

Memo

To: Town Council

From: Christine Wolfe

Date: 9/2/2021

Re: Town Council Vacancy

Title 30-A outlines that a vacancy in the office of Municipal Officer shall only be filled by election.

The Town Charter designates in section 2.07 (c) Filling of Vacancies: If a seat in the Town Council becomes vacant more than 6 months prior to the next regular election, the council shall call a special election to fill the unexpired term within 60 days from the date the vacancy occurred. If a seat in the council becomes vacant less than 6 months prior to the next regular election, the council may call a special election.

The Charter also outlines the procedure for filing nomination papers for Town Officials as follows: Nomination papers are made available 100 days prior to the election and must be filed with the clerk 55 days prior to the election. Using this formula, we could not add the new vacancy to the November ballot and would need to hold a special election to fill the vacancy.

Below is the response from a staff attorney at Maine Municipal Association in regards to our ability to invoke a shortened nomination paper process as allowed in Title 30-A, section 2528.

Section 7.01 of the Freeport Town Charter states in pertinent part, "Except as otherwise provided by this Charter, the provisions of the laws of the State of Maine shall apply to elections held under this Charter and said elections shall be conducted by the election officials according to State law."

I have reviewed the charter, in particular Article VII (Nominations and Elections), and I have found no provision addressing the subject of shortened nominations to fill an unanticipated vacancy on the council. For this reason (namely, because the charter does not address the

subject), it is my opinion that the above-quoted excerpt from Section 7.01 of the charter authorizes the council to invoke the special shortened nomination provisions of 30-A M.R.S. Section 2528(4)(E).

As 30-A M.R.S. Section 2528(4)(E) indicates, only the municipal officers (the councilors) may invoke this special shortened nomination procedure, and they may do so only at a public meeting of the council. But there is no need for an emergency council meeting or an ad in tomorrow's paper. Pay no attention to the charter's deadlines. Under the statute, the council could establish a nomination paper filing deadline as few as 14 days before election day and a time for the availability of nomination papers as few as 10 days before the filing deadline. In other words, this entire nomination process, from start to finish, could begin as late as 24 days before election day or as late as October 8, 2021. The council could allow for more time than these minimum times, of course, but there is still ample time between now and November 2, 2021 to arrange for a special nomination procedure for this particular vacancy.

A hand-counted ballot may be your only option with such a tight printing deadline.

My recommendation is to have nomination papers for the District 3 vacancy, with 2 years remaining on the term, be available Wednesday September 8, 2021 and be due 21 days later on Wednesday, September 29, 2021 at 6 pm. I will print hand count ballots the following day and start regular absentee voting the following Monday on October 4th, 2021 along with the state ballot and the regular municipal Candidate ballot. The result of allowing nomination papers to circulate to a date later than September 29th will be that all ballots will not available to the voter when absentee voting begins 30 days prior to the election on October 4th.

Town Clerk
Christine Wolfe

If possible, it is best to avoid this question by scheduling elections so that the nomination paper deadlines will not fall on a weekend or holiday.

Filing Deadline Falling on Weekend or Holiday

What if the deadline for candidates to file nomination papers falls on a Saturday, Sunday, or legal holiday? It is clear that 21-A M.R.S. § 6 would require a nomination paper filing deadline that falls on a weekend or holiday to be extended to the next business day. Clerks should be careful to note when an election is scheduled whether such an extension will be required. The nomination papers should clearly state the filing deadline so that there is no confusion. One side effect of an extended filing deadline is that clerks will have slightly less time to prepare ballots. This is another reason to try to avoid weekend or holiday deadlines when scheduling the election.

Town Meeting Day

Certainly 21-A M.R.S. § 6 does not govern election day itself: if a warrant specifies a Saturday or Sunday for town meeting, the meeting itself will be held on that Saturday or Sunday and not on the next following business day.

Special Procedure for Shortening Nominating Process to Fill Vacancy (Municipal Officers and School Committee Members)

When we discussed vacancies in office in Chapter 3, we noted that 30-A M.R.S. § 2602 provides that vacancies in the offices of selectman and municipal school committee member (where a school committee does not act within 30 days to appoint a successor) can only be filled by election. Probably because of the central importance of these offices, state law—in 30-A M.R.S. § 2528(4)(E)—authorizes a shortening of the nomination process for filling vacancies in them.

The authority to shorten the nominating process is available to the municipal officers in all municipalities that use the nomination paper process under 30-A M.R.S. §§ 2527 and 2528. It also appears to be available for shortening the time for nominations by political caucus. See 30-A M.R.S. §§ 2527(1) and 2528(4)(E).

- **Circumstances under which available.** Section 2528(4)(E) states that the shortened nomination paper process shall be available when the municipal officers determine to fill a vacancy under 30-A M.R.S. § 2602 which must be filled by election. Remember from the discussion in Chapter 3 that the regular expiration of an elected office does not create a vacancy. It is only if a vacancy arises through resignation or the other means listed in

Section 2602(1) that this shortened process can be used. Thus it can be used in connection with the regular annual meeting only when it is being used to fill a vacancy in an office for which there would not otherwise be an election at the annual meeting. This would be the case, for example, if a selectman with more than a year remaining on her or his term resigned before the annual meeting. And of course the shortened process can always be used when a special meeting is being called to fill a vacancy.

- **Extent of shortening permitted.** The municipal officers can shorten the period for the availability of nomination papers to as few as 10 days before the filing deadline, and they can shorten the filing deadline itself to as few as 14 days before the election. Therefore the *total* time from the first day of availability of nomination papers until the day before election day can be shortened to as few as 24 days. When this is done, it is even more important that the clerk meet the date established by the municipal officers for the *availability* of papers than under the usual 40-day process because fewer days are available for the circulation of papers. The *filing deadline* definitely should be inflexible, subject only (if at all) to the rule governing weekends and holidays, discussed above; it is best to lay out dates so that the specially shortened filing deadline will not fall on a weekend or holiday.
- **Effect on availability of absentee ballots.** Section 2528(4)(E) does not alter the deadline by which absentee ballots must be made available, which is established by 21-A M.R.S. § 752 as being 30 days before the election. Even when using the special shortening procedure, it is recommended to set the nomination paper filing deadline to be more than 30 days prior to the election, so that the clerk will have time to prepare the absentee ballots in accordance with Section 752.
- **Procedure for shortening.** The municipal officers must “designate” the shortened period for the availability of papers and/or the time between the filing deadline and election day for the vacancy for which the period is shortened. 30-A M.R.S. § 2528(4)(E). They can do this on motion and vote at a properly noticed, public meeting of the board. If minutes are kept, they should certainly make note of this action. The municipal officers should provide the clerk notice of their designation in the form of an order adopted by them. The clerk needs this order in order to know what papers to prepare and what time periods govern.
- **Posting notice and notifying media of shortening.** There are two other procedural requirements for shortening the nomination process. Notices of the “designation” (of the office and the particular shortened period(s)) must be posted in the same places as town meeting warrants are posted, and local representatives of the media must be notified of the designation. 30-A M.R.S. § 2528(4)(E).