

CANDACE McLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD HOWIE
Deputy Attorney General



ANTHONY G. BROWN
Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

PETER V. BERNS
General Counsel

Telephone
410-576-6472

Email
dkobrin@oag.state.md.us

June 21, 2024

Jared DeMarinis
State Administrator of Elections
Maryland State Board of Elections
151 West Street, #200
Annapolis, MD 21401

Re: Conflict Between the Prince George's County Code and State Law Relating to the Scheduling of a Special General Election to Fill the At-Large County Council Seat Vacated on June 14, 2024.

Dear Administrator DeMarinis:

I write to bring to your attention incompatibilities between the provision of the Prince George's County Code that governs the scheduling of a special general election and the requirements imposed by State law for the conduct of a special election. Should these incompatibilities remain unaddressed, they would result in the State Board of Elections ("SBE") and the Prince George's County Board of Elections (the "local board") conducting a special election in violation of State law. Accordingly, SBE should work collaboratively with the Prince George's County Council towards a solution that allows the scheduling of the special general election to conform with State law.

The Prince George's County Code provision at issue is § 2-104. It requires a special election to fill a vacancy in a Prince George's County Council seat when that vacancy occurs within the first three years of the office's term. To schedule the special election, the County Council must issue a resolution within seven days of the vacancy. That resolution must set a date for a special primary election to take place on a Tuesday within 45-60 days of the vacancy; and, the resolution must set a date for a special general election to take place on a Tuesday within 60-90 days of the vacancy. Moreover, the dates chosen for the two special elections may not fall within 30 days "prior to any regularly scheduled election." The Prince George's County Code, therefore, requires the conduct of a special primary and general election to take place over a 45-day span.

June 21, 2024

In this instance, the at-large seat on the Prince George's County Council was vacated on June 14, 2024. The Prince George's County Code, therefore, requires a special primary to take place between July 29, 2024 and August 13, 2024. The code further requires a special general election to take place between August 13, 2024 and September 12, 2024.

On a broad level, the timeline required by the Prince George's County Code for the special general election conflicts with SBE's duty to conduct elections diligently and accurately. The Election Law Article requires SBE to "manage and supervise elections in the State." Md. Code Ann (2023 LexisNexis), Election Law Article, § 2-102(a). SBE therefore bears ultimate responsibility for ensuring that elections in Maryland are conducted fairly, equitably, and with a level of security that ensures integrity in the electoral process. *See* Elec. Law § 1-201.

Holding a special general election in late August or early September concurrent with preparations for the 2024 presidential general election would strain electoral resources to the point that SBE could fail in its duty to properly "manage and supervise" both elections. The potential failure arises from several systemic limitations that prevent SBE from administering the special general election and presidential general election at the same time. Among these limitations are the inability to close voter registration for the special general election (as required by Election Law § 3-302(a)) while keeping it open for the general election; the inability to have two mail-in ballots issued to a voter at one time, which will be required under the law to administer both elections; and the inability to create web delivery ballots for two elections, which is required by law to administer both elections. In addition, conducting the special general election would introduce significant risks to the security of the general election. Among the risks are having two sets of election results uploaded and processed by the voting system at the same time, and the potential for a shortage of equipment, due to required post-election maintenance.

On a more specific level, the requirement to hold a special general election within 45 days of a special primary conflicts directly with State law. Section 8-401(b)(2)(ii) of the Election Law Article requires "at least 45 days between the date" that a ballot is made available to uniformed service members serving outside the State "and the date of the special election." It is not possible to abide the required 45-day period imposed by the Election Law Article if the special primary and general elections are themselves 45 days apart.

If a special primary election were held on day 45 after a vacancy, the result of that election could not be certified until day 56. This is because mail-in ballots in a special election are timely received up to 10 days after the election. Elec. Law 9-505(a)(2).¹

¹ This 10-day period between election day and certification arises whether or not the special election is held by mail-in vote. Even in a non-mail-in election, SBE must provide mail-in ballots

June 21, 2024

Assuming a ballot could be designed, printed, and finalized in one day, it must be publicly displayed for three days before it can be printed for an election. Elec. Law § 9-207(e). The soonest, then, a ballot could be made available for a special general election is day 59 after a vacancy. And the soonest a special general election could take place is 45 days after the ballot becomes available—day 104.

Under the provisions of the Election Law Article, then, a minimum of 59 days must elapse between a special primary election and special general election. The Prince George's County Code, however, provides for only a maximum of 45 days between the two elections. The conflict between the county code and State law is not amenable to reconciliation. Where a local provision conflicts with State law, the State law must prevail under principles of preemption. *County Commissioners of Kent County v. Claggett*, 152 Md. App. 70 (2003). SBE is therefore obliged to follow State law in this instance and conduct the special general election in accordance with the Election Law Article and COMAR, rather than in accordance with the Prince George's County Code.

It therefore behooves SBE, the local board, and the Prince George's County Council to collaborate on a solution that schedules the special general election. Any solution must derive from the Council's authority to issue a resolution scheduling an election; but, it must also honor and abide by State law. The failure to do so could have dire consequences, including making the election susceptible to challenge and overturn under Election Law § 12-202.

Should you have any further questions relating to this issue, please don't hesitate to contact me directly.

Sincerely,

Daniel Kobrin
Assistant Attorney General

during a special election to voters subscribed to the permanent absentee ballot list. Elec. Law § 9-311.1(h). And mail-in ballots are generally timely when received by the 10th day after election day. *See* Elec. Law 11-303(c)(1); *see also* COMAR 33.11.03.08B(4).