

Chapter Four

Running and Holding Township Office: Duties, Eligibility, and Vacancies

§ 4-1. Considerations to Run for Town Office

With any elected position, there are certain items to consider before running for township office:

- There is a time commitment to being on the town board. Generally, your fellow officers and neighbors will determine the time required for performing your duties. There are regularly scheduled meetings (usually one per month) and special meetings (as determined by the board of supervisors) and board meetings.
- Be a good listener for concerned citizens who may have a question or problem. Perform the statutory duties of office along with other assigned tasks.
- Make time to attend regularly scheduled training sessions provided through the Minnesota Association of Townships and the local county unit. Training provides guidance in performing your duties efficiently and effectively.
- If you hold another public office, it might be considered incompatible with serving on the town board. *See § 4.4 on incompatible positions.*
- If you have a conflict of interest serving on the town board, i.e., owning a business that is currently doing business with the township. *See Chapter Eleven on Conflicts of Interest.*

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- When you run for public office remember you are entering into a public trust, which is created for the benefit of the public, not for the benefit of the officeholder. *Olson, In re*, 300 N.W. 398, 400 (Minn. 1941). Violations of that public trust can subject you to criminal prosecution.

Making decisions to deliver important services that improve the lives of your friends and neighbors can be rewarding. Serving on the town board is an important way you can preserve your quality of life and build your community.

§ 4-2 Eligibility to Serve

The Minnesota Constitution sets the eligibility requirements to hold public office and authorizes the Legislature to establish qualifications for holding local government office. Minn. Const. Art. 7, § 6; Minn. Const. Art. 12, § 3.

To be eligible to run for town office you must be:

- 1) an eligible voter;
- 2) filed as a candidate for only one position at the same election;
- 3) be at least 21 years old at the time of assuming the office; and
- 4) be a resident of the town for at least 30 days before the election.

What happens if no one runs for office?

There are a couple possibilities. First, an eligible person could win an election as a write-in candidate. The person may purposely run a write-in campaign, or be elected by surprise after receiving a winning number of write-in votes. There are many “surprise” winners in township government. The winner of an election may decline the office, though.

Second, if there is no write-in winner, or the winner declines to accept the office, then the Board appoints a successor pursuant to Minn. Stat. § 367.03.

§ 4-3 Filing for Office

Minn. Stat. § 205.13 governs the filing process. For March elections, candidates must file no more than 70 days, but not less than 56 days, before the election.

For November elections, the affidavit of candidacy must be filed not more than 98 days, but not less than 84 days before the election.

Notice of the filing period, the offices up for election, and where to file must be published in the local newspaper at least two weeks before the first day to file affidavits of candidacy and must be posted at the town’s posting places at least 10 days before the first day to file. ***The clerk’s office must be open for filing from 1:00 to 5:00 p.m. on the last day of the filing period.***

Those interested in running for a township office can contact the town clerk to file for an office. To file, a person completes an affidavit of candidacy and hands it to the town clerk along with a \$2 filing fee. Those who properly file for office will have their name printed on the town’s election ballot.

§ 4-4. Incompatible Positions

One limit placed on town officers is their ineligibility to hold certain other public offices while serving on the town board. Such a situation is known as holding incompatible positions. The courts and the Legislature have reasoned it is a violation of the public trust for one person to hold multiple public offices if those offices are incompatible. “Public offices are incompatible when their functions are inconsistent, their performance resulting in antagonism and a conflict of duty, so that the incumbent of one cannot discharge with fidelity and propriety the duties of both.” *State ex rel. Hilton v. Sword*, 157 Minn. 264, 266, 196 N.W. 467 (1923).

Such antagonism is more likely to exist when one of the positions “can interfere with or has any supervision over the other.” *Kenny v. Goergen*, 31 N.W. 210, 211 (Minn. 1886). The

idea is that the “inconsistence in the functions of the two offices . . . [would] prevent one person from properly performing the duties of both.” *Id.*

If an officer takes a second public office that is deemed incompatible with the first, the first office is automatically deemed vacated. This may seem like a harsh restriction, but it is based on legitimate concerns over protecting the public’s interests.

