

Linda Daigle

To: Brian Riley
Subject: RE: Annual Town Meeting - scheduling and timelines

From: Brian Riley
Sent: Wednesday, July 8, 2020 3:49 PM
To: Keith Hickey (KHickey@townofwinchendon.com) <KHickey@townofwinchendon.com>
Subject: Annual Town Meeting - scheduling and timelines

Hi, Keith. You asked me to opine on the various ATM timeline requirements for preparing the annual operating budget and capital improvement budget, and how such requirements in the Charter and bylaws will apply under the current situation. These include Charter sections 5-3 (Town Manager submits budget to Finance Committee 45 days before ATM, per By-law §2.11), 5-6 (Finance Committee public hearing), and 5-7 (Town Manager submits capital improvement plan to BOS & Fin Comm 30 days before budget). In the event that the Board of Selectmen decide to call a ATM sooner than would allow for the normal scheduling, you have asked whether this would pose any issue with the validity of the Town Meeting.

In my opinion, this would not pose any legal issue with the Annual Town Meeting. I first note that this type of bylaw or charter provision is frequently defined in Massachusetts case law as "directory, not mandatory." For example, these scheduling requirements serve to provide an orderly timeline for the various Town officials and boards to prepare for Town Meeting – there is no penalty for failing to meet the timeline. *"Although 'shall' is commonly a word of imperative obligation, it does not inflexibly have that signification."* Warman v. Warman, 21 Mass. App. Ct. 80, 82 (1985). Therefore, conducting an Annual Town Meeting that does not comply with this Charter timeline would not pose any risk of the Meeting votes or proceedings being deemed invalid, in my opinion.

In addition, current statutes and emergency laws also allow for valid Town Meetings that do not necessarily comply with local requirements. General Laws Chapter 39, §9 has long provided (well before the 2020 state of emergency) that **"notwithstanding the provisions of this section or of any other law, by-law, or charter to the contrary, a town, by the vote of its board of selectmen or town council may delay the annual town meeting."** There is similar language in the recent emergency legislation that authorizes towns to hold Annual Town Meetings after June 30, reduce a quorum, have the Moderator continue a posted Town Meeting, and the like. In my opinion, these laws will allow the Board to schedule the ATM whenever it deems appropriate. Please note, however, that the ATM warrant must still be posted at least seven days before the Meeting, and the provision allowing for a minimum quorum to be reduced (if desired) requires about two weeks to post advance notice of the agenda item.

Any further questions, let me know.

Brian

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