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September 18, 2023

Sherman Packard, Speaker of the House
NH House of Representatives
107 North Main Street
Concord, NH 03301

Re: Troy Merner, Alleged Wrongful Domicile

Dear Speaker Packard:

On March 22, 2023, our Office received a complaint regarding Troy Merner, a current Representative from Coos District 1. The complaint alleged that Rep. Merner is not domiciled in Lancaster, New Hampshire or any other town in Coos District 1. This Office conducted an investigation and concluded that Rep. Merner was not domiciled in Coos District 1 during the previous legislative session and still is not domiciled within the district. For this reason, he should be ineligible to represent that district in the General Court. Although this Office is continuing to investigate issues related to Rep. Merner's domicile, the New Hampshire Constitution provides that the authority to judge the qualifications of its members rests solely with the House of Representatives. See N.H. Const., Pt. II, Art. 22. Therefore, this Office is referring our findings to your attention to take further action on this matter.

I. FACTUAL BACKGROUND

On March 22, 2023, Kathy Lavoie called this Office to report concern about Rep. Merner not living in Lancaster. She stated that she had worked as a checkout volunteer at the Lancaster Town Election, and she observed Rep. Merner vote in that election. She explained that she asked him whether he lived in Lancaster. He replied that he lived at [redacted]. She knew that address and its residents and knew that Rep. Merner does not live there. She did not believe he could produce anything indicating that he lived there. Finally, Ms. Lavoie stated that she spoke to him in November, 2022, as well when he voted using his former [redacted] address even though he had sold the property two months prior. He told her that he had a "lease back" and that he had spoken with this Office about this matter and "there was no issue." Chief Investigator Richard Tracy was assigned to investigate this complaint and found the following facts.

A. [redacted] Lancaster

Rep. Merner formerly lived in a home at [redacted], Lancaster, NH. The current owner of [redacted], Tammy Dubreuil, confirmed that, after the closing of her purchase of the property on August 26, 2022, she gave Rep. Merner one or two weeks to remove all of his furniture and other household items from the property. She did not have an agreement with Rep. Merner allowing him to continue to live in the house for any period of time. Ms. Dubreuil knows Rep. Merner to live with his wife in "Twin Mountain," located in Carroll.

B. [redacted] Carroll, NH.

After selling his [redacted] home, Rep. Merner moved into a home with his wife at [redacted] Carroll, NH. On May 4, 2023, Rep. Merner informed Investigator Tracy that he lived in Carroll with his wife.

C. [redacted] Lancaster

Although Rep. Merner has rented an office located at [redacted] in Lancaster, he has not lived at that address. On March 24, 2023, Investigator Tracy traveled to [redacted] in Lancaster, and he observed Rep. Merner's name next to the mailboxes of the building next to "Apartment C." Apartment C appeared to be a single office/den-type room with another door on the opposite corner of the room. Apartment C had bookshelves and a table and chairs, but it did not have a bed. Subsequently, Investigator Tracy was able to speak with Annie Gould, the second-floor tenant living in Apartment B. Ms. Gould stated that she never saw Rep. Merner at the apartment building and that he did not live there or stay overnight.

On May 2, 2023, Investigator Tracy called and spoke with the owner of 80 Elm Street in Lancaster, Rita Cloutier. Mrs. Cloutier confirmed that Rep. Merner rented the office in the back of her apartment at 80 Elm Street. She confirmed that the only door that Investigator Tracy observed in the office led to her apartment and that she allowed Rep. Merner to use her kitchen and bathroom as needed when he was at the office. She believed Rep. Merner spent about one day a week at the office, and she has never known him to stay overnight.

Investigator Tracy spoke with Rep. Merner on May 4, 2023. Rep. Merner indicated that he did not stay overnight at [redacted] but that he did go in frequently and that he was in Lancaster most days of the work week. Investigator Tracy pointed out that, as of his re-election in November of 2022, he represented the towns of Lancaster, Dalton, North Umberland, and Strafford, meaning that he was not domiciled in any community that he was representing. Rep. Merner confirmed that he was "not really staying there" when Investigator Tracy asked if he was living in Lancaster. Although he initially claimed that he "stays occasionally" at [redacted] he later stated that he was "not really staying there" and that he "lives in Carroll" with his current wife.