“Office” for the purposes of determining compatibility includes all elected offices and those appointed positions involving independent authority under law to determine public policy or to make a final decision not subject to the supervisory approval or disapproval of another. *McCutcheon v. City of St. Paul*, 216 N.W.2d 137, 139 (Minn. 1974).

It can be very difficult to determine if two offices are incompatible. Some incompatible officers are stated in statute. For instance, the positions of town supervisor for most towns and school board member are compatible. Minn. Stat. § 367.033. That means one person can serve as both a town supervisor and school board member at the same time. However, the position of school board member and town supervisor in a town having adopted powers under Minn. Stat. Chap. 368 (often referred to as urban towns), or that was granted those powers by special legislation, are incompatible.

Other legislative pronouncements of compatibility/incompatibility of town offices with other public offices include:

1. Soil and water conservation district supervisor position is compatible with the office of town clerk or supervisor in a town with a population of under 2,500, except for districts located in Anoka, Hennepin, Ramsey, or Washington County. Minn. Stat. § 103C.315, subd. 6. The person must refrain from any matter on the conservation district board that has a substantial effect on both the district and the town.

2. Anyone who has the power alone or as a board member to make the appointment to fill a vacant elected position is prohibited from being appointed to the position. Minn. Stat. § 471.46. The officer cannot take the position even if he/she resigns from office before the appointment is made. For example, a supervisor could not be appointed to fill a vacancy in an elected clerk or treasurer position, and a clerk could not be appointed to fill a vacant supervisor position.
3. The position of county commissioner is incompatible with any other elected office, including town office. Minn. Stat. § 375.09.
4. Park district commissioner is incompatible with any other public office, including town office. Minn. Stat. § 398.05.

An officer should consider whether one of the positions reports to, makes budgetary decisions for, hires or appoints, contracts with, or performs activities that are inconsistent with the other position.

If the town officer decides to take both positions and a suit challenging the decision is brought, a court could find the positions incompatible and declare the officer to have vacated the first of the two public offices. If the two positions were held for some time, it is not clear what a court would do to the officer for having exercised the powers of the first office without having the legal right to the office. Because of the potential consequences of holding incompatible positions, officers should seek legal assistance before taking a second public office.

A person holding public office may run for another public office even if the two positions are incompatible. However, before the person can assume the second office, the officer must resign from the first position. *Hoffman v. Downs*, 145 Minn. 465, 467, 177 N.W. 669 (1920). See, <http://www.house.leg.state.mn.us/hrd/pubs/comptoff.pdf> for a full listing of incompatible offices.

§ 4-5. Entering Public Office

Before a town officer is permitted to exercise the powers of the office, he or she must be properly instated into the office. The timing of the procedures that must be followed depends on whether the town conducts its election in March or November. In either case, anyone attempting to undertake the duties of office before being properly installed can be found guilty of a crime punishable by up to one year imprisonment and a fine up to \$3,000. Minn. Stat. § 609.44.

Within seven days after the election, all candidates must file a certificate of filing form with the town clerk. Minn. Stat. § 211A.05, subd. 1. If more than \$750 was received or spent in the campaign for office, an additional report must be filed. Minn. Stat. § 211A.02.

Once the certificate of filing form is filed with the town clerk and after the contest period has run, assuming there were no challenges, the clerk is to issue the successful candidate a certificate of election. Minn. Stat. § 205.185, subd. 3 (b).

In March elections, the person has ten days after receiving the certification of election in which to take the oath of office and file it with the town clerk. Minn. Stat. § 367.25, subd. 2. If the oath is not taken and filed within the ten-day period, the person is deemed to have refused the office. A candidate elected in March assumes the office upon the proper filing of the oath with the town clerk.

In towns that hold their election in November, the term of office begins on the first Monday in January. Again, the oath of office must be taken and filed with the clerk before undertaking the duties of office. Minn. Stat. § 367.25, Subd. 1.

Because town clerks are, by their positions, ex officio notaries, town officers often take their oath before the clerk. The previous office holder is required to turn over all town documents and property in his or her possession to the new officer.

