



American Legion Baseball
Tar Heel Boys State
High School Oratorical
Veterans' Service

**THE AMERICAN LEGION
DEPARTMENT OF NORTH CAROLINA**
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DATE: April 20, 2020

MEMO TO: Department Executive Committee

FROM: Department Judge Advocate Gaither M. Keener, Jr.

SUBJECT: Potential Questions of Post Elections

Elections:

May a post have an election of officers; and if so, what are the procedures under the current Stay At Home Order and limitation of mass gatherings?

I have already answered how a post may conduct elections of officers by my legal opinion in respect to the forms of Post elections during the time frame of this pandemic medical emergency; pursuant to the CDC recommendations; and the NC Governor's Executive Order 131. Said Executive Order which currently expires thirty days after March 30, unless renewed or modified by our Governor is still the current law. See attached legal opinion of April 7.

However, on April 13, 2020, the Board of Directors of The American Legion Department of North Carolina, Inc. (the DEC), met and passed Resolution #3 of the DEC which cancelled the Department Convention. (See DEC Resolution #3.) The Department of North Carolina DEC has all Judicial, Executive, Legislative and Administrative powers in between all Department Conventions. The DEC is the Board of Directors duly elected by the Delegates pursuant to NCGS 55A.

The jurisdiction of a Post comes under the authority of the Department Executive Committee. (The National Constitution Article III)

The Department's Constitution requires yearly election of Post Officers; however, the officers of a Post can only be installed after the Convention.

As to Post Officers, our Constitution is clear, NC Constitution Article V, Section 6 states; "...Post Officers elected SHALL be installed in their respective offices not more than 30 days after the adjournment of the Department Convention"

A Post Constitution and Bylaws shall not be in conflict with the National Constitution and Bylaws and the Department Constitution and Bylaws. (Article V Section 7).

So therefore, post elected officers and PEC members remain in their respective offices, same as National's officers per the National Constitution and Bylaws (Article VI, Section 2) and the Department Constitution and Bylaws (Article X, Section 2), until the end of Department Convention of 2021.

What if the Commander resigns or does not want to serve?

If the Commander resigns, the post judge advocate shall call a meeting of the post executive committee within 30 days and preside over said meeting to declare the post commander's office vacant. The PEC shall elect a new post commander to serve the remainder of the unexpired term. The newly elected post commander shall be installed as soon as possible. This is a requirement under the Department Constitution and Bylaws, Article 1, Section 2 for the Department and therefore the requirements for a post.

What if the officer resigns is not the Post Commander but another officer?

If the officer is also a Board member of the Post (PEC) and a voting member of that Board, then in that event, the Post shall follow NCGSA-8-11, Vacancy on Board, unless the articles of incorporation or its Bylaws provide otherwise.

So, the District Commander needs to review the Post's two key documents, the Articles of Incorporation and its Bylaws.

Most Post Bylaws require the PEC to elect a new member to the vacancy per NC55A-8-11 (2). Some post Bylaws are silent. If the Post Bylaws are silent, then the PEC should elect a member to complete the term of office. (See NC Constitution and Bylaws Article VII, Section 13).

Some Post Bylaws allow the Commander to make a nomination. That is proper so long as the PEC confirms and elects that member to that office. See NC Department Constitution and Bylaws Article VII, Section 13).

Some Posts may have Bylaws where there is a procedure to allow a second Vice Commander to become first Vice Commander. That is acceptable, as it is similar to the procedures under the Department's Bylaws Article 1 Section 3 for the proper succession of an NEC person.

IF A POST HAS A DIFFERENT PROCEDURE THAN OUTLINED ABOVE, IT SHALL BE REVIEWED BY THE DEPARTMENT JUDGE ADVOCATE FOR VALIDITY AND DETERMINING IF SAID PROCEDURE IS A VIOLATION OF THE NATIONAL AND DEPARTMENT CONSTITUTION.

So, it makes no difference if a Post has an election of officers between April 27, 2020 to May 31, 2020, since officers cannot be installed and take their position at a post level. Same as the current situation with national officers and department officers.

Can a Post Officer be removed from his/her position?

Yes, so long as the post follows the proper requirements of the Constitution and Bylaws. Removal as we all know must follow Article V, Section 11 and Section 12.

District Commanders, make sure when and if you speak with a Post, you have Resolution #3, the minutes of April 13, and your Department's Constitution and Bylaws as a reference.

What if a Post's Officers or the PEC of a Post fail to comply?

If that occurs, then the district Commander shall immediately report such situation to the Department Commander. The Commander will then provide such information for the DEC to review and determine if the Post Charter shall be suspended, etc. per the National and

Department Constitutions and said individual members may be brought up for charges by the DEC under Article V, Section 11 and Article 6, of the North Carolina Bylaws.

Cc: Commander James D. Moore, Jr.
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DAC
PDCs