



Amherst Massachusetts

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To: Select Board

Fr: Paul Bockelman
Town Manager

Dt: April 29, 2018

Re: Opinion of Town Attorney Regarding Election Schedule and Recommendations for Action

You asked me to investigate several issues, including issues of constitutionality, that you and members of the public have raised with regard to the dates of the first election to elect members to the Town Council. You also sought guidance on how best to ensure broad participation by the voters of Amherst, taking into account the academic schedule and the fact that students comprise a substantial percentage of voters in the Town.

I have sought guidance on these issues from the Town Attorney who, in turn, also consulted with the legal counsel for the Secretary of State. I have attached two opinions from the Town Attorney and a proposed motion for Article 1 of the Special Town Meeting.

Executive Summary

The Town Attorney said the scheduling Town's preliminary election on the same date as the State primary does not raise constitutional issues. In a separate memo, the Town Attorney has recommended adjusting some of the dates in the Special Act, as recommended by the Secretary of State's office, to bring the schedule into alignment with the State election schedule. The Town Moderator has informed me that these date changes are permitted under the Article. The dates would have the added benefit of making nomination papers available before the colleges and university conclude their academic years and provide ample time for overseas and military voters to participate in the municipal election.

If the Special Act is approved by Town Meeting, the Select Board and staff should take the following actions:

- Forward the Special Act to the Legislature;
- Schedule municipal elections in accordance with the vote of Town Meeting and the Charter.
- Make nomination papers available as early as possible to allow students and others to take out papers before they leave for the summer.

The Chair of the Select Board has called a meeting for Tuesday, May 1st at 2:00 p.m. to take all three of these actions.

Background and Recommendation

Attached is the opinion from the Town's legal counsel, Attorneys Joel Bard and Lauren Goldberg of K-P Law, concerning the constitutionality of calling a preliminary election on the same date as the State primary, as called for in the Town Charter. They also make other recommendations to ensure broader participation in the electoral process.

I have been in contact with Senator Rosenberg, Representative Goldstein-Rose, and the Governor's office with the intent of expediting action on the Special Act. The warrant article was reviewed by legal counsel for the Secretary of the Commonwealth, Michelle Tassinari. Attorney Tassinari has recommended adjusting some of the dates, which the Town's attorney has incorporated into a main motion for presentation to Town Meeting.

Attorney Tassinari noted that the Charter was completed before the state primary date was changed to September 4th and that filing dates on the warrant article do not allow for sufficient time for preparation of ballots. Attorney Tassinari has actually extended the deadlines to be longer than currently required by law, but for a specific purpose. Since the election will be held on the same day as the state primary, she thought it would be useful to have ballots available at the same time for both elections. This would prove less confusing to voters.

Under Federal law, ballots for military and overseas voters must be transmitted to such voters at least 45 days before each federal election. For the September 4th primary, the deadline to transmit ballots is July 21st. As state law provides military and overseas voters with the right to vote in municipal elections equally, it seemed to make sense to move the municipal filing deadlines to allow sufficient time for the clerk to be able to send both ballots to any military or overseas voters simultaneously.

To further encourage full voter participation, the Town can make nomination papers available immediately after the Select Board sets the election schedule. This will allow any registered voter, including college students registered in Amherst, to collect the requisite number of signatures (25 for a district councilor, 50 for an at-large councilor) before the end of spring terms at the colleges and university.

In addition, staff will work with the colleges and university to send out information and deadlines to all current students on seeking office and all current and incoming students on how to register, vote, or seek an absentee ballot.

I welcome other suggestions to ensure this first election is conducted fairly and inclusively.