

**This document is for informational purposes only.
The original document may be obtained at the Town Hall.**

Town of Danville
Board of Selectmen
SPECIAL MEETING
Monday, February 01, 2021
7:00 PM

6:53 PM

Meeting is Video-Recorded

Selectmen Present: Shawn O'Neil, Chair; Steve Woitkun, Vice Chair; and Joshua Horns
Sheila Johannesen and Dottie Billbrough are attending the meeting via conference call due to the weather

Others Present: Kimberly Burnham, Selectmen Administrator;

Shawn called the special meeting to order at 6:53PM and opened the meeting with a moment of silence for the troops who put themselves in harm's way. All stood for the Pledge of Allegiance

I. Delegates

Shawn notes that this a Special Meeting called for the sole purpose of addressing issues raised by Executive Order #83.

II. Special Meeting

Shawn explains that he asked for this Special Meeting to address the BOS decision made at the January 25, 2021 BOS meeting to change the Town's Deliberative Session to June 6 and the Town Elections to July 13. This decision has caused issues with the School District voting, as the Town and the School District are two separate entities. The BOS did not consider this, and it has resulted in this meeting.

Shawn states that he has received a long and detailed letter of the legal ramifications and reasoning of why the School District is stating why the Town needs to hold the School elections on the date already scheduled (March 9). That opinion came to him (Shawn) who forwarded it to the Town Attorney. The Town Attorney is in agreement with the opinion of the School District Attorney, and noted additional issues.

Shawn summarizes this opinion as such: For the School District, it is the Moderator who would have the ability to move an election. The majority of the moderators of the School District would make that decision. Shawn notes that he agrees with that. Shawn asks that the BOS release the opinion to the public "such that we can talk about it even more and that the BOS actually post it moving forward as part of the minutes." Shawn asks for a motion to take the response from Matthew Seger (Town Attorney) in regards to Executive Order #83 Town of Danville's voting change/TRSD. Steve makes the requested motion. Second by Joshua.

Roll Call vote: Shawn=yes, Steve=yes, Joshua=yes, Sheila –yes, Dottie=yes. Vote is unanimous (5-0).

From: **Matthew R. Serge**

Thu, Jan 28, 2021 at 11:32 AM

Subject: RE: Emergency Order #83 - Town of Danville

Voting Change/TRSD To: Shawn O'Neil

Hi, Shawn. To follow up our telephone call, I wanted to send this email to confirm that I have reviewed Jim O'Shaughnessy's opinion and agree that the school district election should proceed in March. I note that in his email, Jim refers to the following statutory language:

RSA 671:22-a Rescheduling Elections. - *In the case of a school district that comprises one or more preexisting districts and holds its elections in conjunction with the town elections in the component towns as provided in this subdivision, in the event of a weather or other emergency as described in RSA 669:1, V, the town moderators in each town shall, as described in RSA 669:1, coordinate to reschedule the town and school district elections.*

Because RSA 669:1 (Election Dates) is referred to in the above-statute, it is important to also consider that legislation when analyzing the issue of election postponement for cooperative school districts. RSA 669:1, V (b) provides:

When a ballot to be used at an election which has been postponed contains questions that are to be voted on simultaneously by more than one town, such as those relating to village, school, or water districts, the postponement of an election shall apply to all towns voting on that issue at the election. The moderators of the towns involved, after consultation with respective town officials, shall communicate with each other to reach a consensus on the postponement. In such instances, one of the moderators shall be selected to document the communications and notify the secretary of state. If a consensus cannot be reached, the election shall be postponed if a majority of the moderators vote to postpone.

This statute, as well as RSA 671:22-a, provide that the moderators are the ones who decide the postponement issue for cooperative school district elections. It is my understanding that both the Danville moderator and the Timberlane moderator agree that the school district election shall proceed on schedule. Obviously the other communities in the district do not want to postpone.

Emergency Order 83 is silent concerning the issue presented here and, therefore, I believe the statutes referred to above still control.

-Matt

----- Forwarded message -----

From: **James A. O'Shaughnessy** Date: Wed, Jan 27, 2021 at 4:37 PM

Subject: Re: Emergency Order #83 - Town of Danville Voting Change/TRSD

Dear Dr. Farah:

In your capacity as Chair of the Timberlane Regional School Board, you asked me to explain how Danville's decision to postpone its deliberative session and election session impacts the School District. As an initial matter, while there is no precedent for a town postponing its election by 4 months except as provided in Governor Sununu's Emergency Order #83, it is clear that Danville's decision will have a significant impact on Timberlane and the voters in Danville in a number of ways.

First, because Timberlane has not postponed its deliberative session or election day, the other towns in the District will be voting on warrant articles on March 9th. Meanwhile, the voters in Danville must wait until July to vote on those same ballot questions, including the operating budget. RSA 671:26 provides that the results of the election are not determined or announced until all votes from the towns have been recorded. However, while the results are not officially announced, the tallies of

the votes on each article in each town may be public records and there may be no mechanism in the law to withhold those results from the public. Thus, **the voters in Danville will likely know the results of the votes of the other towns in the District in early March, but will not have an opportunity to vote themselves until July.** The Danville voters may feel, among other things, disengaged in the process and/or disenfranchised because their votes will be significantly delayed.

