beckstedfive.com](http://beckstedfive.com).

The texts also included a link to a video that was critical of the five then-current city councilors.

The website “[beckstedfive.com](http://beckstedfive.com)” was similarly published after the November 2, 2021, election. The website [beckstedfive.com](http://beckstedfive.com) contained negative information about certain city councilors.

In addition to reviewing the materials submitted by the complainants, this Office subpoenaed materials under RSA 7:6-c, conducted interviews, and reviewed other available information related to the allegations in the complaint.

## ANALYSIS

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and addresses of the candidates, persons, or entity responsible for it. RSA 664:2, VI defines political advertising as “any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly<sup>1</sup> **advocates the success or defeat of any party, measure, or person at any election.**” RSA 664:2, VI (emphasis added). RSA 664:2, I states: “‘Election’ means any general biennial or special election, political party primary, or presidential preference primary as provided in RSA 664:1.” RSA 664:2, I.

As an initial matter, the form of the political advertising does not matter for the purposes of the application of RSA 664:14. Whether structured as a print mailer, a newspaper advertisement, a website, a handbill, or a text, the *content* of the communication is the subject of analysis for the purposes of satisfying identification requirements under RSA 664:14.

Fed. Election Comm’n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 469–70 (U.S. 2007) discusses what may constitute the functional equivalent of express advocacy. Communications are not the functional equivalent of express advocacy where:

First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate’s character, qualifications, or fitness for office.

Id. at 451.

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<sup>1</sup> With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term “implicitly” was unconstitutional. *Stenson v. McLaughlin*, No. CIV. 00-514-JD, 2001 WL 1033614, at \*7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term “implicitly” from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

The beckstedfive.com website and the December texts do not fall with the definition of “political advertising” under RSA 664:2 and under the criteria identified in Fed. Election Comm’n v. Wisconsin Right To Life, Inc. because they are not advocating in support of or in opposition to candidates in the Portsmouth City Council race and were sent or published after the November election. The content of these communications focused on sitting councilors and issues before those councilors. The texts exhort the public to adopt a policy position and urge the public to contact public officials with respect to the matter. No individual identified was a candidate on the ballot for an upcoming election. Consequently, based both on the content and timing of the communications, the website and texts did not trigger the identification requirements for political advertising under RSA 664:14.

## CONCLUSION

RSA 664:14 requires that political advertising be signed with the name and address of a person responsible for the advertising or include an internet address at which a website immediately and prominently displays all of the required disclaimer information. However, the website and texts at issue did not constitute political advertising covered by RSA 664:14. As such, the texts are not subject to enforcement action by this Office.

This Office will take no further action on this matter. Each facet of the multi-part complaint has now been addressed and this investigation is closed.

Sincerely,



Brendan O'Donnell  
Assistant Attorney General  
Attorney General's Office

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

September 13, 2023

Steve Marchand  
c/o Joseph Foster, Esq.  
McLane Middleton  
900 Elm Street  
Manchester, NH 03101

**Re: Portsmouth Election Handbill Alleged Campaign Finance Violation**

Mr. Marchand:

On December 23, 2021, this Office received a multi-part complaint about an “attempted manipulation of the [Portsmouth City Council] Election and the business of the Portsmouth City Council before and after the election” from complainants Rick Becksted, Peter Whelan, Paige Trace, and Esther Kennedy. The complaint alleged, in part, that a series of calculated actions by individuals or entities with financial interests in Portsmouth were attempting to influence the election using “fake malicious websites created anonymously” along with anonymous flyers and text messages. Specifically, the complaint identified four sets of communications that were alleged to be unlawful:

- (1) “Preserve-Portsmouth.com,” a website that essentially spoofed a “PreservePortsmouth.com” website;
- (2) “beckstedfive.com,” another website related to City Councilors;
- (3) December 15 and 16, 2021, robo-text messages sent to Portsmouth residents with links to a video critical of the complainants; and
- (4) anonymous handbills.

The first issue regarding “Preserve-Portsmouth.com” was previously addressed under separate cover on October 6, 2022. The second and third issues identified above are being addressed in a separate letter issued today. This letter solely addresses the anonymous handbills, which consisted of double-sided printed cards. The content of the handbills appeared to be largely drawn from Preserve-Portsmouth.com – a website for which you admitted you were responsible. The political advertising content on the handbill included the names of five city councilors, along with the following statements:

- “Learn more about their plan to ‘Make Portsmouth Great Again’ at [www.Preserve-Portsmouth.com](http://www.Preserve-Portsmouth.com).”
- “In 2020, Rick Becksted was one of only two councilors to vote against a mask mandate.”

