



# State of New Hampshire

## DEPARTMENT OF SAFETY

### BUREAU OF HEARINGS

James H. Hayes Safety Building, 33 Hazen Drive, Concord, NH 03305

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## REPORT OF HEARINGS EXAMINER

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RESPONDENT: Ian Bernard aka Ian Freeman  
DOB: 8/2/80  
HEARING DATE: 7/26/13  
DATE OF REPORT: 09/06/13  
HEARING LOCATION: Concord, N.H.  
LICENSE #: 08BDI80021  
DOS HEARING #: 13-8519  
REFERENCE: MISUSE OF PRIVILEGES/IMPROPER DRIVING 0014  
PRESIDING HEARING EXAMINER: Michael P. King, Esq.  
RESPONDENT REPRESENTED BY: Marc Stevens via WEBEX  
OTHER PERSONS PRESENT: Attorney Jean Kilham  
Sgt. Jason Short, Keene PD

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### BACKGROUND:

This hearing was initiated by Jean Kilham, Assistant County Attorney, Cheshire County, by letter dated 6/25/13. Based on the nature of the complaint, Attorney Kilham was notified to appear along with Officer Short of the Keene Police Department.

A request was received via email from the respondent that his "council", Marc Stevens, be permitted to appear via video conferencing. It is noted that Mr. Stevens never indicated his official capacity and he is identified on Wikipedia as an essayist and talk radio host. Mr. Stevens began the hearing connected via WEBEX.

### MOTIONS:

After the close of testimony, the respondent filed a "Motion to Dismiss" both by email and US Mail. It was dated 8/1/13. The state filed a response to that motion dated 8/15/13.

## **EXHIBITS:**

### **STATE:**

1. Summons Report, Keene Police Department, 2/8/13, pertaining to Ian Bernard (4 pages)
2. DSMV 63 dated 3/26/13 pertaining to Ian Bernard (1 page)
3. DSMV 63 dated 4/30/13 pertaining to Ian Freeman (1 page)
4. State of Florida Transcript of Driver Record pertaining to Ian Bernard (1 page)
5. Certified copy of Volume 2346, Page 736, Cheshire County Registry of Deeds (3 pages)
6. Certified copies of New Hampshire Voter Registration Forms pertaining to Ian Bernard and Ian Freeman dated 9/18/06, 11/7/06, 9/3/10, 1/18/12 and 6/4/12 (10 pages)
7. Certified copy of Notice of Candidacy dated 8/12/11 (4 pages)
8. Affidavit of Diane Freitas and Declaration of Candidacy by Ian Freeman (2 pages)
9. Complaints and narrative report by Officer Chickering, Chesterfield Police Department, incident dated 2/10/10.

### **RESPONDENT:**

1. Photocopy of Quitclaim Deed, Volume 2825, Page 914, Cheshire County Registry of Deeds (2 pages)

## **PRELIMINARY MATTERS:**

The initial portion of the hearing consisted of a discussion between Mr. Stevens and the hearings examiner concerning the basis for proceeding with the hearing. Whenever the hearings examiner attempted to allow the state to present its case by eliciting factual testimony, Mr. Stevens would object. Without attempting to summarize the number of objections by Mr. Stevens, the essence of his objections appeared to be that he did not believe that Ian Freeman (herein "respondent") was subject to the jurisdiction of the Department of Safety. He framed the argument in various ways, but the arguments all amounted to the same thing: Mr. Freeman has not subjected himself to any governmental authority and the Department of Safety had no right to conduct the hearing and the Keene Police Department had the burden of establishing that authority. No matter how many times the hearings examiner explained the basis for the hearing, Mr. Stevens would not accept the explanation or the ruling and continued to object to any testimony being elicited. Eventually, the hearings examiner had to invoke Saf-C 203.12:

*Saf-C 203.12 Control of Hearing.*

*(a) In cases of disorder or refusal to comply with the rules of the hearing, the hearings examiner shall use reasonable means to control the hearing.*

*(b) Parties, representatives, and witnesses shall not engage in bitter exchanges, vulgarities, or abuse or make offensive or insulting comments. When such an act is committed, the hearings examiner shall admonish the offender reminding the offender that such behavior does not contribute to a fair hearing and impedes the orderly disposition of a case.*

*(c) If the offense is repeated and further admonition appears fruitless, the hearings examiner shall exclude a disorderly person from the hearing.*

*(d) A disorderly person shall not lose the case because of his/her offensive conduct or the offensive conduct of his/her representative or witness.*

*(e) Notwithstanding (d) above, if a disorderly person's offensive conduct is so flagrant that it prevents the completion of the case, the disorderly person shall be warned that his/her conduct shall result in a default judgment entered for the case. Such party may reopen the case upon submitting his/her offer of proof or argument in an orderly fashion.*

After approximately 45 minutes of continually overruling the same or similar objections and having warned Mr. Stevens that the continuation of his behavior toward the authority of the hearings examiner would result in his WEBEX connection being terminated, the hearings examiner did terminate the WEBEX connection. This banishment of Mr. Stevens from the hearing will not be considered in the ultimate decision per Saf-C 203.12 (d).

