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May 26, 2026

SENT VIA E-MAIL

Woodstock Selectboard Members  
c/o Susan Ford, Chair  
Woodstock Selectboard

**Re: Opinion Letter re Application of 24 V.S.A. §§ 961 and 963**  
**Re: Filling of Selectboard Vacancies**  
**ATTORNEY/CLIENT PRIVILEGED COMMUNICATION**

Dear Selectboard Members:

In preparation for meeting with the Town of Woodstock Selectboard ("Board") in an anticipated executive session scheduled for May 26, 2026, at 2:30 p.m., this will provide you with my legal advice in filling two vacancies that currently exist on the 5-member Board. It is my current understanding that the term of one of the vacated Board positions is due to expire in March, 2027 and one is due to expire in March, 2028. It is not yet clear to me what the term lengths are of the two vacant positions.

Vacancies in town offices are covered by 24 V.S.A. §§ 961 and 963.<sup>1</sup> I understand that the question currently being considered by the Board is whether these statutory provisions require or obligate the three remaining Selectboard members to consider and appoint interim selectboard members prior to an anticipated townwide special meeting to vote on new members by ballot in conjunction with the August 11, 2026, primary election.

When a municipal officer resigns the officer's office . . . the office shall become vacant. Notice of this vacancy shall be posted by the legislative body in at least two public places in the municipality, and in and near the municipal clerk's office, within ten days of the creation of the vacancy.

24 V.S.A. § 961(a).

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<sup>1</sup> 24 V.S.A. § 962 simply provides that "[a] town at a special meeting *may* fill a vacancy in a town office." (emphasis added).

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It is my understanding that the vacancies have already been posted in two public places and near the Clerk's office as required within ten days of the creation of the vacancies.

Filling a vacancy which occurs in any town office, requires that:

. . . the selectboard *forthwith* by appointment in writing *shall* fill such vacancy until an election is had; except that in the event of vacancies in a majority of the selectboard at the same time, such vacancies shall be filled by a special town meeting called for that purpose.

24 V.S.A. § 963(a) (emphasis added).

Currently, a majority of the 5-member Board remains in place. Accordingly, the Board "forthwith by appointment in writing *shall* fill such vacancy until an election is had . . ." *Id.* "Statutes generally use 'shall' as imperative or mandatory language. . . . [I]t is a word of command, and it is inconsistent with a concept of discretion." *State v. Rafuse*, 168 Vt. 631, 632, 726 A.2d 18, 19 (1998). *See also, In re Jones*, 2009 VT 113, P.7, 187 Vt. 1 ("As always when interpreting a statute, we attempt to 'determine and give effect to the intent of the legislature.'")(internal citation omitted).

In my opinion, the use of the word "*shall*" imposes a duty on the Board to endeavor to fill a vacancy until an election is had. To that end, I believe it is appropriate in fulfilling that duty to post the vacancies and consider candidates for interim appointment that can garner the approval of all three Board members based on criteria that it establishes for selection.

In interpreting the word "*forthwith*", however, ambiguity is inherent in its meaning depending on its application in any given situation. *See e.g. McCormack v. Scott*, 2024 Vt. Super. LEXIS 197 \*19 (Vt. Super. Ct., Civ. Div., Wash. Unit) (judicially unresolved "skirmish" over statutory meaning of "forthwith" in Governor's dispute with Vermont Senate over appointment of agency secretary). While the term suggests urgency in undertaking a task, it also stops short of setting a time limit for its completion. Accordingly, many courts have adopted the view that it means that an act must be done "within a reasonable time." *See The Law Dictionary* at (<https://thelawdictionary.org/reasonable-time/>). "Forthwith has no legalized meaning . . . and the legislature having used a term incapable of being rigorously complied with to the letter, must have intended to authorize the courts to put a reasonable interpretation upon the term . . . according to the circumstances of the particular case." *Van Wyck v. Hardy*, 1861 N.Y Misc. LEXIS 289, \*228.

Given the current situation, it would be reasonable to interpret *forthwith* as allowing for a reasonable time to make interim appointments provided the Board is also diligent in its pursuit and consideration of applicants pending a vote. Given that any interim appointment will be, at the longest, 76 days, it is reasonable for the Selectboard to consider, among other factors, (1) the

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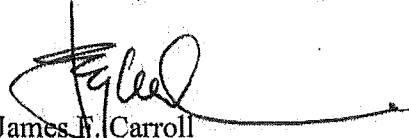
issues that will need to be addressed during the interim period, (2) the ability of the Board to establish a quorum and take affirmative action as needed over that period, and (3) whether the strengths of any particular candidate convinces the 3 remaining Board members that it is in the best interests of the Town to appoint that person on an interim basis.

In short, 24 V.S.A. § 963(a) dictates that the Board engage in reasonable efforts to fill the vacancies, provided there is unanimous agreement on the appointment of a qualified candidate, particularly if the conduct of necessary business will be jeopardized pending a townwide vote on August 11, 2026. It is also my view that the Board has discretion in making its appointment decisions provided it exercises that discretion reasonably based on candidate qualifications and the necessity of conducting Town business in a timely manner.

Pursuant to Vermont's open meetings law, I ask that each of you refrain from speaking with each other concerning the content of this letter pending the Special Meeting scheduled for this afternoon. I plan on attending the meeting using the remote video link on the Town's website. If needed, I can be reached at my office today using the above contact information or on my cell phone at 802-349-9932.

Sincerely,

CARROLL, BOE & KITE, P.C.



James F. Carroll  
JFC:mc

cc: Cliff Johnson, Selectboard Member  
Norm Frates, Jr., Selectboard Member