- “Congressman Chris Pappas is one of the GOP’s top targets in 2022 as they seek to take back Congress. Rick Becksted supported his leading GOP rival at this Sep. 24<sup>th</sup> fundraiser.”
- “The ‘Becksted Five’ block voted against adding Indigenous People’s Day alongside Columbus Day.”
- “This year, the Becksted Five voted 5-4 to a goal of no increased spending, after being told it would lead to school staffing cuts. During a pandemic, they supported a reduction of multiple elementary teachers.”

The handbill in question was published in October prior to the November 2, 2021, Portsmouth city election. The complaint alleged that the handbills violated RSA 664:14 because they failed to display the identification information required for political advertising.

During the course this Office’s investigation, we reviewed the materials submitted with the complaint, conducted interviews, reviewed publicly available information, and issued a subpoena to you for documents pursuant to RSA 7:6-c,

Pursuant to the subpoena, you provided records and represented, through your attorney, that you prepared, printed, paid for, and personally hand-delivered 100 4” x 6” of the above-described handbills. In reviewing the records and information you provided, you ordered and printed the handbills from the Fox Run Mall Staples on October 30, 2021. Based on the information in the complaint, our investigation, and your representations, we conclude that you acted alone in the production and distribution of the handbills.

This Office finds that you were responsible for the handbill and that the content is the functional equivalent of express advocacy. It was, therefore, a violation of RSA 664:14 to fail to provide identification information. However, in light of McIntyre v. Ohio, 514 U.S. 334, 355, 357 (1995), and its narrow protection for the anonymity of political speech when conducted by an individual, this Office will take no further action on this component of the complaint.

## ANALYSIS

RSA 664:14 requires all political advertising to be signed at the beginning or end with the names and addresses of the candidate, person, or entity responsible for it. RSA 664:2, VI defines political advertising as any communication, including buttons or printed material attached to motor vehicles, which expressly or implicitly<sup>1</sup> advocates the success or defeat of any party, measure, or person at any election.

The definition of express advocacy revolves around the concept that, based on the content of the communication alone, the communication has “no other reasonable interpretation” than advocating for support for or opposition against a candidate or measure. See Fed. Election Comm’n v. Wisconsin Right To Life, Inc., 551 U.S. 449, 469–70 (U.S. 2007).

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<sup>1</sup> With respect to implicit advocacy, as referenced in RSA 664:2 and implemented through RSA 664:14, the United States District Court for New Hampshire held that the term “implicitly” was unconstitutional. Stenson v. McLaughlin, No. CIV. 00-514-JD, 2001 WL 1033614, at \*7 (D.N.H. Aug. 24, 2001). As a result, the Court struck the term “implicitly” from RSA 664:2, VI and prohibited its use when enforcing RSA 664:14.

Communications are not considered to be the functional equivalent of express advocacy where:

First, their content is consistent with that of a genuine issue ad: The ads focus on a legislative issue, take a position on the issue, exhort the public to adopt that position, and urge the public to contact public officials with respect to the matter. Second, their content lacks indicia of express advocacy: **The ads do not mention an election, candidacy, political party, or challenger; and they do not take a position on a candidate's character, qualifications, or fitness for office.**

Id. at 451 (emphasis added). Communications that fail to satisfy these criteria would constitute the functional equivalent of express advocacy and would be subject to RSA 664:14.

As an initial matter, the form of the political advertising is not here determinative for the purposes of the application of RSA 664:14. Whether structured as a print mailer, a newspaper advertisement, a website, or a handbill, the *content* of the communication is the subject of analysis for the purposes of satisfying identification requirements under RSA 664:14.

The handbill you produced, based on the content, constitutes the functional equivalent of express advocacy, within the meaning of RSA 664:2, VI, because, under the criteria laid out in Wisconsin Right To Life, Inc., it is subject to “no other reasonable interpretation” than advocating in support or opposition to candidates in the Portsmouth City Council race. The handbill content focuses on candidates, not legislative issues. It does not exhort the public to adopt a legislative policy position or urge the public to contact public officials with respect to the matter. The handbill content contains indicia of express advocacy in that the material explicitly focused on an election, particular candidates, a political party, and it took positions on candidates' qualifications and fitness for office. Your own statements in written correspondence clarify that the purpose of the website—from which it appears the handbill content was drawn—was to impact the City Council election by influencing voters. Consequently, the handbill triggers the identification requirements for political advertising under RSA 664:14.