The hearings examiner explained that the Department's jurisdiction to hold the hearing is vested in New Hampshire law. The specific provisions of constitutional law, statutory law and case law supporting jurisdiction are as follows:

*US Constitution Amendment X*

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

*State v. Sterrin 78 NH 220*

*"the operation of an automobile upon the public highways is not a right but only a privilege which the state may grant or withhold*

at pleasure; and that what the state may withhold, it may grant upon condition." At p. 222

## **Part Second – NH Constitution**

**[Art.] 5. [Power to Make Laws, Elect Officers, Define Their Powers and Duties, Impose Fines and Assess Taxes; Prohibited from Authorizing Towns to Aid Certain Corporations.]** And farther, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, ordinances, directions, and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same, for the necessary support and defense of the government thereof, and to name and settle biennially, or provide by fixed laws for the naming and settling, all civil officers within this state, such officers excepted, the election and appointment of whom are hereafter in this form of government otherwise provided for; and to set forth the several duties, powers, and limits, of the several civil and military officers of this state, and the forms of such oaths or affirmations as shall be respectively administered unto them, for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and also to impose fines, mulcts, imprisonments, and other punishments, and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and residents within, the said state; and upon all estates within the same; to be issued and disposed of by warrant, under the hand of the governor of this state for the time being, with the advice and consent of the council, for the public service, in the necessary defense and support of the government of this state, and the protection and preservation of the subjects thereof, according to such acts as are, or shall be, in force within the same; provided that the general court shall not authorize any town to loan or give its money or credit directly or indirectly for the benefit of any corporation having for its object a dividend of profits or in any way aid the same by taking its stocks or bonds. For the purpose of encouraging conservation of the forest resources of the state, the general court may provide for special assessments, rates and taxes on growing wood and timber.

June 2, 1784

Amended 1792 changing "president" to "governor."

Amended 1877 changing "annually" to "biennially." Also amended to prohibit towns and cities from loaning money or credit to corporations.

Amended 1942 to permit a timber tax.

**[Art.] 6-a. [Use of Certain Revenues Restricted to Highways.]** All revenue in excess of the necessary cost of collection and administration accruing to the state from registration fees, operators' licenses, gasoline road tolls or any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels shall be appropriated and used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever.

November 29, 1938

21-G:9

III. The commissioner may adopt such reasonable internal

practices and procedures as may be necessary to carry out the duties of the department and its divisions consistent with this chapter.

**21-P:13 Bureau of Hearings. -**

I. There is established within the department the bureau of hearings under the supervision of an administrator of hearings, who shall be directly responsible to the assistant commissioner, and who shall be a classified employee.

II. The bureau of hearings shall be responsible for holding all hearings on licenses, permits, and registrations issued by any division of the department pursuant to title XXI, RSA 106-F, and RSA 158. The bureau of hearings shall have authority to take disciplinary action in the name of such division against any holder of such license, permit or registration in accordance with law. Unless otherwise provided by law, all rehearings and appeals shall be held in accordance with RSA 541.

The respondent's assertion that it was up to the Keene Police Department to prove jurisdiction is rejected. The Department of Safety scheduled the hearing at the request of the Keene prosecutor in accordance with the foregoing authority. The burden of proof was then placed on the Keene Police Department to demonstrate a basis for action by the Department of Safety against the respondent.

While the "Motion to Dismiss" contains three numbered issues, all revert to whether or not the laws of the State of New Hampshire apply to the respondent thereby arguing that the Bureau of Hearings lacked jurisdiction. There is no need to address each point separately, as the foregoing statutes establish jurisdiction to hold the hearing. Accordingly, the "Motion to Dismiss" is denied.

