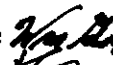



To: New Hampshire City and Town Clerks and Moderators

From: William M. Gardner, Secretary of State 
Gordon J. MacDonald, Attorney General 

Re: No Authority to Postpone Elections
Clerk's List of Absentee Voters – Non-Public
REAL ID compliant licenses – Not proof of US Citizenship
Notices of Supervisor Sessions – Include availability of Affidavit
Compliance with SB3 Changes to Law
Election Day Hotline

Date: March 6, 2018

In anticipation of the upcoming March 13, 2018 town elections, this memorandum provides guidance on several specific issues. If you have questions or concerns please direct them to Deputy Secretary of State David Scanlan (603) 271-3242 or to Assistant Attorney General Matthew T. Broadhead (603) 271-3650 or toll free (866) 868-3703.

No Authority in New Hampshire law to Postpone Elections

“All towns shall hold an election annually for the election of town officers on the second Tuesday in March, except those towns which have adopted an alternative date under RSA 40:14 or those towns which have adopted the provisions of RSA 31:94-a and have, by majority vote at a previous town meeting, decided to elect officers on the second Tuesday in May.” RSA 669:1. Parallel provisions in RSA 670:1 and RSA 671:2 specify the election dates for Village District and School District elections. New Hampshire law does not contain a provision that authorizes any public official to postpone an election. RSA 40:4 authorizes the Moderator in the event of a weather emergency, under the conditions described in the statute, to postpone the business meeting of the traditional form of town meeting or the deliberative session for a jurisdiction that has adopted the use of Official Ballot voting under RSA 40:13. This provision in the Chapter of law addressing government of town meeting does not authorize postponement of an election.

Do not post Clerk's List of Absentee Voters at Polling Place

Do not post the clerk's list of absentee voters at the polling place. Although clerks are required to maintain a list of voters who request absentee ballots, these lists “shall not be available for public inspection at any time without a court order.” RSA 657:15, I. The list is only available to candidates or individuals bearing a notarized request signed by a candidate. RSA 657:15, II.

We have been asked by local election officials for guidance regarding a bullet point in the New Hampshire Municipal Association “Town Meeting & School Meeting Handbook, 2018-2019.” That document, on page 38, in pertinent part states:

“According to the election manual, before the polls open, the moderator should confirm the following:

...

- A copy of the list kept by the town clerk showing who voted by absentee ballot is posted outside the guardrail.

....”

This is incorrect. Do not post the clerk’s list of absentee voters at the polling place.

The Legislature repealed RSA 658:27, relative to absentee list posting, in 1998 and removed the reference to posting the absentee voter list that was in RSA 657:15. Laws of 1998, Chapter 246. Concern existed that having the list of voters who were voting absentee available to the public before or on election day risked providing individuals intent on breaking into homes with a list of people who may be out-of-town.

The Election Procedure Manual issued by the Secretary of State, with the advice and approval of the Attorney General, does not advise that the list of absentee voters be posted at the polls. RSA 652:22. Page 60 of the 2016-2017 Election Procedure Manual provides the current guidance offered by our offices regarding the requirements that a moderator should ensure are complied with prior to opening of the polls. No reference exists to posting the clerk’s list of absentee voters in this guidance or in any earlier version dating back to the substantial revision of the Manual which occurred before the 2006-2007 edition.

This memorandum does not apply to the checklist used on election day and marked to show who voted, which is a public document following the election.

REAL ID Driver’s Licenses/ID – Not proof of US Citizenship

A New Hampshire REAL ID compliant driver’s license or non-driver identification is not proof of United States Citizenship.

The State of New Hampshire has started issuing REAL ID compliant driver’s licenses. To obtain a REAL ID compliant license, a person must prove that he or she is a United States citizen or a person, who is lawfully present in the United States in circumstances that allow the person to have a social security card. A Permanent Resident Alien (Green Card holder) or non-citizens who have an unexpired Refugee or Asylee document issued by the federal government may obtain a REAL ID compliant New Hampshire Driver’s license, but they are not United States citizens.

Notices for Voter Registration Sessions:

It is important that any voter registration notice that is posted must clearly inform applicants that qualified applicants who do not possess or who do not bring proof of qualifications at the time of registration may use an affidavit for proof and will be allowed to vote.

Individuals registering to vote in New Hampshire must provide proof of identity, age, citizenship, and domicile. More than 30 days before an election, applicants who do not have proof of age, identity, or citizenship with them may use a Qualified Voter Affidavit to prove age, identity, or citizenship. If the applicant does not have proof of domicile he or she must retrieve proof and return to register or may register without proof starting 30 days before the election.

Starting 30 days before an election and for election day registrants, applicants who do not have proof of identify, age, citizenship or domicile with them may use the affidavit on the back side of the Voter Registration Form B to prove qualifications.

Applicants willing to sign the appropriate affidavit shall not be denied registration because they do not have documentary proof with them when registering to vote. Notices of sessions to be held by the Supervisors of the Checklist or other voter registration opportunities must be worded to inform applicants that if they do not possess or bring proof with them, an affidavit may be used.

Recommended wording for notices of opportunities to register to vote:

Applicants for registration who possess proof of identity, age, citizenship, and domicile should bring that proof when they come to register. Qualified applicants who do not possess proof or who do not bring proof with them may register if they sign an affidavit attesting to their qualifications for identity, age, and citizenship.

More than 30 days before an election, applicants without proof of domicile will be asked to retrieve proof and return to register. Within 30 days of an election and on election day, applicants without proof of domicile with them may register to vote if they sign an affidavit attesting to their domicile and either agreeing to bring or send in proof or attesting that they are not aware of possessing proof of domicile.

Compliance with SB3

Please note that the Attorney General's office will be deploying teams throughout the State on March 13, 2018 to in order to monitor and assist towns in implementing recently enacted changes to the same day registration requirements established by Senate Bill 3 ("SB 3").

SB 3 modified the voter registration process. The statutory changes contained in SB 3 are currently the subject of a lawsuit in the Hillsborough County Superior Court, Southern District. In that matter, the Court issued a preliminary order that allows the State to implement the statutory changes contained in SB 3 and has allowed the use of new voter registration forms which comply with the law. Please be sure to utilize the new 2017 version of the voter registration forms and Verifiable Action of Domicile forms. Both forms have two versions. Use version A for individuals registering to vote more than 30 days before an election. Use version B for individuals registering to vote starting 30 days before an election and on election day. The Secretary of State distributed forms to all towns and cities. If you have not received your forms, contact the Help Desk at the Secretary of State's Office.

Please note that, pursuant to the Court's order, there are currently no civil or criminal penalties for failing to return any domicile documents in connection with same-day voter registration. We request that you inform the appropriate officials in your town or city about this order.

Election Day Hotline

The Attorney General's Office will again be operating its Election Day hotline on March 13, 2018. The number is 1-866-868-3703.