

NHMA (New Hampshire Municipal Association) LEGAL OPINION ON ELECTED OFFICIALS

Town elected officials are independent of the select board and are not subject to the select board's supervision or control in the performance of their duties. As provided in RSA 669:15, III and RSA 41:46-a, the town is required to elect three legal voters to serve as checklist supervisors. The checklist contains the name of every qualified voter who has registered in that municipality. The checklist is prepared and maintained by the supervisors of the checklist. 14 *NH Practice Series: Local Government Law* § 1198 (2022).

The supervisors of the checklist shall be in session for the correction of the checklist at some suitable place in the municipality on a day designated by the supervisors which shall be six (6) to thirteen (13) days prior to any election. At any session for corrections, the supervisors are required to hear all applications for corrections and relevant evidence submitted regarding those applications. After hearing the evidence, they must correct the checklist so that to their best knowledge it contains only the names of those persons qualified to vote at the election 14 *NH Practice Series: Local Government Law* § 1201 (2022). The secretary of state shall issue and distribute guidelines for the content, composition, and style of checklists and for the maintenance of data related to checklists by which the supervisors of the checklist shall compile and correct the checklist. Such guidelines shall specify the information which will be maintained and updated by the supervisors. RSA 654:25.

A person aggrieved because her name was not added to the checklist may appeal from the decision of the checklist supervisors to the Superior Court. RSA 654:14.

If the supervisors of the checklist have received a notice of transfer from any other state or from another board of supervisors of the checklist in the state of New Hampshire through the statewide centralized voter registration database that a voter whose name is on the checklist has been added to the checklist of some other town or city, they shall strike that name from the checklist at the next session for the correction of the checklist. RSA 654:36

Under RSA 654:36-a, any citizen may submit a request for correction of the checklist to the supervisors of the checklist or to the town or city clerk based upon evidence that a person listed on the checklist is not qualified as a voter in the town or ward. The clerk shall forward requests for correction of the checklist to the supervisors of the checklist.

If the supervisors of the checklist determine that it is more likely than not that the person's qualifications are in doubt, they shall send a notice to the person and afford the person at least 30 days to provide proof of his or her qualifications. If the person fails to respond to the 30-day notice or responds but fails to provide proof that establishes that it is more likely than not that the person is qualified to vote in the town, the person's name shall be removed from the checklist.

Under RSA 654:38, on petition of 50 registered voters or 5 percent of the registered voters in any town, whichever is less, or on petition of a majority of the board of supervisors of the checklist filed with the secretary of state no later than the eighth Friday after a state election,

the ballot law commission shall conduct an investigation to determine whether or not there should be a revision and verification of the checklist of the town. In the event of an affirmative decision, the commission shall direct the supervisors to revise and verify such checklist.

As provided in RSA 654:39, regardless of a petition under RSA 654:38, supervisors of the checklist shall verify the checklist starting in 1981 and once every 10 years thereafter.

Citizens also may petition the Superior Court to add or remove a person from the checklist. RSA 654:42

Checklist Supervisors are guilty of violations for not adding or deleting a person from the checklist if their status as a legal voter is proven or disputed. RSA 654:43.

The work of the checklist supervisors may only be questioned by the Ballot Law Commission or a Justice of the Superior Court. The select board has cannot take any action to order the checklist supervisors to conduct a decennial verification of the checklist or to add or remove an individual voter from the checklist.

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