**ADDITIONAL DEFINITIONS AND APPLICABLE LAWS AND RULES:**

**263:56 Authority to Suspend or Revoke License. -**

I. In addition to any other authority provided by law, the director is hereby authorized to revoke or suspend any license, permit or certificate issued under this title after a hearing upon a showing by its records or other sufficient evidence that the driver or boat operator:

(h) Is a hazard to the public safety as evidenced by proper evidence or information received from a law enforcement agency of misconduct or misuse or abuse of driving privileges;

Saf-C 204.13 Persons Hazardous to Public Safety

(a) *The commissioner, upon receipt of information that a person might be hazardous to public safety, shall issue an order requiring the person to appear and show cause why his/her driver's license or operating privilege should not be revoked or denied.*

(b) *A person who shall be subject to such an order shall include, but is not limited to, one who:*

*(1) Has been driving to endanger the public;*

*(2) A law enforcement officer has reported for misconduct, abuse or misuse of the person's driving privileges;*

*(3) Has been convicted 2 or more times of driving a motor vehicle while under the influence of intoxicating liquor or controlled drugs, or any combination thereof; or*

*(4) Has an alcohol or drug problem that is not under control.*

(c) *The commissioner shall presume that a person with an alcohol or drug problem that is not under control, is a person hazardous to the public safety.*

(d) *Nothing contained herein shall prevent the department from conducting an investigation or requiring a driver examination, alcohol evaluation, a medical examination or any combination thereof of such person or requiring the filing of proof of financial responsibility pursuant to RSA 264:2 and Saf-C 207.05.*

(e) *After notice and an opportunity for a hearing, a hearings examiner shall suspend, revoke, or deny the driver's license or driving privilege of any person whose past record of convictions, accident involvement or other serious misbehavior would make the person a hazard to him/herself or other highway users, or result in the person being declared a habitual violator.*

(f) *Nothing contained in this section shall prevent the commissioner from suspending the license or driving privilege of a person prior to a hearing, whenever there is reason to believe that the person is operating in such a manner so as to constitute a present danger to the public or him/herself.*

(g) *In the case of a person whose license has been suspended or revoked pursuant to RSA 263:56, I (d) by reason of physical or mental impairment, the suspension or revocation shall be for an indefinite period provided, however, the person may request a hearing once every year thereafter for the purpose of reviewing the original order. Such a request shall be in writing. The person shall be required to produce medical evidence clearly indicating his/her condition no longer renders him a hazard.*

(h) *For the purposes of (g) above, the request for a hearing shall contain:*

*(1) The individual's name, address and date of birth; and*

*(2) A request for a hearing to be scheduled.*

**263:5-e Residence.** - The department may require that an applicant for a driver's license provide reasonable proof of his or her place of residence. Any person applying for a driver's license may present proof of residence in a form satisfactory to the department, provided that one or more of the following may

satisfy a proof of residence requirement established pursuant to this section if it is current and shows the name and address of the applicant:

I. A government check or a government document issued by an official in the municipality of residence.

II. A paycheck, payroll document, or employment contract.

III. A lease or deed.

IV. Other documents issued in the ordinary course of business that establish that it is more likely than not that the applicant resides at the place claimed.

*Source. 2006, 211:2, eff. June 1, 2006.*

**263:35 Nonresident Who Establishes a Residency in the State.** – Notwithstanding the provisions of RSA 261:44 or any other law to the contrary, any nonresident driver of a motor vehicle who holds a valid driver's license in another jurisdiction, upon the establishment of a bona fide residency in this state, shall have a maximum of 60 days from the date his residency was established to obtain a driver's license issued by the state of New Hampshire.

**259:88 Resident.** – "Resident" shall mean a resident of the state as defined in RSA 21:6, except that no person shall be deemed to be a resident who claims residence in any other state for any purpose.

**21:6 Resident; Inhabitant.** – A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

**21:6-a Residence.** – Residence or residency shall mean a person's place of abode or domicile. The place of abode or domicile is that designated by a person as his principal place of physical presence for the indefinite future to the exclusion of all others. Such residence or residency shall not be interrupted or lost by a temporary absence from it, if there is an intent to return to such residence or residency as the principal place of physical presence.

**654:7 Voter Registration; Voter Registration Form.** –

I. Any person registering to vote shall be:

(a) At least 18 years of age on the day of the election;  
and

(b) A United States citizen; and

(c) Domiciled in the town or city in which the applicant is registering to vote and not otherwise disqualified to vote.

II. The applicant shall be required to produce appropriate proof of qualifications as provided in RSA 654:12 and fill out the form as prescribed in paragraph IV.

III. If an applicant is unable to provide the proof of qualifications as required in RSA 654:12, he or she may register by completing the necessary affidavits, pursuant to RSA 654:12, and completing the form in paragraph IV.

#### Saf-C 203.21 Rendering Decision

(a) Except as otherwise provided by law, within a reasonable time after the hearing, not to exceed 30 working days after the conclusion of the hearing, the hearings examiner shall issue a written decision stating the action to be taken by the department, the reason therefore, and notify the respondent of his/her rights to appeal.