Before a person may undertake the duties of town clerk or town treasurer office, a bond in an amount determined by the town board and conditioned on the faithful discharge of the duties, must be filed with the county auditor. Minn. Stat. §§ 367.10; 367.15. A majority of townships (99.7%) participate in the self-insurance Bond Program provided by the Minnesota Association of Townships Insurance and Bond Trust (MATIT). The program provides \$100,000 of bond coverage for the clerk and treasurer positions in participating towns. MATIT files the bond with the county auditor for each of the participating towns as required by law.

Incumbents must take the oath after each election. Every time the position is up for election or appointment, entry into office is treated the same even if the incumbent was reelected to the office.

§ 4-6. Duties of Town Supervisors

By law, supervisors “have charge of all town affairs not committed to other officers by law.” Minn. Stat. § 366.01, subd. 1. Town supervisors are charged with the duty to make decisions on behalf of the town and are responsible for fulfilling its duties. Common duties include awarding contracts, authorizing township expenditures, adopting ordinances and resolutions.

Rather than being a task-oriented position, the

office of town supervisor involves setting policy by making choices from a wide range of options. The challenges for supervisors include identifying what the available options are based on the town’s legal authority, following the correct process, taking the required steps to implement the selected option, and implementing the decision. Along the way, there are various legal policy questions, financial limitations, and political pressures that can make

this a very difficult process.

Supervisors must choose a board chair. The statutes do not set an selection process for the chair's position, so the board has discretion to use the process it prefers. The person appointed as the town board chair performs certain duties in addition to the usual responsibilities of a supervisor. Those include serving as the presiding officer for town board meetings and signing checks and other documents on behalf of the board. When designating a chair, boards should also appoint a vice-chair to serve in the chair's absence.

The chair retains all the powers of a supervisor to make, second, and vote on motions. A board may not adopt rules to limit the powers the law grants to this or any other elected position (i.e., it cannot adopt a rule prohibiting the chair from making a motion). However, it is equally important to note that while the stat-

utes assign the chair certain tasks to perform on behalf of the board, *the chair is not automatically granted any superior or independent authority over the other supervisors.*

As a practical matter, the chair often accepts more tasks than other supervisors, but the assignment of additional tasks must not be mistaken for the power to control a matter. For instance, the chair working with the clerk to draft an agenda for a meeting does not give the chair the authority to refuse to place items on the agenda the other supervisors would like to discuss. Except for the statutorily designated tasks, and to the extent the board expressly assigns additional duties or powers, the chair is the same as the other supervisors .

Refer to Document Number **TO1000** for a sample resolution creating a vice-chair position.

§ 4-7. Duties of the Town Clerk

A town clerk performs a variety of duties for the township. Some of the clerk's duties are listed in Minn. Stat. § 367.11, but that list is deceptively incomplete. There are many other references to clerk's duties spread throughout the statutes, and the clerk frequently performs other tasks needed for the town to function effectively and efficiently.

The duties of the town clerk described in Minn. Stat. § 367.11 are:

- 1) act as clerk of the town board and keep in the clerk's office a true record of all of its proceedings;
- 2) unless otherwise provided by law, to have custody of the records, books, and papers of the town and file and safely keep all papers required by law to be filed in the clerk's office;
- 3) to record minutes of the proceedings of every town meeting in the book of town records and enter in them at length every order or direction and all rules and regulations made by the town meeting;

- 4) to file and preserve all accounts audited by the town board or allowed at a town meeting and enter a statement of them in the book of records;
- 5) to record all requests for a special vote or special town meeting and properly post the requisite notices of them;
- 6) to post, as required by law, fair copies of all bylaws made by the town, and make a signed entry in the town records, of the time when and the places where they were posted and record in full all ordinances passed by the town board in an ordinance book;
- 7) to furnish to the annual meeting of the town board of audit every statement from the county treasurer of money paid to the town treasurer, and all other information about fiscal affairs of the town in the clerk's possession, and all accounts, claims, and demands against the town filed with the clerk;
- 8) Perform any other duties required by law.

This list is just the beginning of the clerk's responsibilities. For instance, the clerk's role in

conducting elections in the town is a significant undertaking with many duties and procedural requirements. New clerks are advised to seek out training on their duties to assist them.

