



NEW HAMPSHIRE ELECTIONS FREQUENTLY ASKED QUESTIONS – 2014

Prepared by Legal Advisory Services, New Hampshire Municipal Association

ELECTION PURITY ISSUES

What election duties, if any, can be performed by a moderator or a selectman who is also on the ballot? What if the moderator's or selectman's spouse is on the ballot?

If the moderator is on the ballot for an elective position, she is permitted to perform all of her election duties, except she shall not handle marked ballots and the counting of votes. However, if the moderator is on the ballot for the position of an election officer, she may carry out all of her election duties. If a selectman is on the ballot, she would be prohibited from handling marked ballots and she would also be prohibited from being within the guardrail during the counting of votes for an office for which she is a candidate. RSA 659:58; See also RSA 658:24.

Are any persons other than election workers and voters allowed inside the area designated for voting?

A person designated by the voter to be the person to assist the voter with voting is permitted inside the area designated for voting, provided that person is not the voter's employer or union official. RSA 659:20. In addition, elections officers may permit other persons to be within the area designated for voting for the purpose of keeping order and enforcing the law. RSA 659:21.

Can children under the age of 18 accompany their parent or guardian into the voting booth?

Election Officials have the authority under RSA 659:21 to admit other persons within the guardrail for the purpose of keeping order and enforcing the law. If the moderator concluded that disorder would occur if children were left unattended outside the guardrail while a parent voted and that no disorder would occur in the voting area if a child or children accompanied the parent during the act of voting, the child or children could be permitted to accompany a parent inside the guardrail.

Is photography or video recording allowed inside the polling station?

Voters are now prohibited from taking a digital image or photograph of their marked ballot. RSA 659:35 (I), HB 366, Chapter 82, eff., 9/1/14. Other than this specific prohibition, nothing specifically authorizes the regulation of video or still photography within the polling station. However, RSA 659:37 does protect a voter from interference by another while the voter is within the guardrail. To the extent a voter expressed an objection to being photographed while in the act of voting (such as a religious objection), the moderator could deem such activity to be an interference with a voter and order the offending person to cease or leave the polling station. Although prohibiting photography or videography within the polling station may clash with the First Amendment, the Third Circuit Court of Appeals found that there is a very real possibility that the presence of reporters during the sign-in period, when individuals are necessarily exchanging personal information in preparation for casting a private vote, could concern, intimidate, or even turn away potential voters. The Third Circuit ruled that Pennsylvania election officials could exclude print and video news reporters from polling stations. PG Publishing v. Aichele, 705 F.3d 91 (3d Cir. 2013). In addition, RSA 31:41-c would permit the Town Meeting to adopt a bylaw to prohibit any activity that affects the safety, welfare, and rights of voters within or near a polling station.

Must all poll watchers/observers/challengers be allowed to sit next to election workers as voters are checked in for voting?

Persons who wish to observe voter registration on Election Day must be at least five feet away from the registration table where the exchange of nonpublic information may be heard or seen. RSA 654:7-c. Persons who wish to observe the check-in of voters must be positioned at least six feet away from the ballot clerk, unless otherwise permitted by the moderator. RSA 659:13-a.

Is the entire Board of Selectmen required to be present at the polling place during voting and vote tabulation?

Pt. 2, Art. 32 of the NH Constitution requires the attendance of Selectman during voting and vote tabulation at a State General Election. For primary elections, the NH Attorney General's Office takes the position that a quorum of the Board of Selectmen must be present at all times. NHMA does not share that view because NHMA believes that the duty to attend imposed on the Board of Selectmen stated in Pt. 2, Art. 32 of the NH Constitution only applies to the State General Election. Note also that where the presence of a selectman who is on the ballot is necessary to establish a quorum of the Board, the selectman may be present at the polling place, provided she is not within the guardrail.

Can local community groups be permitted to set up tables inside the voting location, but outside the rail, and distribute information or sell items?

RSA 659:43 prohibits electioneering inside the building where the polling station is located and within a corridor 10-feet wide and extending a distance from the entrance door of the building as determined by the moderator. Provided the community groups do not engage in activity that is intended to influence the action of a voter, the presence of community groups inside the polling station would be permitted.

