
TO: Truro Town Moderator Paul Wisotzky (*By Electronic Mail Only*)
CC: Truro Town Clerk Elizabeth Verde (*By Electronic Mail Only*)
Truro Town Manager Darrin Tangeman (*By Electronic Mail Only*)
FROM: Lauren F. Goldberg, Esq.
RE: Preparing for October 21, 2023 Special Town Meeting
DATE: October 20, 2023

Question

You have requested advice concerning the holding of the special town meeting scheduled for October 21, 2023. Specifically, as the Board of Registrars have found that 66 voter registration complaints should proceed to hearings, you ask whether you have authority, in accordance with the General Laws, to open the meeting solely for the purpose of adjourning to a particular date, time and place.

Short Answer

In my opinion, a Town Moderator has responsibility and authority to “preside and regulate the proceedings [of town meeting], decide all questions of order, and make public declaration of all votes”. This broad authority expressly includes, in my opinion, authority to open the meeting solely for the purpose of continuing it based upon concerns about voters’ ability to participate in the meeting.

Detailed Analysis

General Laws c.39, §§10 and 15 outline the authority of the Moderator at Town Meeting to regulate all proceedings and decide all questions of order. Courts examining the authority of the Moderator under state law have routinely confirmed this authority, explaining that the good faith determination of questions of order are not reviewable. See, e.g., Doggett v. Hooper, 306 Mass. 129, 133 (1940) (and cases cited therein).

In particular, G.L. c.39, §15 states, in relevant part, “the moderator shall preside and regulate the proceedings, decide all questions of order, and make public declaration of all votes”. General Laws c.39, §10 expounds on this authority, making clear that the Moderator has broad discretion to recess a meeting on the Moderator’s own initiative if he believes voters are being deprived of the opportunity to participate in the meeting for any reason. Specifically, the statute states:

Whenever the moderator determines that voters are being excluded from the town meeting because there is no room for them in the places provided or that voters in attendance are being deprived of the opportunity to participate therein for any reason

whatsoever, he shall either, on his own motion recess the meeting for any period during the day of the meeting or, after consultation with the members of the board of selectmen then present, adjourn the same to another date, not later than fourteen days following the date of said meeting, when places and facilities sufficient to accommodate all voters attending and to enable them to participate therein shall be available. [Emphasis added].

The Town Moderator's judgment about whether persons are being deprived of the opportunity to participate falls squarely within his right to decide all questions of order and make procedural determinations.

Only persons domiciled in the Town are qualified to register to vote and to vote in town meetings and elections. G.L. c.51, §1. In the seminal case on this topic, Hershkoff v. Ballot Law Commission of Registrars, 366 Mass. 570, 576-77 (1974), the court defines the concept of "domicil" as follows:

Every person must have a domicil, and [s]he can have only one domicil at a time, at least for the same purpose. A person's domicil is usually the place where [s]he has [her] home. Home is the place where a person dwells and which is the center of his domestic, social and civil life. A change of domicil takes place when a person with capacity to change [her] domicil is physically present in a place and intends to make that place [her] home for the time at least; 'the fact and intent must concur.'

Here, there are open questions about whether 66 voters are properly registered in the Town. The Board of Registrars, after examining into the complaints, found earlier this week that there are "substantial grounds" for each such complaint. G.L. c.51, §48. Consistent with G.L. c.51, §§48 and 49, the Board of Registrars will be issuing summonses to such persons and holding hearings at which voters will be required to testify under oath as to their residence for voting purposes. The Town Clerk has expressed concern about proceeding with the meeting under these unusual circumstances. Indeed, even the State Elections Division has acknowledged that with so many voter registration challenges pending it may not be desirable to move forward with the October 21, 2023 Special Town Meeting.

Should persons not entitled to vote participate in Town Meeting, in my opinion, the Moderator can properly conclude that votes of all properly registered voters of the Town will be diluted, thereby excluding them from participation "for any reason whatsoever". In summary, in my opinion, ensuring that only voters participate in Town Meeting, and that all who are qualified to participate are able to do so, falls within the very essence of the moderator's responsibilities relative to the orderly proceeding of the Town Meeting to attend to the legislative business of the Town.