



APPOINTING A DEPUTY CLERK OR TREASURER

The power to appoint a deputy clerk or treasurer is controlled by statute. The clerk's and treasurer's powers are similar, but are found in different statutes. This resource considers them together because of their similarities. These notes apply to deputy clerks, deputy treasurers, and deputy clerk-treasurers.

1. Statutory Basis: Each type of deputy has a basis in statute or other authority.

A. Deputy Clerk: The power to appoint a deputy clerk is found at Minn. Stat. § 367.12. "Each town clerk may appoint a deputy, for whose acts the clerk shall be responsible, and who, in the clerk's absence or disability, shall perform the clerk's duties."¹

B. Deputy Treasurer: The power to appoint a deputy treasurer is found at Minn. Stat. § 367.161. "Each town treasurer may appoint a deputy not currently serving as an elected official of the town for whose acts the treasurer is responsible, and who, in case of the treasurer's absence or disability, shall perform the treasurer's duties."²

C. Combined Deputy Clerk-Treasurer: Some townships have combined their clerk and treasurer offices into a single clerk-treasurer position by selecting Option Township D Township government.³ In towns that have a combined clerk-treasurer position, the clerk-treasurer does have the implied authority to appoint a deputy clerk-treasurer.⁴ However, it also appears possible for the Clerk-Treasurer to appoint a deputy clerk and a deputy treasurer.

2. Clerk & Treasurer Responsible for Deputy's Acts: The clerk and treasurer are responsible for the actions of the deputy. The clerk and treasurer are expected to supervise the work of the deputies.

3. Appointing: Only the clerk or treasurer may appoint their deputy. Supervisors never have power to appoint the deputy.⁵ Since the clerk or treasurer must be responsible for the

¹ Minn. Stat. § 367.12.

² Minn. Stat. § 367.161.

³ See Minn. Stat. § 367.31 and MAT Information Library Document GI 1000.

⁴ See, e.g., Op. Atty. Gen., 469b, April 12, 1967.

⁵ See Op. Att. Gen., 443B-11, July 10, 1958.

deputy's acts, only the clerk or treasurer makes the appointment. Clerks and treasurers serving in Option B Townships should work with their supervisors before appointing a deputy. This is because Option B clerks and treasurers are considered employees of the townships whose employment may be ended by the township board. Option B clerks and treasurers should ensure the board agrees with the decision to appoint a deputy before doing so.

4. **Only One Deputy Allowed:** The clerk and treasurer may appoint only one deputy. The statutes say they may appoint "a deputy", which is interpreted to mean one deputy. While this language seems limiting the fact is that the clerk or treasurer can effectively change who serves as their deputy at nearly any time. Since the clerk or treasurer may appoint or remove deputies at their pleasure, the clerk or treasurer can make quick and temporary removals and appointments to accommodate situations when neither the clerk or treasurer nor the appointed deputy can be present to serve. The clerk or treasurer would simply remove the current deputy and appoint a new deputy to serve for the time the they and the usual deputy are unavailable.
5. **Discharge / Firing:** Only the clerk or treasurer may remove the deputy. Neither the Supervisors nor the voters can directly remove a deputy. As a general guideline, the clerk or treasurer should consider and treat the deputy in the same way an employee would be treated. Following that guideline, the deputy could be removed for good cause or no cause, but never a bad cause. Bad causes are those that would be illegal, prohibited, or amount wrongful termination. Questions about employment law practices should be referred to the township attorney.
6. **Automatic Discharge:** The deputy serves only if the clerk or treasurer who appointed him or her is still in office. When the clerk or treasurer resigns or completes the term of office, the deputy's power is automatically removed. Township boards sometimes assume, mistakenly, that if a clerk or treasurer dies while in office, resigns, or is no longer eligible to serve, the deputy remains available to serve the township board until they appoint a new clerk or treasurer.
7. **Residency:** The deputy does *not* need to be a resident of the town. This allows the clerk or treasurer more options to find a suitable backup. For example, the clerk or treasurer from a neighboring town may serve as the deputy.
8. **Compensation:** The supervisors set the pay for the deputy clerk or treasurer. The supervisors cannot prohibit the appointment of a deputy or prevent the deputy from serving, but they may refuse to pay the deputy. MAT recommends township boards agree to fair compensation, training, and support of deputies so the township has qualified backup support ready to stand in or take over the clerk or treasurer offices when needed. Deputies should be paid for training, which may include attending educational events offered by MAT. To provide training, the Board will need to agree to pay the deputy at the same time as the clerk or

treasurer is being paid. This is allowed. In some towns, the deputies regularly support the board and the clerks or treasurers, so they act similar to part-time employees of the township.

- 9. Powers of the Deputy:** Deputies exercise all powers of the clerk or treasurer who appointed them when the clerk or treasurer is unable to perform the duties because of absence or disability. The clerk or treasurer may direct the deputy to perform some or all actions of the office
- 10. Duties of the Deputy:** Deputies are held to the same legal standards of the clerk's or treasurer's office when performing those duties.
- 11. Oath of Office:** The deputy should perform the oath of office and be issued a certificate of appointment when the deputy is appointed and each time the clerk or treasurer is re-elected. Sample documents are in the Elections section of the MAT Information Library.
- 12. Incompatibility of Offices:** A person who is already serving as an elected or appointed officer for the town, like a supervisor, cannot serve as the deputy clerk or treasurer. It is possible for a supervisor, clerk, or treasurer from a different township to serve as the deputy.
- 13. Simultaneous Service as Deputy Clerk and Deputy Treasurer:** MAT recommends that the Clerk and Treasurer appoint different people to serve as their deputies. There is no statute or case prohibiting a person from being appointed as deputy clerk and deputy treasurer, but the concept poses some problems. In townships that have separate clerk and treasurer offices, the voters have not approved of a combined clerk-treasurer, so the appointment of a person as both the deputy clerk and deputy treasurer may be considered as undermining the structure of separate offices. It is also possible the offices of deputy clerk and deputy treasurer would be deemed incompatible if the matter were ever considered by a court or the Attorney General's Office.

Some townships, however, cannot find two people to serve as the deputies. In those cases, it's better to have a deputy than to not have one. A person appointed as both deputy clerk and deputy treasurer must not serve in both roles on the same matter. For example, he or she could not sign as the clerk and treasurer on a document or check. He or she may not reconcile financial statements for both offices during the same period. In any matter, the deputy would try to serve in only one role.