VOTING & REGISTRATION ISSUES

Can a voter change her registration from Democrat to Republican or from declared to undeclared on voting day?

A voter who has previously registered to vote with a declared party membership may change such party declaration at a primary election, but cannot then vote for the ballot of any party at such primary. RSA 654:34 (I) (b). A voter without a declared party membership may register as a member of a party at a primary election and then may vote the ballot of the party of the voter's choice. RSA 654:34 (II) (b). Such a voter may then elect to have her registration changed to undeclared after voting. Otherwise, voters who have a declared party registration may change their party affiliation on Election Day at a state general election since the supervisors of the checklist are in attendance at the polls.

What are acceptable forms of picture identifications in order to vote?

The following IDs are acceptable if they are current or did not expire more than five years ago (For voters over 65 years old, no expiration restriction applies).

- A driver's license from any state or federal government.
- A non-driver's photo ID from any state.
- A United States armed services photo ID.
- A United States passport or passport card.
- New Hampshire photo ID issued by the DMV for voting purposes only.

Student photo IDs (No date is required on student IDs)

- A college, university, or career school in New Hampshire and approved to operate or licensed to operate in New Hampshire.
- A public high school in New Hampshire.
- A nonpublic high school in New Hampshire accredited by a private school accrediting agency that is recognized by the department of education.
- Dartmouth College.
- A college or university operated by the university system of New Hampshire or the community college system of New Hampshire. Other acceptable means of identification.

Other forms of acceptable identification

- A photo ID deemed acceptable by a Supervisor of the Checklist, Moderator, or Town or City Clerk.
- Verification of a person's identity by a Supervisor of the Checklist, Moderator, or Town or City Clerk.
- An affidavit filled out and signed by the voter and an authorized election officer.
- Voter ID from the DMV: If you don't have a driver's license or a non-driver's ID from the New Hampshire Dept of Motor Vehicles, you may get a voucher from your Town Clerk that will allow you to get a free Voter ID for Voting Purposes.

Can voters keep unmarked ballots? If a voter asks for another ballot because she made a mistake on hers, can she keep the spoiled ballot?

Spoiled ballots must be marked cancelled by the moderator over his signature and must be preserved and sealed in containers provided by the Secretary of State. Since unmarked ballots must also be so preserved, they may not be kept by voters.

When writing in a person as a candidate for office, can a voter use a pre-printed, self-adhesive sticker?

No, New Hampshire statute and case law clearly prohibit this. RSA 659:65 provides that “a ballot shall be regarded as defective in part and that part shall not be tabulated if either or both of the following conditions exist:...(b) the ballot has attached to it an adhesive slip, sticker or paster not prepared in accordance with RSA 656:21 in the space for any office...” RSA 656:21, in turn, provides that the Secretary of State may authorize the use of pasters for state elections when a candidate dies or is disqualified and the name of a substitute candidate must be used.

VOTING EQUIPMENT ISSUES

If we do not have enough stand-up voting booths, what other options are available to create more voting stations?

An amendment to RSA 658:9, effective 8/10/14, permits portable booths set up in pods of up to 4 voting stations. Each voting station in the pod shall have 2 sides enclosed that are at least 32 inches long and meet at a right angle. A table top shall fit into the corner of the enclosed sides with the edges of the table top that contact the sides being at least 14 inches deep, and the edge of the table facing the voter no less than 25 inches in width. The third, open side of the voting station shall be enclosed by a curtain large enough, and designed in a way, to give the voter privacy.

If nobody uses the HAVA voting system, must we still set it up for every election?

Under the Help America Vote Act of 2002 (HAVA), it is mandatory that each polling station shall have one direct recording electronic voting system equipped for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, also equipped to provide privacy and independence for the voter. See, 42 USC §15481, et seq.

Why is the HAVA system required for State and Federal elections but not for Town elections?

