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## **League of Wisconsin Municipalities**

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### **Appointments & Vacancies FAQ 1**

#### **What is the proper procedure for filling vacancies in city or village offices?**

Vacancies in the office of mayor and alderman in second, third and fourth class cities are filled by appointment by the common council or by special election. Wis. Stat. sec. 17.23(1)(a). A person appointed to fill a vacancy in such office may be appointed to serve either the residue of the expired term or until a successor is elected and qualified at a special election. Sec. 17.23(1)(a).

Unless otherwise ordered by the council, the date for holding a special election to fill a vacancy is dictated by date the vacancy occurs.

If a vacancy occurs before June 1st in the year preceding expiration of the term of office, the special election shall be held on the Tuesday after the first Monday in November. Sec. 17.23(1)(a). If a vacancy occurs on or before December 1, and the term does not expire the following April, the special election is held the first Tuesday in the following April. Sec. 17.23(1)(a).

State law specifies that no special election to fill a vacancy may be held at the same time as the regular election for the office; instead, the regular election determines who will succeed to the office. Secs. 17.23(1)(a) and 64.05(2).

Vacancies in other elective second, third and fourth class city offices are filled by the mayor subject to council confirmation. The person appointed serves until the office is again filled by election. A successor to the appointee will be elected at either the next regular election for the office or at a special election ordered by the common council. Sec. 17.23(c). Vacancies in appointive city offices are filled in the manner used for making regular full-term appointments. Secs. 17.23(1)(c) and (d).

Vacancies in all elective village offices are filled by appointment by a majority of the members of the village board for the residue of the unexpired term or, if the vacancy occurs before December 1st and the term does not expire the following April, the board can opt for a special election in April to fill the vacancy. Sec. 17.24. If the vacancy occurs after December 1<sup>st</sup> and before June 1st, the village board can order a special election to be held on the Tuesday after the first Monday in November. As with cities, vacancies in appointive village offices are filled in the same manner used for making the original appointment.

Vacancies in the office of municipal judge are filled by appointment by the governing body until a new judge can be chosen at a special election. If the vacancy occurs on or before December 1 the special election can be held concurrently with the next spring election. If the vacancy occurs after December 1, the special election is held at the 2<sup>nd</sup> succeeding spring election or, if the vacancy occurs between December 1 and April 15, the governing body can order a special election to fill the vacancy on the Tuesday after the first Monday in November. Secs. 8.50(4)(fm), 17.23(1)(bm) and 17.24(1).

#### **Method of Appointment**

Questions often arise concerning the method that a governing body must employ when appointing a person to fill a vacancy on the governing body. Although the statutes provide that vacancies on common councils and village boards can be filled by appointment by the governing bodies of the city or village, the statutes do not set forth a procedure by which the appointments must be made. Since no method of appointment is prescribed by statute, municipal governing bodies may determine their own procedure for nominating candidates and selecting a person to fill the vacancy.<sup>1</sup>

It should be emphasized, however, that sec. 19.88 prohibits a governing body from filling a vacancy by secret ballot.<sup>2</sup> Secret ballots may only be used for the limited purpose of electing the officers of the governing body, such as the council president. Therefore, if a municipal governing body uses a paper

ballot when selecting a person to fill a vacancy in a municipal office, the ballot must contain the name of the person voting as well as the name of the person voted for, so that the vote of each member would be ascertainable.<sup>3</sup>

A related question concerns the number of votes necessary to fill a vacancy on the governing body. For village boards, sec. 17.24 specifies that vacancies in elective village offices may be filled by appointment by a majority of the members of the board. The statutes are silent with respect to the number of votes necessary to fill a vacancy on the common council. Section 17.23 merely provides that vacancies on the council shall be filled by appointment by the council. The common law rule in Wisconsin is that in the absence of a statute, ordinance, or rule requiring the vote of a majority or greater number of the members of a governing body, a majority of a quorum is sufficient to elect.<sup>4</sup>

Finally, when a person is elected to fill a vacancy on the governing body, the appointment is complete once the result of a sufficient vote is ascertained and announced, and no resolution declaring that person to be appointed is necessary.<sup>5</sup> In addition, the weight of authority seems to be that once a governing body has appointed a person to fill a vacancy in a municipal office, the governing body cannot rescind its vote or reconsider its action and elect another person.<sup>6</sup>

#### End Notes

1. Appointments and Vacancies 237
2. 65 Op. Att'y Gen. 131 (1976).
3. 63 Op. Att'y Gen. 570 (1974).
4. *State ex rel. Burdick v. Tyrell*, 158 Wis. 425, 149 N.W. 280 (1914).
5. *Id.*, 158 Wis. at 433.
6. *State ex rel. Schneider v. Darby*, 179 Wis. 147, 154, 190 N.W. 994 (1922).

#### Other Appointments & Vacancies FAQs

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