

From: nhmoderators@googlegroups.com [mailto:nhmoderators@googlegroups.com] **On Behalf Of** Stephen Buckley
Sent: Monday, March 13, 2017 11:33 AM
To: nhmoderators@googlegroups.com
Subject: [NHModerators] Update - NHMA Opinion on Postponement of deliberative session or voting day

Here is the considered opinion of NHMA on this subject. Obviously there are contrary opinions being offered by the NH Secretary of State so moderators are urged to also consult with their town attorney.

Can a moderator postpone either the balloting session or the deliberative session, or both, of the town meeting?

Yes, the moderator can postpone either the balloting session or the deliberative session of town meeting under the authority provided by RSA 40:4, II. That statute clearly says that the moderator may postpone and reschedule the deliberative session or voting day to another reasonable date, place and time in the event the moderator reasonably believes the roads are hazardous and unsafe due to a weather emergency. Provided, however, the moderator must make that determination to postpone and reschedule at least 2 hours prior to the scheduled session.

Since the statute says the moderator can postpone and reschedule the deliberative session or voting day that means that she can postpone both the official ballot session for the election of town officers and voting on other matters by official ballot, as well as the business meeting (a/k/a deliberative session). Therefore, as determined by the moderator, and not dependent on the actions of other election officials, either or both the deliberative session and the voting day can be postponed and rescheduled if the moderator reasonably believes the roads are hazardous and unsafe due to a weather emergency.

Further support that this is the correct interpretation of RSA 40:4 has been provided by Attorney Jae Whitelaw of the Mitchell Municipal Group:

While RSA 669:1 does require towns to hold the election for officers on the second Tuesday in March, with limited exceptions, RSA 40:4, which was adopted after RSA 669:1, authorizes the moderator to reschedule "town meeting" in the event of a weather emergency. It appears that the question is whether the "election of officers" is included within the "town meeting" or whether it is a separate procedure altogether.

I believe the election is an integral part of the annual town meeting. RSA 39:2 requires that the single warrant for town meeting include both the election of officers and the warrant articles, as well as the days/times when the town meeting will address both. Further, RSA 39:2-a authorizes the towns to vote to adopt SB2 which provides for "two sessions for the annual

town," meeting," one to vote on the town business by ballot - the election and other ballot questions - and the other day for the "transaction of other business." Also, per RSA 39:3-d, the ballot which is used to elect officers may also be used to vote on questions which by law are required to be voted on by ballot. The legislation makes no sense if the election is not considered to be part and parcel of the annual town meeting.

What information can be gleaned from the legislative history that explains the meeting of RSA 40:4?

RSA 40:4 was adopted in 1998 through SB 349, 1998 NH Laws Chapter 278. We have reviewed both the Senate and House Legislative histories for SB 349 and the evidence from the hearings before the Senate Committee on Public Affairs and the House Committee on Municipal and County Government are at best equivocal as to the precise meaning of what type of "meeting", balloting or deliberative, can be postponed. However, the final committee report, see attached, makes clear that the moderator may postpone the deliberative session or voting day if a "weather emergency . . . makes attending the deliberative session or voting day a hazardous duty."

Stephen C. Buckley, Esq.
Legal Services Counsel
NH Municipal Association
25 Triangle Park Drive
Concord, NH 03301
Tel: (603) 224-7447 x3408
Email: sbuckley@nhmunicipal.org



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