However, in 1995, the United States Supreme Court found that a “written election-related document...is often a personally crafted statement of a political viewpoint” and as such, “identification of the author against her will is particularly intrusive.” McIntyre, 514 U.S. at 355, 357. The Court held that the First Amendment protects the anonymity of political speech when conducted by an individual. Id. at 357.

We caution you, however, that in the twenty-eight years since McIntyre, many courts—including one within our federal circuit—have narrowed the case's application and upheld advertising disclosure requirements, even against individuals. See Bailey v. State, 900 F. Supp. 2d 75, 85-87 (D. Me 2011); Citizens United v. FEC, 558 U.S. 310, 366-71 (2009).

## CONCLUSION

Our review of the evidence has concluded that the subject handbill violated the mandatory disclosure requirements set forth in RSA 664:14. However, the evidence did not establish that you coordinated with other individuals in the creation and distribution of the handbill. As such, in light of the evidence available, we accept your claim that you alone were responsible for the handbill. As an individual engaging in the functional equivalent of express advocacy, McIntyre establishes a safe harbor in this circumstance.

Accordingly, this Office will take no further action on this component of the complaint at this time. You are warned, however, that the coordination with candidate campaigns or other non-campaign individuals are factors, among others, that could bar you from being covered by the McIntyre exception.

This component of the matter is closed.

Sincerely,



Brendan O'Donnell  
Assistant Attorney General  
Attorney General's Office

CC: Rick Becksted  
Peter Whelan  
Paige Trace  
Esther Kennedy

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

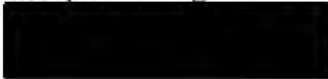
JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

September 15, 2023

Joseph Behling



Re: **CEASE AND DESIST ORDER**  
664:17 Placement and Removal of Political Advertising  
AMOUNT DUE WITHIN 30 DAYS: \$300.00

Mr. Behling:

On August 12, 2022, this Office received a complaint regarding thefts of campaign signs from multiple properties in Hooksett, New Hampshire. Following an investigation, the Attorney General orders you to cease and desist from removing political signs unless you are authorized by the owner of the property. This Office further fines you \$300.00 pursuant to its statutory authority under RSA 664:17 and RSA 664:21.

**I. INVESTIGATION**

The complainant, J.R. Hoell, contacted this Office to report the theft of campaign signs from his property and from his neighbor's property in Hooksett, NH. Mr. Hoell provided this Office with the names of two witnesses to these thefts. Mr. Hoell explained that the signs were for Carol McGuire, Michael Yakubovich, and himself. He provided a photograph of the suspect's vehicle in which the vehicle's license plate was legible. Mr. Hoell stated that one sign was stolen from his property and one was stolen from Hooksett Family Eye Care and that his signs cost \$8.00 each.

On August 26, Investigator Richard Tracy spoke with Mr. Yakubovich, who was running for State Representative at the time. Mr. Yakubovich told Investigator Tracy that a witness had informed him of at least three of his signs that had been removed and placed in the back of a black Honda Accord. One witness took a photo of the Accord and sent it Mr. Yakubovich. Mr. Yakubovich paid \$5.00 for each sign.

On August 30, 2022, Investigator Tracy spoke with Representative Carol McGuire, who was running for reelection at the time. Rep. McGuire confirmed that she had given Mr. Hoell about a dozen of her signs and that the signs cost between \$7.00 and \$8.00 each.

On August 26, Investigator Tracy spoke with a witness who confirmed that, according to data on her daughter's phone, the theft that they observed took place on August 8, 2022. The witness explained that they watched a black Honda Accord pull into the parking lot and a 30-year-old white male with blonde hair and glasses exited the vehicle. The man removed a total of six or seven signs from their and Mr. Hoell's property, placed them into the Accord, and then drove off.

On August 21, 2023, Investigator Tracy observed two vehicles parked in the driveway at 581 Central Street in Manchester, NH. One was a black Honda Accord. The license plate matched the plate that Investigator Tracy observed in his initial investigation and was registered to you. Investigator Tracy spoke to you, and you indicated that you understood the law to be that people could not place political signs on public property. Investigator Tracy explained that, while you were partially correct, only the owner of the signs, property owners, and maintenance for the property, or law enforcement could remove political signs. You admitted that you did not meet these requirements. You acknowledged that you considered all political signage to be a form of "littering" and that your actions were not politically motivated.

## II. ANALYSIS AND LAW

In New Hampshire,

[n]o person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to public property or any private property except for removal by the owner of the property, persons authorized by the owner of the property, or a law enforcement officer removing improper advertising. Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel.

RSA 664:17. Individuals who violate this statute may be subject to misdemeanor criminal prosecution. RSA 664:21, IV. Under RSA 664:21, V(a), "[w]hoever violates any of the provisions of RSA 664:16-a or the provisions of RSA 664:17 relative to removing, defacing, or destroying political advertising on private property shall be subject to a civil penalty not to exceed \$1,000." Section V(b) of that same statute clarified that "[t]he court, upon petition of the attorney general, may levy upon any person who violates the provisions of ...RSA 664:17 relative to removing, defacing or destroying political advertising on private property a civil penalty in an amount not to exceed **\$1,000 per violation.**" (Emphasis added).

Witnesses observed you removing signs, and they photographed your vehicle. You admitted that you were not authorized by the property owner to remove the signs, as required by RSA 664:17.

This Office finds, therefore, that you violated RSA 664:17 by unlawfully removing political signs from Mr. Hoell's property and from 1150 Hooksett Road, Hooksett, NH, without permission from the owners of those properties.



### **III. CONCLUSION**

You violated RSA 664:17 by removing political advertising from private property without the property owner's permission. RSA 664:21 authorizes the Attorney General to notify suspected violators of RSA 664:17 of the State's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the Secretary of State for deposit into the general fund. Accordingly, the Attorney General imposes a civil penalty for your violation of this state's election laws in the amount of \$300.00.

**PURSUANT TO RSA 664:21 AND BASED UPON THE INVESTIGATION CONDUCTED BY OUR OFFICE, YOU ARE FURTHER ORDERED TO CEASE AND DESIST FROM REMOVING, DEFACING, OR DESTROYING POLITICAL ADVERTISING ON PUBLIC OR PRIVATE PROPERTY IN NEW HAMPSHIRE.**

**Your payment of the \$300.00 civil penalty must be delivered to our Office within thirty (30) days of receipt of this letter. In the event that you fail to make timely payment of this penalty, this Office will initiate further enforcement action.**

Your payment of \$300.00 shall be made by check payable to "Treasurer, State of New Hampshire" and mailed to the Office of the Attorney General, 33 Capitol Street, Concord, NH 03301, Attention: Assistant Attorney General Matthew G. Conley.

This matter will be closed upon receipt of your payment of the civil penalty.

Sincerely,



Matthew G. Conley  
Assistant Attorney General  
Civil Bureau  
(603) 271-6765  
matthew.g.conley@doj.nh.gov

MGC/mgc

cc: Joseph Hoell, Jr.  
Michael Yakubovich  
Rep. Carol McGuire

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA  
ATTORNEY GENERAL



JAMES T. BOFFETTI  
DEPUTY ATTORNEY GENERAL

September 15, 2023

The Laconia Education Association  
ATTN: Tara Columb, LEA Union President  
c/o Sean List, Esq.  
6 Garvin Falls Rd,  
Concord, NH 03301

Re: Tara Columb, Alleged Illegal Campaign Activity  
**CEASE AND DESIST ORDER**

Dear LEA Union President Columb:

On February 2, 2023, this Office received a complaint from the Laconia School Board, Ward 2 Candidate, Laura Dunn, regarding activities conducted on behalf of the Laconia Education Association (LEA) by you and other members of the organization. The complaint alleged that you used a school district e-mail address to distribute two letters to the editor from the Laconia Daily Sun, which explicitly advocated for readers to vote for Candidate Dunn's opponent.

Following an investigation, this Office concludes that this activity violated RSA 659:44-a, II, which prohibits public employees from using government property or equipment for electioneering. Accordingly, this Office orders the LEA and its members to cease and desist from using government property, including government computers and e-mail addresses, for electioneering.

**I. Background:**

On Friday, November 4, 2022, at 11:59 a.m., you sent an e-mail from your "@laconiaschools.org" e-mail address to Karen Abraham at her "@laconiaschools.org" e-mail address. In that e-mail, you asked Abraham to "send the following letters to the editor to all members regarding Tuesday's Election." You also stated: "Dear Members, Attached are two letters to the editor that provide important candidate information for all voters (but especially individuals in Laconia's Ward 2)."

The first attached letter was a letter to the editor of the Laconia Daily Sun written by Aaron Hayward, the outgoing Laconia School Board chairperson. In that letter, Hayward stated "Laura Dunn and Dawn Johnson have made this last year as difficult as I could have imagined." Hayward asked readers to support Candidate Dunn's opponent for school board in Ward 2, and another candidate for school board in Ward 3.

The second attached document was a letter to the editor of the Laconia Daily Sun written by Matt Lahey. In that letter, Lahey questioned how Candidate Dunn could represent Ward 2 when she was sending her kids to a school in another ward. Lahey further stated that “Ward 2 parents, their children and Woodland Heights School deserve the full support of their Ward 2 School Board Representative” and that he was “voting for [Candidate Dunn’s opponent].”

On Friday, November 4, 2022, at 3:27 p.m., Abraham e-mailed the articles from her “@laconiaschools.org” e-mail address to the LEA Executive Board at its “@laconiaschools.org” e-mail address. Abraham’s e-mail included the message: “I was instructed to forward to all union members. Please forward to your building members. Thanks!”

On Monday, November 7, 2022, at 8:13 a.m., Hayley Rogers e-mailed the articles from her “@laconiaschools.org” e-mail address to 15 other LEA members at their “@laconiaschools.org” e-mail addresses. Rogers’ e-mail included the message “See below on information regarding candidate information relevant to tomorrow’s election. GO VOTE!”

During its investigation, this Office spoke with Attorney List, counsel for the LEA. Attorney List explained that he believed the LEA members’ activity was proper because the 2022-2025 collective bargaining agreement between the Laconia School District and the LEA (the “CBA”) “embraces LEA having open and regular communications with its members.” Article V of the CBA provides that the LEA, as relevant here, “may, with permission of the Building Principal, use school equipment normally used by teachers for Association activities.”<sup>1</sup>

## **II. LAW AND ANALYSIS**

RSA 659:44-a, II, provides that “[n]o public employee shall use government property or equipment, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering.” RSA 659:44-a, III defines “electioneer” for purposes of this requirement to mean “to act in any way specifically designed to influence the vote of a voter on any question or office.”

You, Abraham, and Rogers were public employees subject to the electioneering requirements of RSA 659:44-a because you were employed by the Laconia School District, which is a public employer. See RSA 273-A:1, IX (defining “public employee” as “any person employed by a public employer”); RSA 273-A:1, X (defining “public employer” as “the state and any political subdivision thereof”).

You, Abraham, and Rogers engaged in electioneering by sending communications that expressly advocated for the success or defeat of any person at an election. Although nothing in the body of your e-mail expressly advocated for the success or defeat of a candidate, your e-mail included two letters that did so. For example, the Hayward letter asked readers to vote for a specific candidate in the Ward 2 school board election and a second specific candidate in the Ward 3 school board election. Similarly, the Lahey letter stated that “Ward 2 parents, their children and Woodland Heights School deserve the full support of their Ward 2 School Board

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<sup>1</sup> Notably, Article XII, Section 12.1 provides that if any provision of the CBA is “held to be contrary to law, then such provision or application shall not be deemed valid and subsisting, extent to the extent permitted by law.”

Representative” and that he was “voting for [Candidate Dunn’s opponent].” Thus, each letter expressly advocated for the success of one or more school board candidates. Moreover, your e-mail stated that you were sending the articles to “provide important candidate information for all voters (but especially individuals in Laconia’s Ward 2),” indicating that the purpose of your e-mail was to influence voters by conveying Hayward’s and Lahey’s advocacy statements to LEA members.

Abraham and Rogers subsequently forwarded your email, with the attached letters, to LEA members. Notably, Rogers’ e-mail additionally urged LEA members to read the letters and to “GO VOTE” at the upcoming school board election, which indicates that the purpose of her e-mail was to influence voters by conveying Hayward’s and Lahey’s advocacy statements to LEA members and urging them to vote.

In sum, these LEA communications constitute electioneering within the meaning RSA 659:44-a because the communications were designed to influence the votes of voters in upcoming school board elections.

In making these communications, you and other LEA members used Laconia School District’s computers and/or e-mail domain. Although Article V of the CBA authorizes LEA members to use Laconia School District equipment, with permission, LEA members cannot use such public property or equipment in a manner that violates State law. Therefore, notwithstanding Article V of the CBA, you and other LEA members violated RSA 659:44-a, II by using government property or equipment for electioneering.

### **III. CONCLUSION**

For the reasons described above, this Office finds that you violated RSA 659:44-a, II by using government property or equipment for electioneering.

**ACCORDINGLY, THIS OFFICE ORDERS THE LEA AND ITS MEMBERS TO CEASE AND DESIST FROM USING GOVERNMENT PROPERTY OR EQUIPMENT FOR ELECTIONEERING.**

This matter is closed.

Sincerely,

/s/ Brendan O’Donnell  
Brendan A. O’Donnell  
Assistant Attorney General  
Civil Bureau

cc: Secretary of State - Elections Division, Secretary of State  
Department of Education Commissioner Frank Edelblut  
Laconia Superintendent Steve Tucker  
Laconia School Board Chair Jennifer Anderson  
Laura Dunn