

May 1, 2022

Please accept the following questions and comments pertaining to agenda item 7.2 on the May 3, 2022, agenda for the Lake County Board of Supervisors.

1. On what date will the vacancy for District 4 supervisor exist in fact?
2. May the Board of Supervisors discuss or take formal action to fill a vacancy before it occurs?
3. Assuming the District 4 seat becomes vacant on or about July 31, 2022, is it possible for the independent nomination procedures in Elections Code §8300 et seq. to be utilized, in their entirety, for candidates seeking to fill the unexpired term should such election be set for Nov. 8, 2022? If not, is it lawful to elect a successor for District 4 where only incomplete nomination procedures can be applied?
4. If the independent candidate nomination procedures described in [Elections Code §8300](#) et seq. cannot be timely completed, in their entirety, prior to the Nov. 8, 2022, general election, shall the unexpired term of the District 4 supervisorial seat be filled by gubernatorial appointment instead?
5. If the Board of Supervisors acts today to call for the Nov. 8, 2022, general election to be used to fill the unexpired term for District 4 supervisor, is it the intent of the Board to also call on the governor to fill the portion of the unexpired term that runs from Aug. 1, 2022, to Jan. 2, 2023? If not, why not?

I look forward to hearing more information from county counsel regarding these questions, as well as input from the board members and the community. For now, please accept the following comments:

1. Supervisor Scott's announced resignation is just that, an announcement. Her seat will become vacant on or about July 31, 2022. Any formal action taken to replace her prior to that date is premature.
2. Supervisor Scott's planned resignation is scheduled to occur 100 days before the Nov. 8, 2022, general election; however, the nomination procedures described in Elections Code §8300, et seq., require more than 100 days to complete. As noted in the [Attorney General's opinion](#) cited in the draft resolution (64 Ops.Cal.Atty.Gen. 1), "In order for the independent nomination procedure to be utilized, ... there must be sufficient time during which the proper nomination procedures could be completed." In other words, filling the unexpired term at the next general election was permissible in part because the full nomination process could be applied after the vacancy occurred. The opposite is true here.
3. The board packet includes a San Benito County resolution that asked the governor to fill an appointment to that county's board. In like manner, your board can ask the governor to make an appointment for the remainder of 2022 so that the board is not left short-handed until January 2023. Considering there is insufficient time to use independent nomination procedures for the Nov. 8 election, however, the better approach is to ask the governor to make an appointment for the full unexpired term.

As stated above, any formal action is premature. There is plenty of time to do additional research on any legal issues regarding the Nov. 8 election and its suitability for filling the future board vacancy. Respectfully, I would ask your board take no action today beyond directing staff to do such research.

Sincerely,

Michael S. Green, Lakeport