In addition, having computer skills is often an asset for the clerk because of the many financial and record-keeping duties.

Clerks do not have a vote on the board except for one instance. The only time clerks can vote is as a member of an appointment committee formed to fill a vacancy on the town board. Minn. Stat. § 367.03, subd. 6. The clerk serves on the nomination committee with the remaining supervisors and is authorized to

make motions and should vote on who should be appointed to fill the supervisor vacancy.

Minn. Stat. § 358.15 gives town clerks the power to act as *ex officio* notaries. An *ex officio* notary is a notary public, the only difference is how the person becomes a notary. By virtue of their office, town clerks have the powers of a notary public and clerks can notarize documents and administer oaths of office. In order to use this power, town clerks must obtain a notarial stamp or they will not be able to perform any duties as an *ex officio* notary. See **TO5000** for additional information.

§ 4-8. Duties of the Town Treasurer

Town treasurers are mostly responsible for properly handling and accounting for the town's funds. The treasurer does not have a vote on the Town Board, but treasurers keep a register of all demands for payment made to the town and of all checks the town issues. The primary duties of the treasurer are listed in Minn. Stat. § 367.16:

- 1) Receive and take charge of all money belonging to the town, or which is required to be paid into its treasury, and to pay it out only upon the lawful order of the town or its officers;
- 2) Preserve all books, papers, and property related to or filed in the treasurer's office;
- 3) Keep a true account of all money received as treasurer and the way it is disbursed, in a book provided for that purpose. Provide the account with the treasurer's vouchers to the town board of audit at its annual meeting for adjustment;
- 4) Deliver all books and property belonging to the treasurer's office and all money in the treasurer's hands as treasurer, to a qualified successor;
- 5) Keep in a suitable book a register of all town orders presented for payment that

cannot be paid for want of funds. Record the date presented, and endorse on the back of each the words "not paid for want of funds," with the date of the endorsement, signed by the treasurer;

- 6) Draw from the county treasurer, from time to time, money received by the county treasurer for the town, and receipt for it;
- 7) Make and file with the town clerk, within five days before the annual town meeting, a written statement of the money received from the county treasurer and all other sources, and all money paid out as town treasurer. The statement must show the money received, from whom, on what account, and when each was received. The statement shall also show the payments, to whom, for what purpose, when, and the amount of each that was made, and the unexpended balance on hand; and
- 8) Perform other duties required by law.

Other duties of the town treasurer include paying judgments ordered against the town (Minn. Stat. § 365.41) and selecting a depository for town funds if the board fails to select one within 30 days of the annual town meeting (Minn. Stat. § 366.07).

§ 4-9. Deputy Clerk and Deputy Treasurer

Two deputy positions are also available in town government. Both the town clerk and the town treasurer have the authority to appoint a deputy, supervisors do not. Minn. Stat. §§ 367.12; 367.161. All clerks and treasurers should appoint a deputy.

The person appointed as the deputy clerk is authorized to perform all the duties of the clerk's position in the absence or incapacity of the clerk. Likewise, the deputy treasurer performs the duties of the treasurer when that person is not available. For example, if the clerk becomes ill and is unable to perform the duties of office, the appointed deputy clerk steps in to perform all those duties until the clerk returns.

Neither of these positions is mandatory, but both are valuable positions to fill. Having a deputy clerk and a deputy treasurer can allow towns to avoid the disruption that can come from long absences by the clerk or treasurer. This is particularly important when one considers the need for signatures by each of these officials for a town to issue a check.

When appointing a deputy, the clerk and treasurer need to identify someone who is trustworthy and likely to be available in the officer's absence (e.g., not the officer's spouse). To make the appointment, a certificate of appointment should be prepared as provided in Minn. Stat. § 367.25, subd. 1 and delivered to the appointee. The person appointed must take and file the oath of office with the town clerk within 10

days of receiving the certificate. Failing to take and file the oath within 10 days is deemed a refusal of the office.

