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House of Representatives
Commonwealth of Pennsylvania
Harrisburg

TO: Mike Turzai
The Speaker

FROM: Clancy Myer
Parliamentarian

A handwritten signature in cursive script, appearing to read "Clancy Myer".

DATE: March 13, 2020

SUBJECT: Special Election

You have requested my opinion regarding the legality and advisability of changing the date for the Special Election scheduled for March 17, 2020, in the 18th legislative district of Bucks County.

The provisions of the Election Code pertinent to special elections for Members of the General Assembly is found in 25 P.S. §2778. This provides, in pertinent part as follows:

“Special elections for Senator and Representative in the General Assembly

Whenever a vacancy shall occur in either house of the General Assembly whether or not it then be in session, the presiding officer of such house shall, within ten (10) days after the happening of the vacancy, issue a writ of election to the proper county board or boards of election and to the Secretary of the Commonwealth, for a special election to fill said vacancy, which election shall be held at the next ensuing primary, municipal or general election scheduled at least sixty (60) days after the issuance of the writ or such other earlier date which is at least sixty (60) days following the issuance of the writ as the presiding officer may deem appropriate: Provided, however, That should the Governor after the issuance of the said writ of election advise the presiding officer that the General Assembly will be called into extraordinary session prior to the date set for such special election, the presiding officer may countermand the writ theretofore issued and shall issue a new writ of election, fixing therein such earlier date therefor as is deemed expedient, but which shall not be less than sixty (60) days after the issuance of said writ.” (underlining supplied)

This section does provide a mechanism for the Speaker to issue a new writ in the event the Governor calls for a special session prior to the date set for the special election. This new special election must be at least sixty (60) days from the issuance of the new writ. Although this provision does not apply directly to the current situation, it does set forth the principle that only the Speaker can set a different date for the special election by the issuance of a new writ, and it is totally at his discretion.

However, because the statute does not specifically allow for the issuance of a new writ under the current circumstance, it is not at all clear that even you have the authority to do so at this time. The Courts have not previously spoken on this issue, so no guidance is available from case law regarding this matter.

Having now established that only you could issue a substitute writ, I do not believe it is advisable to do so for the following reasons:

The first reason is that absentee ballots have not only already been sent out, but they must be filed in the Bucks County Courthouse by 5:00 p.m. today. Thus, these ballots may have to be discarded and voters would probably again have to apply for absentee ballots for the rescheduled election.

This leads into the second reason it is not advisable to reschedule, the confusion this would cause. The election is a mere three days away, and it would be difficult to inform all voters of this sudden change in the date. Some voters would inevitably show up at polling places on March 17th, only to learn of the new election date. Some would not be aware they must again request an absentee ballot. Numerous other questions would arise regarding military ballots and absentee ballots which would become quite confusing.

Finally, there is no guarantee COVID-19 will be any less prevalent sixty (60) days from today than it is now. In fact, as of this writing, I am aware of only two cases of this virus in Bucks County. Using the past history of the spread of this virus as a guide, the outbreak will increase during the coming weeks, thus possibly causing even more health concerns with a new election date, than there are at the present time.

For all of the above noted reasons, I believe it is not only not advisable but also counter productive to issue a new writ of election establishing an election date for later this spring.

If you have any questions, please advise.