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MEMORANDUM

TO: Honorable Goodhue County Commissioners
Scott Arneson, Goodhue County Administrator

FROM: Erin Kuester, Assistant County Attorney III
Stephen F. O'Keefe, County Attorney

RE: Vacancy in Office of County Commissioner - District Five

DATE: August 8, 2022

Background

Goodhue County has five (5) individual Commissioner Districts to ensure that all citizens have equal representation in county government. In November, 2020, Commissioner Paul Drotos was re-elected to the office of Goodhue County Commissioner from the Fifth District to serve the district residents living in the 1st, 2nd, and 3rd Precincts; 3rd Ward; the 1st, 2nd, and 3rd Precincts; 4th Ward of the City of Red Wing; and Wacouta Township. The term expires in January, 2025.

On July 19, 2022, at a regular meeting, Commissioner Drotos requested the Board to appoint Susan Betcher as acting Interim County Commissioner for District Five due to his inability to serve because of serious illness. Later that same day, Commissioner Susan Betcher was sworn in to office. On August 4, 2022, Commissioner Paul Drotos died, ending the interim appointment and creating a vacancy in the office of Fifth District Goodhue County Commissioner.

Applicable Law

Minnesota law requires a special election to be held when there is a vacancy in the office of the County Commissioner and one year or more remain in the unexpired term. (*See generally*, Minn.Stat. §375.101 (2022)). The timing of the special election is dictated by state law. The earliest date on which a special election can be held is Tuesday, February 14, 2023. If three or more candidates file for the office, February 14, 2023, will act as the primary and the special election would then occur on

Tuesday, April 11, 2023. Brian Anderson and staff will be able to instruct the Board in more detail on that process at a later date.

In the interim, there is an option to appoint a person to fill the vacancy until the special election, to ensure that the residents in District Five have representation in county government. Since there is now a vacancy in the office of the County Commissioner for District Five, Goodhue County does have the option to appoint an interim county commissioner to serve until the special election is held.

Should the County Board wish to explore this option, Minnesota law requires the County Board to give proper statutory notice and hold a public hearing relating to the qualifications of prospective appointees. (*See*, Minn. Stat §375.101, Subd. 4 and Minn. Stat. §375.101, Subd. 5 (2022)). Proper statutory notice includes notification of all public officials in the affected district, including town boards and city council members. The public hearing must be held within 30 days after the vacancy occurs.

Minnesota law further requires that during the public hearing, the County Board must “invite public testimony from persons residing in the district in which the vacancy occurs relating to the qualifications of prospective appointees to fill the vacancy”. Minn. Stat. §375.101, Subd. 5 (2016). It is clear that any individual who is selected by appointment to fill the vacancy in District Five must be eligible to take office at the time of the appointment. Therefore, to be eligible for the interim County Commissioner Appointment, all prospective appointees must be qualified to hold elective office and must be a resident of District Five.

If the County Board is unable to choose between the eligible prospective appointees or decides not to make an appointment, the vacancy will be filled by special election as noted above.

Course of Action

If the Board elects to temporarily fill the vacancy until the special election, the following process is recommended:

- (1) A duly noticed Public Hearing be scheduled within 30 days of the death of Commissioner Drotos, pursuant to Minn. Stat. §375.101, Subd. 5 (2022). Notice must be given to all public officials affected by the vacancy in District Five, including but not limited to, town boards and city council members. Due to timing issues, it is recommended the Board set this hearing for September 6, 2022.
- (2) Qualified, prospective appointees for the vacancy are permitted to provide letter of interest with their address/proof of residency in district, interest in serving, and qualifications for job of interim county commissioner with a deadline of Wednesday, August 31, 2022, at 4:00 p.m. Said materials will be provided to current County Board members for review in advance of the Board Meeting and Public Hearing;
- (3) County Board holds the Public Hearing during its regular meeting to hear from persons residing in District Five where the vacancy exists. While the meeting is public, only individuals living in District Five may provide public testimony.
- (4) County Board decides to adopt one of two options:

Option 1- Appointment of Interim County Commissioner for District Five

The Goodhue County Board moves, by majority vote, to appoint an interim county commissioner to serve until a special election is held.

The County Board must select an individual from the slate of qualified prospective appointees who filed letter of interest and supporting materials by the deadline set by the Board. Said individual must be a current resident of District Five and must be otherwise qualified to serve.

The appointment term will be until a Special Election is held and a successor sworn into office.

Option 2- No Appointment of Interim County Commissioner for District Five

The Goodhue County Board is not able to choose between the eligible prospective appointees or decides not to appoint an interim county commissioner for District Five. The seat will remain vacant until the Special Election is held.

Recommendation

The current vacancy in District Five created by the death of Commissioner Paul Drotos requires the holding of a special election. The Board will set that date by resolution at a future Board meeting with input from the Elections Department. Under Minnesota law, the special election cannot be held until February 14, 2023, at the earliest. As a result, the residents of District Five would be without representation for many months. Many of the most important decisions affecting citizens occur at the county level of government. Each district has unique perspectives, challenges, and issues impacting it. It is my recommendation that Board members adopt Option 1 above, and authorize administration to begin the appointment process.