(b) All decisions shall be reached on the basis of a preponderance of the evidence.

(c) The decision of the hearings examiner shall constitute the decision of the commissioner.

(d) The decision setting forth findings of fact, conclusions of law and disposition, made by the hearings examiner, shall be provided to all parties.

(e) Upon request of the hearings examiner, either party may submit proposed findings of fact and conclusions of law. If submitted, the hearings examiner's decision shall include rulings on the proposals

#### SYNOPSIS OF TESTIMONY:

Officer Short testified. He is a police officer with 14 years of experience. He was on duty in his capacity as a police officer on 2/7/13 at 11:20 AM. He was on George Street and was westbound toward Washington Street. He observed a vehicle with a rear license plate that he deemed to be "unusual" and did not match the front plate which was issued by the State of Wisconsin. When he got closer, he noted that the top of the plate read "The Shire". He stopped the vehicle and the driver of the vehicle was the respondent. The plate from the State of Wisconsin was valid. He instructed the driver to place the Wisconsin plate on the rear of the vehicle and move "The Shire" plate to the front of the vehicle. The respondent presented a valid driver's license from the State of Florida in the name of Ian Bernard. However, the respondent was known to the officer from previous contact. The officer had previously advised the respondent that he needed to obtain a New Hampshire operator's license. He submitted a series of exhibits supporting his position that the respondent should have obtained a New Hampshire driver's license based on RSA 263:35.



The exhibits establish that the respondent has been issued a voter identification card (Exhibit 3) but has never applied for or received a New Hampshire driver's license or a New Hampshire non-driver identification card (Exhibit 2); he was originally issued a Florida driver's license on 1/23/96, he was most recently reissued a Florida driver's license on 8/10/12 and Florida lists his address as Keene, New Hampshire (Exhibit 4); the respondent purchased a piece of real property with buildings thereon as evidenced by deed dated 5/19/06 in Keene, NH and recorded the same day (Exhibit 5); he registered to vote in Keene, NH on 11/7/06 and he signed an affidavit that stated "I must be domiciled in this city/town." (Exhibit 6); on 9/3/10, he filed a "qualified voter affidavit" indicating that "I am a duly qualified voter of this town" which was attached to a NH Voter Registration Form listing a "residence address" of 73 Leverett St and a "mailing address" of 63 Emerald Street, both addresses in Keene using the name Ian Freeman (Exhibit 6); on 1/5/11 he filed a voter registration form listing the same residence and mailing addresses as on 9/3/10 (Exhibit 6); on 1/18/12 he filed a domicile affidavit and voter registration form (requesting party change) listing 73 Leverett St, Keene, as his domicile (Exhibit 6); on 6/4/12 he filed a voter registration form (requesting party change) listing 73 Leverett St., Keene, as his domicile (Exhibit 6); on 8/12/11, he filed a "Notice of Candidacy" for the position of mayor of Keene (Exhibit 7); on 1/23/13, he filed "Declaration of Candidacy" for the Keene School Board.

While never waiving the jurisdictional issue, the respondent's testimony consisted primarily of setting forth the arguments as to why he should not be considered a resident of New Hampshire for purposes of the driver licensing statutes.

### **DISCUSSION:**

The state initiated this action based on a reading of the plain language of RSA 263:35 which mandates obtaining a New Hampshire license within "60 days" of establishing a "bona fide" residence in the state. Their position is that the respondent's failure to do so constitutes "misconduct" for purposes of Saf-C 204:13 (b)(2). The respondent counters with the language of RSA 259:88 which contains the definition of "resident" for driver licensing purposes. The relevant language of that statute says that "no person shall be deemed to be a resident who claims residence in any other state for any purpose". The basis for this language in that particular statute is unknown. It seems to run contrary to other definitions of "resident" or "residence" (see RSA 21:6 and RSA 21-6-a). But the statutory language appears to give some credence to the respondent's argument and a detailed analysis is required.

The facts indicate and the respondent agrees that he came to New Hampshire in 2006. He differs as to how to categorize that move, but referred to

the fact that he “occupies space in a political subdivision known as Keene, New Hampshire.”

To say that one merely “occupies space” is a semantic distinction that has no legal significance. RSA 21:6 refers both to “resident” and “inhabitant”, essentially making them interchangeable terms. RSA 21:6-a refers to a residence as “a place of abode or domicile”.

While the respondent attempts to play additional semantic games with whether he has designated Keene “as his principal place of physical presence for the indefinite future”, his arguments all depend on his subjective view. However, the RSA 21:6 refers to a standard that takes into account “all of his actions.” His actions must be more credence than his words, allowing for an objective basis for a determination.