Occasionally, questions arise regarding when exactly the deputy can or should step up to perform the duties of office and whether the deputy can work alongside the elected officer to perform duties of office. Because the clerk and treasurer decide for themselves who they are going to appoint to the position of deputy, there is usually a very good working relationship between the two and the issues are usually resolved informally. The town board sets the pay for deputies and can indicate the circumstances under which they are eligible for pay. The town board can, for example, make it clear the town will not pay both the treasurer and deputy treasurer to attend the same board meeting. However, the board should allow for payment of both the clerk or treasurer and the deputy so the deputy can be adequately trained.

The deputy is different from an assistant. Being a deputy only means that the person has the authority to fill the duties of the office when needed. Only the clerk or treasurer may decide on and appoint a deputy. To have an assistant requires the approval of the supervisors. An assistant does not have the power to act as the clerk or treasurer unless that person is also appointed as the deputy.

Refer to Document Number **TO2000** for additional information on appointing deputies.

Resources on Town Elections

- 1) Your town clerk
- 2) Your county auditor, who is the chief elections officer for the county, who can provide you with election-related information.
- 3) The MN Secretary of State's Office Town Election Guide (www.sos.state.mn.us). The Elections Division of the Secretary of State's Office answers questions regarding town elections (651-215-1440).
- 4) Contact a MAT staff attorney if there are any

questions regarding the authority and duties of town officers during elections.

The MAT website (www.mntownships.org) contains:

- a calendar showing the dates and deadlines for town elections.
- The Information Library has documents and links about elections (Certificate of Election, Certificate of Appointment, Oath of Office, etc.).
- Training opportunities for town officers throughout the year.

§ 4-10. Vacancies in Office

A vacancy in a town office can occur for several reasons including resignation, loss of residency, death, or expulsion by court order for having violated certain laws. When a vacancy does occur, it is the responsibility of the board of supervisors to appoint someone to fill the vacant position until the next election regardless of how many years are left in the term. Minn. Stat. § 367.03, subd. 6.

If a supervisor position becomes vacant, an appointment committee comprised of the remaining supervisors and the town clerk seeks to fill the vacancy. Remember, the appointment of a supervisor is the only time the clerk ever votes. The clerk does NOT vote to break any ties on other questions during the period of the vacancy.

If a vacancy occurs after the filing notice has gone out for an upcoming town election, the person appointed to fill the vacancy serves until the following town election since it is too late in the election cycle to put the position up for election in the current year. At the next election, the position must be put up for election for the remainder of the term. If the position would normally have been up for election at the next election, it is placed on the ballot in the usual way.

If the board fails for any reason to fill the position by appointment, a special election can be called to fill the vacancy. Minn. Stat. § 367.03, subd. 6(f). A special election is called in one of the same three methods available for calling a special town election. Once called, the election must be conducted in the manner required for the annual town election.

The person appointed to fill a vacancy must be eligible to hold office in the town, meaning the person must be an eligible voter in the town, is at least 21 years old, and has lived in the town for at least 30 days.

After the board or appointment committee passes a motion to appoint the person, the clerk issues the person a certificate of appointment. Once the appointee receives the certificate, he or she has ten days in which to take the oath of office in front of a notary public and to file the oath in the clerk's office. Once the oath is filed, the person is entitled to receive the documents and other property associated with the position and to assume the full powers and duties of the office.

A vacancy also occurs in a town office if an officer is unable to serve in the office or attend board meetings for a 90-day period because of illness, or because of absence from or refusal to attend board meetings for a 90-day period. Minn. Stat. § 367.03, subd. 7. The board must pass a resolution to declare the vacancy, and then must appoint someone to the position using the same procedure it would to fill a permanent vacancy. However, the person appointed to fill the temporary vacancy serves for the remainder of the unexpired term or until the ill or absent officer is again able to resume duties and attend board meetings.

If the original officer returns, the board must pass a resolution determining the officer's ability to resume the office and removing the temporary officer from the position. If the original officer does not resume the office, the temporary officer serves for the remainder of the term.

Can an elected town board official still serve if he or she moves out of the township?

Minn. Stat. 351.02, subd. 4 provides that every office shall be considered vacant if the incumbent ceases to be an inhabitant "of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged."