



October 15, 2020

New Hampshire Republican State Committee
10 Water Street
Concord, N.H. 03301

TRANSMITTED BY ELECTRONIC MAIL

Attorney General Gordon MacDonald
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301

Re: Registration and Voting by Remote Learners

Dear Attorney General MacDonald:

I write you on behalf of the New Hampshire Republican State Committee. I am writing to request that your office provide immediate written guidance to state and local election officials that (1) a person who has registered to vote in a town or ward pursuant to RSA 654:1, I-a, may not vote in that town or ward once that person no longer lives there and (2) a person who has never registered to vote in New Hampshire but is learning remotely this semester at a New Hampshire institution of learning from a location outside of New Hampshire may not “lawfully claim domicile” here under RSA 654:1, I-a.

RSA 654:1, I-a, creates an unusual accommodation for “a student of any institution of learning” in the state. The statute provides that such a student “may lawfully *claim* domicile for voting purposes in the New Hampshire town or city in which he or she lives *while attending* such institution of learning.” Emphasis supplied. As a result of this statute, a student may register and vote either in the student’s hometown or in the town or city in which the student is living while attending school. It therefore creates a narrow exception to a fundamental premise of RSA chapter 654 that by definition a voter can have only one domicile. *See, e.g.,* RSA 654:1, I (“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 . . .” (emphasis supplied)); RSA 654:2, I (“A voter can have only one domicile for voting purposes.”).

This choice of voting domicile is not granted to others having at least an equivalent stake in the results of New Hampshire’s elections. For example, a person owning two homes in different New Hampshire towns has a direct interest in the municipal affairs of both but cannot claim



domicile in whichever of them he chooses. The law prescribes criteria governing which residence is the person's single domicile. *See* RSA 654:1, I.

This disparate treatment is justified, if at all, by the objective of making voting convenient for students who frequently have limited resources and mobility. This accommodation is not without its limits, however. The statute plainly contemplates that domicile under RSA 654:1, I, is qualitatively different from voting domicile as applied to virtually every other voter.¹ First, domicile may be lawfully *claimed* by the student under the circumstances set forth in the statute. It does not say that students living in New Hampshire during school are automatically domiciled here. This treatment of domicile as elective instead of fixed differentiates it from the almost universal rule governing determinations of domicile and underscores its conditional and temporary nature. Second, the statute expressly limits this right to claim domicile to the period during which the person is *living* in a New Hampshire city or town *and* attending school simultaneously. If both of these requirements are not met the person can no longer claim domicile in New Hampshire for voting purposes under RSA 654:1, I-a.

The temporary absence statute, RSA 654:2, I, does not change this outcome. Because a person loses the right to claim domicile for voting purposes² under RSA 654:1, I-a, if he no longer lives here and attends school here, he can no longer claim domicile under the statute. Unless the person can establish a basis for domicile under RSA 654:1, I, he is no longer qualified to vote in the town or ward where he was living while attending school.³

Consequently, those students who have registered to vote in the past pursuant to RSA 654:1, I-a, but do not live in the town or ward where they registered at the time of an election are not eligible to vote in that town or ward unless they have a physical presence and established domicile here under RSA 654:1, I. Therefore, out-of-state students learning remotely at the time of the election, who have no New Hampshire residence, are precluded from both in-person and absentee voting in New Hampshire. Obviously, remote learners at a New Hampshire school living out of state and who have never registered to vote in New Hampshire can neither register nor vote here. It is equally obvious that students who are temporarily absent from New Hampshire, but maintain a residential address and domicile in the state, can vote by absentee ballot.

¹ We understand that active duty military with a New Hampshire domicile established before entering the service or during enlistment may also elect to vote where stationed or in New Hampshire. RSA 654:2, I.

² It is noteworthy that the statute is not limited to voter registration purposes but applies to all voting purposes. Hence, the conditions to the claim of domicile under RSA 654:1, I-a, must be present both during registration and when the person votes.

³ “[P]ersons entitled to vote in New Hampshire are those who not only are present in the state but who also regard New Hampshire as “that one place where [they], more than any other place, [have] established a physical presence and manifest[] 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.” *Opinion of the Justices*, 171 N.H. 128, 144 (2018)



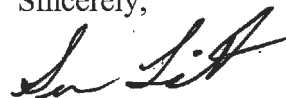
We are aware that the New Hampshire Democratic Party and the Hanover town clerk have both publicized that remote students who have registered here in the past pursuant to RSA 654:1, I-a, but are not now living in the town where they registered, may still vote in that town with no current residential address in New Hampshire. Because of these publicly disseminated misstatements of the law, we have considered seeking declaratory and injunctive relief against those election officials who are accepting voter registration forms or ballots from such individuals. We would strongly prefer, however, to avoid the disruption of litigation so close to the election if possible.

We therefore request that the OAG issue immediate written guidance to all election officials stating that distance learners living out of state and previously registered under RSA 654:1, I-a, are not eligible to vote in New Hampshire. We also request a further clarification in that guidance, clarifying that remote learners living out of state who have never registered to vote here may not register or vote in New Hampshire.

Because New Hampshire is a swing state, there is a great deal of incentive in a presidential election year to increase the number of voters each party can get to the polls. That is salutary. But for the election to be legitimate, only qualified New Hampshire voters should be allowed to participate. Students who do not live here and have no residence here at the time of the election are not qualified voters. We ask only that, as the chief law enforcement officer of the state, you instruct the officials administering our election as follows:

1. Do not permit out-of-state remote learners to register to vote without confirming a current (up-to-date) residential address and domicile in New Hampshire.
2. Do not permit out-of-state remote learners who are already registered to a former but not current residential address to request a ballot.
3. Do not send absentee ballots out of state to remote learners without confirming a current residential address and domicile in New Hampshire.

Sincerely,



Sean R. List, Esq.