D. Related Issues:

On August 10, 2023, Investigator Tracy spoke with House Member Services and Special Project Coordinator Amanda Masse, who spoke with House Clerk Paul Smith, who indicated that Rep. Merner filled out a form with his address for mileage reimbursement in 2018, 2020, and 2022. While the 2018 form was unsigned, it showed the Lancaster address. The forms for 2020 and 2022 did not indicate a change of address. Beginning in 2018, Rep. Merner claimed 205 miles in total for days he was present in Concord, including 49 trips since December 7, 2022. Rep. Merner has been receiving mileage reimbursements based on round-trip mileage from Lancaster to Concord of 205 miles. However, the mileage round-trip mileage from Carroll to Concord is approximately 174 miles in total.

II. ANALYSIS

Under the New Hampshire Constitution,

> Every member of the house of representatives shall be chosen by ballot; and, for two years, at least, next preceding his election shall have been an inhabitant of this state; **shall be, at the time of his election, an inhabitant of the town, ward, place, or district he may be chosen to represent and shall cease to represent such town, ward, place, or district immediately on his ceasing to be qualified as aforesaid.**

N.H. Const., Pt. II, Art. 14 (emphasis added). The legislature has further codified this constitutional requirement into New Hampshire's statutory scheme:

> To hold the office of state representative, a person must be at least 18 years of age and must be qualified as provided in Part 2, Article 14 of the state constitution: for 2 years, at least, next preceding the election shall have been an inhabitant of this state; and shall be, at the time of the election, an inhabitant of the town, ward, place, or district he or she may be chosen to represent, **and shall cease to represent such town, ward, place, or district immediately on his or her ceasing to be qualified as aforesaid**.

NH RSA 655:8 (emphasis added).

There is no ambiguity in the constitutional and statutory requirements delineated above. To serve as a member of the New Hampshire House of Representatives, one must be domiciled in the municipality that they have been elected to serve. If that individual is no longer domiciled in that municipality, that person "shall cease" to represent that community. N.H. Const., Pt. II, Art. 14; RSA 655:8. Notably, a representative must continuously be domiciled in the municipality that they represent, and a representative ceases to be a representative at any point that the person establishes domicile outside of the district. N.H. Const., Pt. II, Art. 14; RSA 655:8.

III. CONCLUSION

There is no reasonable argument that Rep. Merner is domiciled in Lancaster. The current owners of [redacted] in Lancaster confirmed that he moved out of Lancaster on August 26, 2022, at the latest. Tenants of [redacted] in Lancaster, including his landlord, confirm that he rents the property as an office, and he does not stay the night or otherwise live there. Rep. Merner confirmed that he lives in Carroll with his wife and stepson and that he does not live in Lancaster. Despite Rep. Merner being aware that this Office was investigating this matter, Rep. Merner has continued to act as a representative and has continued to collect milage reimbursement based on his former Lancaster domicile.

In the event that an elected Representative's qualifications to hold office are challenged, Part II, Article 22 of the State Constitution provides that "[t]he house of representatives…shall be the judge of the returns, elections, and qualifications, of its members, as pointed out in this constitution." Therefore, because the allegations here pertain to Rep. Merner's qualifications to hold office, this is a matter that must be handled by the House of Representatives. Notwithstanding this referral, this Office will continue to investigate Rep. Merner's activities that are within our jurisdiction, including, but not limited to, issues related to mileage reimbursements and an allegation of wrongful voting. These matters will be addressed separately from this referral.

Sincerely,

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MGC/mgc

cc: Lancaster Town Clerk
Lancaster Board of Selectmen
New Hampshire Secretary of State
Kathy Lavoie