One of his actions was to purchase land and buildings at “the corner of River and Leverett Streets in the City of Keene” (Exhibit 5, part of property description) on 5/19/06. While he presented evidence that he conveyed his interest in that property on 6/27/13, he listed “73 Leverett Street, Keene, NH” as his “residence address” on all voter registration forms from 2006-2012. Simply conveying the property by Quitclaim Covenants is not proof that he no longer resides at that address and his ownership interest and voter registration forms over a period of several years indicate that as a residential address.

The state provided Exhibit 4 which is the transcript of the respondent’s driver record from Florida. As of 7/12/13, the State of Florida lists the respondent’s address as “Keene, NH”. It is also noted that, despite the respondent’s insistence that he be referred to as “Ian Freeman”, the Florida Department of Highway Safety and Motor Vehicles is unaware of or refuses to recognize that name as it appears no where on Exhibit 4.

During the entirety of the hearing, the hearings examiner never heard a fully articulated basis for the respondent continuing to claim that Florida constitutes his residence. He stated that he has a girlfriend there and uses her address. He further stated that he may not remain in New Hampshire, his actions must be given more credence than his words. He has listed a voting residence in Keene, NH for 7 years.

In summary, the respondent has been on notice that he is required to apply for and obtain a New Hampshire driver’s license since he first crossed out that paragraph on his 9/18/06 voter registration form (Exhibit 6). His refusal to do so, even after being instructed to do so on more than on occasion by Officer Short, constitutes “misconduct” as contemplated in Saf-C 204.13 (b)(2).

### **FINDINGS OF FACT:**

1. Ian Bernard registered to vote in Keene, New Hampshire on 11/7/06 indicating that he is domiciled "in this city/town."
2. Ian Bernard aka Ian Freeman has submitted several additional voter registration forms to the City of Keene indicating that he is "domiciled in this city/town."
3. Ian Bernard accepted title "for consideration paid" to "land with the buildings thereon situated at the corner of River and Leverett Streets in the City of Keene" on 5/19/06.
4. Ian Bernard aka Ian Freeman has listed a Leverett Street address on multiple voter registration forms since 2006.
5. Ian Bernard aka Ian Freeman filed a "Notice of Candidacy" for the mayor of the City of Keene on 8/12/11.
6. Ian Bernard aka Ian Freeman filed a "Declaration of Candidacy" dated 1/23/13 pertaining to the Keene School Board.

### **CONCLUSIONS OF LAW:**

The Respondent has "through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others."

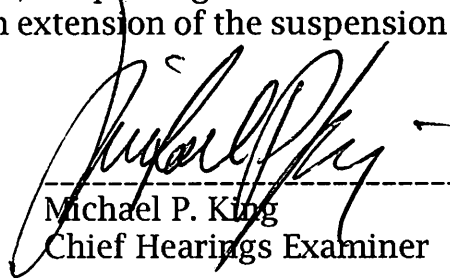
The Respondent's failure to comply with the provisions of RSA 263:35 constitutes evidence of misconduct as reported by the Keene Police Department and as contemplated by RSA 263:56 (I)(h); and by those actions is subject to suspension of Driver License/Operating Privileges.

### **DISPOSITION:**

**INDEFINITE SUSPENSION** of the respondent's operating privileges effective 60 days from the date of this decision, specifically, November 5, 2013. If the respondent provides proper evidence of application for and issuance of a New Hampshire Operator's license within the 60 day period, he needs to provide that evidence to the hearings examiner and the suspension will be rescinded. If the suspension goes into effect, the respondent can have the suspension lifted upon sufficient proof to the hearings examiner that he needs the suspension lifted to complete the process of obtaining a New Hampshire operator's license, subject to applicable restoration fees.

If a suspension remains in effect for more than 15 days, when the suspension time has expired, and provided that there are no other active suspensions, defaults or any other requirements outstanding, the respondent must

pay a \$100.00 restoration fee for his/her privileges to be reinstated. Failure to pay the restoration fee shall result in an extension of the suspension indefinitely, until paid.



Michael P. King  
Chief Hearings Examiner

**Appeal rights (RSA 263:76):** Any person aggrieved by the decision of the Director of the Division of Motor Vehicles, may appeal to the superior court in the county wherein he/she resides within 30 days from the date of this order.

Pursuant to Saf-C 203.27, this appeal does not postpone or delay the suspension resulting from the action by the Director of the Division of Motor Vehicles.

Report emailed to both parties: 09/06/2013

cc: Ian Bernard aka Ian Freeman  
Atty. Kilham