Second, state law mandates that **the towns and school district must coordinate their elections in the event of a postponement of the election.** As a result of the storm that caused annual meeting delays a few years ago, the legislature adopted RSA 671:22-a in 2019. RSA 671:22-a applies to cooperative school districts that are comprised of multiple towns. It mandates that the town moderators from each town shall "coordinate to reschedule the town and school district elections." While the context may be different this year as the result of the pandemic, the statute nonetheless clearly mandates coordination of the of the Election Day so that no towns are unfairly impacted by one town's decision to postpone the date of the election. While Danville chose to postpone its meeting pursuant to a Governor's Emergency Order #83, the obligation to coordinate the postponement of the election remains.

RSA 671:22-a Rescheduling Elections. - In the case of a school district that comprises one or more preexisting districts and holds its elections in conjunction with the town elections in the component towns as provided in this subdivision, in the event of a weather or other emergency as described in RSA 669:1, V, the town moderators in each town shall, as described in RSA 669:1, coordinate to reschedule the town and school district elections.

Third, EO #83 does not provide any relief to school districts that are under a statutory deadline to provide letters of non-renewal and contracts to teachers. Under current law, RSA 189:14-a, school districts must notify teachers of lay-offs no "later than "than the Friday following the second Tuesday in May." This year the statutory deadline for Timberlane to provide such notices (and have its final budget in place) is May 14, 2021, almost 60 days before Danville will conduct its elections. **This means that Timberlane will not have a budget in place until almost two months after the deadline to notify staff of non-renewal has passed.**

As a practical matter, teacher contracts and employment letters to support staff must be issued well before the end of the 20-21 fiscal year, which again will be over a month before Timberlane would even have a budget. In other words, Danville's postponement of its election will leave Timberlane without a budget in place and in an unworkable predicament with respect to its teachers and support staff.

Fourth, although Danville has legal authority to delay its meeting and election pursuant to EO #83, Danville also has a legal duty to assist Timberlane in conducting its vote. The citizens of Danville previously chose to coordinate its elections with the school district as a member of the cooperative school district. See RSA 669:1, 671:22. Timberlane similarly voted to adopt "as official for school district purposes the [Danville] checklist, polling place, and election machinery" in accord with RSA 671:22. Accordingly, Timberlane relies entirely on Danville to coordinate the voting on its ballots and Danville has a legal obligation to assist Timberlane in the process. See also RSA 40:14-a.

As a result of its vote to delay its elections until July for town warrant articles, Danville now has an obligation to work with Timberlane to find a solution for its residents. In fact, the current 2021 Timberlane Warrant notifies Danville residents that the second voting session will take place on March 9, 2021, at the Danville Community Center from 8am-7pm. One solution would be for **Danville continue to hold the school district vote in March as currently scheduled.** The Timberlane Moderator and Danville Moderator can work together to staff the polling place and arrangements can be made regarding the sharing of additional costs, if necessary. It would be prudent for Danville to consider this option as it is likely the best solution for its residents and it also satisfies Danville's

duty as a member of the Timberlane Regional School District. Additionally, it would avoid any possible litigation or legal dispute between the parties.

In sum, my recommendation would be to officially ask Danville to either reconsider its decision to postpone its elections, or to confirm its commitment and legal obligation to coordinate with Timberlane to allow Timberlane to hold its election on March 9, 2021, as currently scheduled.

I understand that time is of the essence, but please let me know if you have any questions or would like to set up a meeting to discuss this issue.

*Sincerely,
Jim O'Shaughnessy*

Shawn requests a motion to have the School Election held on the date already presented (March 9). Joshua makes the requested motion. Second by Steve.

Steve asks if the Town could also hold their elections on March 9. Shawn explains that in order to do that, all the required postings for the original Deliberative Session and Voting dates were due on Monday night (January 15). Nothing was posted because of the date changes. The BOS cannot go back in time, so the Town is now committed to the new voting date. The Town will have to hold two separate elections because the Town and the School District are two separate entities. Shawn notes that Kim has spoken with the Secretary of State and the Town has not met the requirements necessary to make that change. Shawn notes that this issue is part of the decisions that were made and the BOS must live with ramifications of those decisions.

Shawn calls the question. Roll Call vote on the motion to hold the School Elections on Tuesday, March 9.

Shawn-yes, Steve-yes, Joshua-yes, Sheila-yes, Dottie-yes. Motion passes.

There being no further items to discuss Shawn adjourns the special meeting
Meeting is adjourned at 7:00PM

Minutes derived by video provided on the Town of Danville website.

Respectfully Submitted
Deborah A. Christie