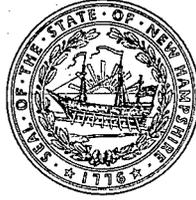


**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



ANN M. RICE
DEPUTY ATTORNEY GENERAL

March 15, 2018

Town of Washington
Board of Selectman
Bob Williams, Chair
Al Krygeris, Member
Tom Marshall, Member
7 Halfmoon Pond Rd
Washington, NH 03280

Jane Barkie, Clerk
Town of Washington
7 Halfmoon Pond Rd
Washington, NH 03280

Barbara Gaskell, Moderator
Town of Washington
7 Halfmoon Pond Rd
Washington, NH 03280

Re: Postponement of March 13, 2018 Town Election in Washington, NH

Attention Town Election Officials:

The Town of Washington was scheduled to hold its election of officers by official ballot on Tuesday, March 13, 2018, pursuant to RSA 669:1 and RSA 39:2-a. Our office received a complaint by the Secretary of State's office that the Town of Washington had, and continues to have, significant deficiencies in the conduct of this town election. Among those deficiencies is the decision by the town moderator, Barbara Gaskell, to postpone the election from March 13, 2018 until March 17, 2018.

Additionally, proceeding with this election on March 17, 2018 risks the disenfranchisement of voters and could result in additional election law violations. For the reasons set forth below, we have established a corrective action plan that the Town must follow in order to avoid having further law enforcement action being taken by our office against the Town's election officials.

Analysis

On March 12, 2018, the town moderator, Barbara Gaskell, unilaterally postponed the election to March 17, 2018; without legal authority to do so. One week before the election, on March 6, 2018, the Secretary of State and the Attorney General issued a memorandum which

stated that no state or town public officials had authority to postpone the town elections. In addition, Director Perry Plummer of New Hampshire Homeland Security & Emergency Management conducted a “Town Officials Conference Call” on March 12, 2018, to discuss impending weather events set to occur on March 13, 2018, and to reaffirm our office’s position that the elections could not be postponed. On March 13, 2018, Ms. Gaskell informed a Department of Justice investigator, Fred Lulka, that she received the March 6, 2018 memorandum and participated in the March 12, 2018 conference call. Nevertheless, she postponed the election, citing to RSA 4:40, II.

The Town of Washington has opted to be governed by the provisions of RSA 39:2-a which requires the use of an official ballot for the election of officers on the second Tuesday in March or May. This election date is chosen by the voters at the previous town meeting. RSA 39:2-a. There is no provision in the law which authorizes any public official to postpone this election date, except by vote at a subsequent town meeting. RSA 39:2-a; RSA 40:14, XI.

Although RSA 40:4, II authorizes the moderator to postpone the “deliberative session” or the “voting day of a meeting” due to a weather emergency, it does not authorize the postponement of the election day which utilizes the official ballot adopted at the prior town meeting. Under long standing rules of statutory construction, the New Hampshire Supreme Court holds that when construing a statute “where general words follow... words of specific meaning, such general words are not construed to their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned.” *State v. Beckett*, 144 NH 315, 318-19 (1999) (emphasis added). In other words, in RSA 4:40, the use of the term “deliberative session” is a specific reference to the business session (not the election session) of a town meeting in SB 2 towns and the subsequent reference to a “voting day” is to be construed narrowly to mean the business portion of the town meeting for towns that are governed by RSA 39:2-a, such as the Town of Washington. The reference to “voting day” does not mean election day for either SB 2 towns or for towns governed by RSA 39:2-a. Furthermore, after 70 communities unlawfully postponed their elections last year due to inclement weather, the General Court ratified the elections, but stated that this action did not authorize postponement of elections in the future due to weather emergencies, thereby confirming the State’s interpretation of this law. *See* Laws 2017, Ch. 20, s. 6, HB 329.

Conclusion

Ms. Gaskell violated RSA 4:40 by unlawfully postponing the March 13, 2018 election. Please be advised that Ms. Gaskell’s conduct could constitute “official misconduct” which is punishable as a misdemeanor pursuant to RSA 666:3, although we are foregoing prosecution under this statute at this time.

Pursuant to RSA 659:77, III, we have concluded that the conduct of Ms. Gaskell has resulted in significant deficiencies in the conduct of your town election and therefore, the

Secretary of State, in consultation with our office, will appoint an election monitor to directly observe all aspects of your conduct in preparing for this year's election.

Of particular concern to our office is that, by postponing the election by just four days, you have not allowed sufficient time for a voter, including military or uniformed service voters, who may have been able to attend Tuesday's election, to request and return an absentee ballot by mail in the event that they are out of town on Saturday. Also, your town clerk will not be in compliance with RSA 652:20 which requires the clerk to be available to accept completed absentee ballots between 3pm to 5pm the day before an election on Friday, March 16, 2018. RSA 669:29; RSA 657:17 & 24. Finally, the March 17, 2018 would be held without a properly updated checklist. *See* RSA 39:1-c. RSA 669:5 requires the supervisors of the checklist to meet on the Saturday 6 to 13 days before the election date in order to update the official checklist. RSA 669:5; RSA 654:27. These violations may result in the disenfranchisement of voters who would have been otherwise able to register or vote on the originally scheduled election day.

Corrective Action

In light of the foregoing, we hereby order the Town of Washington to take the following corrective action:

- On or before Saturday, March 17, 2018, the Town shall post a 7-day notice of the meeting of the supervisors of the checklist RSA 654:27 and RSA 669:5.
- On Saturday, March 24, 2018 the supervisors of the checklist must meet for at least 30 minutes in order to process new voter registrations pursuant to RSA 654:27 and RSA 669:5.
- On or before Monday, March 19, 2018, the Town shall cause the warrant for the town meeting to be posted. RSA 39:5.
- On Monday, April 2, 2018, the Town Clerk shall be available to accept completed absentee ballots filed in person or delivered by an absentee voter's family member, at a minimum, between the hours of 3:00pm and 5:00pm.
- The Town shall hold its election of town officers on April 3, 2018. As for the second session of the town meeting (the business meeting), the selectmen may "choose another day for the second session of the town meeting for the transaction of all other town business." RSA 39:2-a. You may hold this meeting on the same day as the election, or afterward, but it cannot be held prior to the election set for April 3, 2018. RSA 39:2-a.

By copy of this letter, we have referred our conclusions to the Secretary of State's office. Please be advised that continued failure to comply with our State's election laws may result in

this office taking action by pursuing criminal prosecution, civil penalties, or seeking to remove officials from office.

Sincerely,

By the Authority of,

GORDON J. MACDONALD
NEW HAMPSHIRE ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'MTB', with a large, sweeping flourish extending to the right.

Matthew T. Broadhead
Assistant Attorney General
New Hampshire Department of Justice
33 Capitol St.
Concord, NH 03301
Tel. (603) 271-3650

cc: William M. Gardner, Secretary of State
Matthew R. Serge, Esquire