

Town Meeting 2023: Australian Ballot Voting Legal Requirement Overview

1/18/2023

Q&A

Question: Is mailing out ballots without request the authority of the selectboard or the town clerk? The town clerk in our town handles all the absentee ballots.

Answer: When using Australian ballot, the selectboard may vote to mail ballots to all active registered voters in the town. If the selectboard chooses to do so, by majority vote of its total membership at a duly warned meeting, it must ensure that the ballots are mailed not less than 20 days before the election or as soon as they are available (therefore, the vote to mail out ballots must come sometime beforehand). 17 V.S.A. § 2680(g)(1).

Question: Is there any indication that the State will authorize Australian ballot voting permanently given the increased access and participation of voters as demonstrated in the last 2 years?

Answer: The authority for towns to vote to permanently switch to Australian ballot voting for any or all of the three topics (electing officers, budget articles, public questions) already exists. 17 V.S.A. 2680. The temporary law (H.42), if it passes, would just temporarily allow the selectboard to vote to make the switch for its annual meeting this year instead of the voters.

Question: Susan mentioned eliminating the office of constable. I thought the only option was to make it an appointed position?

Answer: A town may now vote at an annual meeting to eliminate the office of constable. 17 V.S.A § 2651a(d). Unlike other town votes to eliminate town offices, however, if a town votes to eliminate the constable office, the selectboard must still appoint a town officer to discharge the constable's duties, if any, subject to 24 V.S.A. § 1936a. The town officer appointed must discharge those duties in the same manner and be subject to the same liabilities as established by law.

Question: Is it permissible to have candidates for office introduce themselves and speak for a set amount of time at the informational meeting?

Answer: Yes, candidates may speak so long as the informational hearing is NOT taking place during the floor portion of town meeting. If it's taking place during the floor town meeting, then it's allowed to the extent permitted by the voters at the meeting. "(A) candidate for local office nominated from the floor at the annual meeting may introduce his or her candidacy to the extent permitted by the voters at the meeting." 17 V.S.A. § 2640(c)(2). In that case, an alternative is to offer a candidates' forum at another time ahead of elections during a special selectboard meeting.

Question: If the Town has a hybrid Australian ballot and floor vote, must a town have one informational hearing, or more than one within the 10 days prior time period? Does this depend on the number or nature of articles on the ballot and warning?

Answer: If a town has adopted the Australian ballot method of voting for any public and/or budget question(s), then a public informational hearing is required. "Whenever a municipality has voted to adopt the Australian ballot system of voting on any public question or budget . . . the legislative body shall hold a public informational hearing on the question by posting warnings at least 10 days in advance of the hearing in at least two public places within the municipality and in the town clerk's office." 17 V.S.A. § 2680(h)(1). Only one hearing is statutorily required (within 10 days preceding the election) but a town can always hold more if it's so inclined.

Question: Is a caucus the same as an informational meeting? Can it be one and the same meeting?

Answer: No. An informational meeting is required by law to be held in the ten days preceding a town's annual meeting whenever it has voted to adopt the Australian ballot system of voting on any public and/or budget question(s). The purpose of the meeting is to serve as the discussion component that ordinarily accompanies the floor voting associated with a town's annual meeting of its voters. 17 V.S.A. § 2680(h). In contrast, a town caucus is a meeting of the members of specific political parties in a town. 17 V.S.A. § 2304. Due to their different functions, these two meetings cannot be one and the same.

Question: Did you say that, if the temporary law passes, you recommend against voting by Australian ballot this year to permanently change to the Australian ballot method of voting if a town ordinarily votes from the floor?

Answer: Yes. Unlike Act 77 which was last year's temporary town meeting measure, the current version of H.42 (which again, has not yet passed) does not explicitly prohibit municipalities from using the temporary authority granted to permanently switch to Australian ballot voting for any and all articles, for any subsequent municipal meetings. Our understanding is that the Legislature's attorneys (Legislative Counsel) believe the explicit prohibition is unnecessary because a vote on the permanent switch is already prohibited by 17 V.S.A. § 2680(e) which reads, "[u]se. A municipality shall not use the Australian ballot system at the same election at which its voters decide that the system shall be used." Regardless of whether we agree with that interpretation, we caution selectboards from warning such an article if it has used temporary authority to switch to Australian ballot voting this year, as such a question would ordinarily have to be voted from the floor and those who oppose it may feel that the vote is unfair because it's taking advantage of a one-time allowance. In other words, a different set of voters might be deciding the question than those who would normally attend a floor meeting and decide the question under normal circumstances.