Congress elected to mandate the HAVA voting requirements for Federal elections only, but provided that each State could determine whether to go beyond the minimum requirements and apply the Help American Vote Act to non-federal elections

ELECTIONEERING ISSUES

May candidates whose names appear on the ballot be present within the polling site if they are not electioneering?

The presence of a candidate at a polling station is not prohibited, provided the candidate does not electioneer in any way, which would include displaying any campaign literature, signs, or buttons supporting her candidacy or any other candidate

Are there any limits on the types of information that a person can hand out at a polling place, provided the distribution takes place the necessary distance from the polling place?

The limitation on the distribution of election materials only applies to distribution inside the building where the election is being held and within a corridor 10-feet wide extending a distance from the entrance door as determined by the moderator.

Can a Town enact more stringent electioneering rules and prohibit all electioneering on the grounds of the polling station, including prohibiting political signs anywhere on the grounds of the polling station or on cars parked in the parking lot?

Pursuant to RSA 31:41-c, Town Meeting can adopt bylaws regulating the distribution of campaign materials or electioneering or any activity that affects the safety, welfare, and rights of voters at any election held for any purpose in such town. However, this would not include regulating the display of printed or written matter attached to any legally parked motor vehicle. Nor could such electioneering bylaws extend to activities conducted wholly on private property so as not to interfere with people approaching or entering a polling place.

ACCOMMODATIONS FOR HANDICAPPED & INFIRM

If a person is handicapped and infirm and cannot get out of his vehicle, can a ballot be delivered to him in the parking lot?

If the Town has complied with all of the necessary handicap accommodations as prescribed by RSA 658:9-a, it should obviate the need to deliver a ballot to someone outside of the polling station. An absentee ballot is the only permissible method of delivering a ballot to a person outside a polling station.

If a voter is accompanied by his spouse, and the moderator knows the spouse is suffering from severe dementia and is clearly not aware of what is going on, must the Town nonetheless give a ballot to the mentally-impaired spouse?

As long as the voter suffering from dementia can assert his desire to obtain assistance from another person to assist with his voting, the moderator would be required to give a ballot to the designated person. RSA 659:20.

How many handicapped parking spaces must be provided in the voter parking areas?

There shall be at least one van-accessible parking space that is in compliance with the New Hampshire building code, RSA 155-A, and with standards implementing the Americans with Disabilities Act of 1990, 28 C.F.R. part 36 and designated with the international symbol of accessibility.

ABSENTEE BALLOTING ISSUES

When can they be counted?

Absentee ballots cannot be counted until after the polls have closed. RSA 659:49

May an absentee ballot be considered cast and be counted if hand-delivered to moderator by a family member on Election Day?

As provided in RSA 657:22, the Town Clerk may refuse to accept any completed absentee ballots delivered after 5:00pm on Election Day. Provided the absentee ballot is delivered to the Town Clerk by 5:00pm on Election Day, it may be processed and counted, otherwise any absentee ballot received after 5:00pm is marked as rejected.

What is the consequence if an absentee ballot was not signed by the voter on the inner envelope but the handwriting on the outer envelope matches the handwriting on the application form?

RSA 659:50 provides that upon opening the mailing envelope containing the absentee ballot affidavit envelope, the signature of the voter on the affidavit envelope is then to be compared by the moderator to the absentee ballot application. If there is no signature on the absentee affidavit envelope, the moderator cannot make that comparison, and, in that event, the moderator could not declare the person an absentee voter. Furthermore, pursuant to RSA 659:53, the moderator must mark across the face of the envelope "affidavit improperly executed," and shall record next to the name of the absentee voter on the clerk's list of absentee voter applicants the word "rejected" and the reason for the rejection.

What is the proper disposition of absentee ballot applications after the election?

Absentee voter forms, ballots, and affidavits in state elections are kept for a period of 60 days after the election or until the contest is settled and all appeals have expired, whichever is longer. RSA 33-A:3-a (XXXVII). For federal elections, absentee voter forms, ballots, and affidavits are kept for a period of 22 months after the election or until the contest is settled and all appeals have expired, whichever is longer. RSA 33-A:3-a (XXXVI)