

# Town of Benson

## *Vermont*

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**SUBJECT: Selectboard response to correspondence submitted at the regular Selectboard meeting dated 01 April 2024**

**DATE: 15 April 2024**

**TO: Town of Benson**

**REFERENCE: a) Correspondence titled “Presented to Benson Select Board at Regular Meeting, April 1, 2024”**

1. In response to the letter submitted to the Selectboard at the regular meeting on 01 April 2024, herein contains answers to the questions listed on the final page.

**Question #1** - Why was no complaint made regarding improper registration BEFORE the town vote?

**Answer** – The Selectboard cannot answer this question as they were not the ones who brought the complaint. The Selectboard was first notified of this complaint at the Selectboard meeting on 18 March 2024.

**Question #2** – Why don’t minutes reflect the attempt at invalidating the election?

**Answer** – They do. This question was asked prior to the 18 March 2024 meeting minutes being approved. Due to normal Selectboard meetings only taking place every 14 days, draft, unedited versions of meeting minutes are released to the public to comply with Vermont state statute. “Minutes must be available for inspection five calendar days after the meeting. 1 V.S.A. § 312(b)(2).” The minutes in question were finalized to include a more accurate account of the 18 March 2024 meeting, then approved.

**Question #3** – Who made the decision to file a complaint to overturn the election?

**Answer** – After being informed by the town’s attorney, and following the attorney’s legal counsel, the Selectboard initiated the complaint to contest the election.

**Question #4** – Why hasn’t the board of civil authority been called in?

**Answer** – The Selectboard was informed by legal council that the Board of Civil Authority did not have the authority to invalidate an election, therefore, since under the advice of legal counsel the Selectboard was pursuing a request to invalidate the election, the Board of Civil Authority was not called in.

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**Question #5** – What was the rush in all of this?

**Answer** – The Selectboard did not rush this matter, only made the decision to pursue the election invalidation at the time of the meeting with legal counsel. The town’s attorney presented a very clear, factual case in which all information, from the attorney’s perspective, was available. It was recommended the Selectboard begin the process of invalidating the election sooner, rather than later, in order to minimize the amount of time an illegitimate board was in place and also to make the board whole again as timely as possible.

**Question #6** – Why was no substantive investigation conducted?

**Answer** – The Selectboard was informed by the town’s attorney, and it was announced at the 14 March 2024 emergency meeting, that the town’s attorney had investigated the matter.

**Question #7** – Why was Jean-Sebastian never notified of this issue or asked if he had, in fact, registered?

**Answer** – There was a failure to validate Mr. Valois’ registration status at the time of his turning in his petition. Neither this, nor any other details regarding the contested election, were known about by the Selectboard until the 14 March 2024 emergency meeting, at which time the public was made aware during the open meeting portion of the meeting.

**Question #8** – Why wasn’t Jean-Sebastian Valois’ proof of registration entered into the minutes?

**Answer** – Upon hearing Mr. Valois’ speak at the 18 March 2024 meeting during public comment, when he explained that he was in fact registered at the time of turning in his petition, the Selectboard did not require Mr. Valois to prove his claim with documentation. Mr. Valois did not submit his proof of registration for public record as it was not requested, therefore his proof is not captured in the minutes, only the fact he offered to show the Selectboard proof of his registration- which was in October of 2023.

**Question #9** – Why ask the court to INVALIDATE rather than VALIDATE the election?

**Answer** – Under legal counsel from the town’s attorney, the Selectboard was advised to ask the Rutland County Superior Court to invalidate the election because, as far as was known at the time, Mr. Valois was not registered to vote in the town of Benson at the time he submitted his petition to run for Selectboard, a violation of 17 VSA§2681 (a)(1)(B) which provides “A candidate shall be registered to vote in the town he or she is seeking office at or before the time of filing the petition.”

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**Question #10** – How much was the lawsuit expected to cost the taxpayer?

**Answer** – The cost of correcting what was believed to be an invalid election was not a factor in the decision to ensure all residents in the town of Benson had an unquestionably legitimate election, nor was it questioned.

**Question #11** – Was any consideration given to this issue?

**Answer** – No. See answer to question #10.

**Question #12** – Why was NO PUBLIC NOTICE given about any of this?

**Answer** – Information about this contested election was passed to the public immediately upon the Selectboard learning of it on 14 March 2024 during the open meeting portion of the meeting. Regrettably, there was no mechanism in place to inform those not in attendance, other than minutes from the meeting. The Selectboard has agreed to work with certain members of the community to draft and implement procedures to ensure situations such as these are handled in a more transparent and predictable manner in the future.

**Question #13** – Does the Selectboard understand the role of the town attorney?

**Answer** – Yes. Town attorney services are explained in the letter from James W. Barlow dated January 25, 2018 titled “RE: Engagement for Legal Services”. (See attachment)

**Question #14** – Who decided which of his three options to follow?

**Answer** – While no vote was taken, all members were persuaded to comply with the advice of legal counsel.

**Question #15** – The unapproved minutes of March 14<sup>th</sup>, 2024, state that a question was asked regarding the attorney’s recommendation, and the answer given is that the attorney is recommending starting the process to ask for a new election. Is this true? Weren’t there three distinct options offered?

**Answer** – Yes. Yes. The town attorney did not direct the Selectboard to pursue invalidating the election. The Selectboard was presented with three options. The option chosen by the Selectboard was to ask to have the election invalidated and re-hold another election for the reasons discussed in all previous answers in this document.

**Question #16** – Why was there an attempt to change the Keeper of Records from the Town Clerk to Selectboard Assistant, despite this role being defined by VT law?

**Answer** – Per the Approved Minutes Special SB Meeting 3.14.24 “Discussion the documents have become unorganized and missing from the file cabinet containing the selectboard minutes. The

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records are public records but not open to the public to go through. Request for selectboard documents should be made to the Selectboard Assistant.” The was in an attempt to better control the records and ensure accuracy. On 01 April 2024 this topic was brought up again by the Vice Chair. After much discussion, it was agreed upon to have these file cabinets locked, with only the Town Clerk and the Selectboard Assistant having access.

2. The circumstances around the town vote on March 5<sup>th</sup>, 2024, were the result of a series of failures. The Selectboard was brought into this situation to provide a path forward which was meant to be in the best interest of the residents of Benson. Taking no action, or delaying action, on what was declared to the Selectboard to be an invalid election, could have caused a cascade of re-votes and accusations of improper procedures. Invalidating this vote and moving forward with a new vote was the best decision the Selectboard could have made with the information it was presented. Ultimately, this was all for nothing and the vote was legitimate. This would have been discovered earlier and could have been prevented had an internal investigation, or even a couple of phone calls, taken place following the emergency meeting with the town’s attorney. The Selectboard regrets that this was not how this instance unfolded. Be assured, from the Selectboard, there was in no way any attempt to go against the will of the residents of the town of Benson, only an effort to correct what was explained to be a mistake that led to an invalid vote. Transparency is very important to members of this Selectboard. We are thankful for the community who showed up to the 14 March 2024 Selectboard meeting in such strong support of the recently voted-in members. Given the input and shared knowledge of these community members, the Selectboard was able to determine that the original election was valid and were able to immediately reinstate two very deserving members back to their rightful positions as members of the Benson Selectboard.

Attachment: Letter from James W. Barlow dated January 25, 2018 titled “RE: Engagement for Legal Services”.