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March 18, 2024

Lucille Dalton, Town Clerk
Town of Southampton
210 College Highway, Suite 2
Southampton, MA 01073

Re: Southampton Special Town Meeting of December 5, 2023 -- Case # 11291
Warrant Articles # 18 and 19 (General)

Dear Ms. Dalton:

Articles 18 and 19 – We approve Articles 18 and 19 voted at the Southampton December 5, 2023 Special Town Meeting. Our comments on Article 18 are provided below.

Article 18 - Under Article 18 the Town voted to amend Article XLV regarding requirements for membership to elected and appointed town boards, committees, and councils (Boards) by adding new text regarding the number of members on Boards, appointments to Boards, and vacancies on Boards. [1] Article XLV, Section 2 addresses Boards that have an even number of members and allows the Select Board to vote to increase or decrease the number of Board members by one when an even number Board cannot conduct business due to tie votes as follows:

> Should an existing group, which was originally established with an even number of members and where such number is not set by bylaw, consistently not be able to conduct necessary business due to tie votes, the group may petition the Select Board, or the Select Board may so decide, to increase or decrease the official membership of the group by one. In this case, the vote by the Select Board would supersede any previous stipulation of the official number of members of the group.

We approve Article 18, including Article XVL Section 2 as quoted above because it does not conflict with state law. See Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law). However, Article XVL, Section 2 applies to both elected and appointed boards. When the Town seeks to increase or decrease the number of elected board members the Town must

[1] Article XLV refers to boards, committees, commissions, and councils as "groups" throughout Article XLV.

comply with G.L. c. 41, § 2 regarding decreasing or increasing the number of elected board members. Section 2 provides as follows:

> Where official ballots are used, . . . increase or reduction of the number of members of a board, shall be determined at a meeting held at least sixty days before the annual town election. In towns not using official ballots the matter may be determined by vote at the annual meeting. Such vote shall continue in effect until rescinded. If a town votes to increase the number of members of any board, such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen, as will within three years effect it, and such vote to increase shall remain in force until the increase under it is accomplished. If a town votes to diminish the number of members of any board, such diminution shall be made by choosing annually such number as will within three years effect it, and a vote to diminish shall remain in force until the diminution under it is accomplished. . . .

To increase or decrease the number of members on an elected board, the Town must comply with G.L. c. 41, § 2 that requires a Town Meeting vote at least sixty days before the Annual Town Election. See Board of Selectmen of Braintree v. Town Clerk of Braintree, *et al*, 370 Mass. 114, n. 2 (1976) (Town could have used G.L. c. 41, § 2's procedures to increase the number of Board of Selectmen rather than seeking a special act). The Select Board cannot simply vote to decrease or increase the number of members of an elected board. Such a vote would conflict with G.L. c. 41, § 2. The Town should discuss G.L. c. 41, § 2's requirements for decreasing or increasing the number of elected board members with Town Counsel. [2]

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

[2] The Town may also consider discussing the lawfulness of even number of Board members generally with Town Counsel. See G.L. c. 43B, § 20 (c) that requires charter provisions creating multiple member bodies to consistent of an odd number of members.

Very truly yours,
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cc: Town Counsel Michele E. Randazzo