

# Pennsylvania Municipal Vacancies 101

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With election season just around the corner, Pennsylvania municipalities often face the issue of municipal vacancies. While some municipalities have highly contested elections, others, particularly small boroughs, may struggle to find individuals even willing to serve. Municipalities often have questions regarding the rules for these openings, which follow rules from multiple statutes and codes. To add to the confusion, the rules for filling vacancies differ greatly depending on the type of municipality and the exact timing of when the vacancy occurs. This article provides a broad overview of how vacancies occur, how they are filled, and for how long the new official will serve.

## **How Vacancies Occur**

Vacancies on municipal governing bodies can occur in several ways. Most commonly, they occur due to the death, resignation, or relocation of the elected official. The timing of the vacancy depends on the cause. Where a vacancy occurs by the death of an elected official, the official and operative date of the vacancy is the date of death. Where a vacancy occurs by resignation, the date of the vacancy is either (i) on the date the municipality's governing body accepts the resignation as a whole by vote at a public meeting or (ii) 45 days from the date the resignation was tendered, whichever comes first. An elected official may withdraw their resignation in writing prior to the governing body's acceptance, so long as 45 days have not passed.

Relocations are the trickiest vacancies to date, as in those cases, the vacancy occurs when the elected official has established a permanent domicile outside of the municipality. Most commonly, the operative date of vacancy is the date they moved into a new home. However, in other cases, this analysis may be more nuanced, particularly if they continue to own property inside the municipality and it is unclear when they have permanently moved without intent to return. Complicating matters further, the relocating elected official may often choose to submit a letter of resignation. If the letter is submitted before the relocation occurs, then the standard rules for a letter of resignation apply. If it is sent after the relocation, the vacancy should still be dated to when the elected official relocated, and the resignation letter is irrelevant to that analysis.

## **Filling the Vacancy**

Regardless of how the vacancy occurs, from that date, the municipality's governing body is on the clock. More specifically, the governing body has 30 days to act from the date of the vacancy before the authority to fill the position passes.

How the remaining elected officials of the governing body find a person to fill the vacancy is within the governing body's discretion. The governing body is not required to advertise the position, hold interviews, or follow any other specific process to fill the vacancy. It is, however, important to note that if a quorum of the governing body is participating in deliberations about the vacancy, those deliberations are subject to the Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701-716, and must occur at an advertised public meeting to allow for public comment, and the discussion must be listed on the agenda 24 hours in advance. While soliciting and accepting resumes and letters of interest, along with the consideration of multiple candidates, is an advisable best practice, these actions are not legally required.

When filling the vacancy of an elected official at the local municipal level, there is no requirement that the replacement be of the same political party as their predecessor. The only requirement is that the new appointee be eligible to serve in the seat, which means they must be a registered elector in the municipality and meet the residency requirements of the position, which typically requires that they be a resident of the municipality for over a year. If the position is elected by ward, they would also need to meet the residency requirements of that ward. The

rules for certain County offices may differ, so always consult your Solicitor regarding any vacancy in your municipality.

Typically, any official action of a municipality requires only a standard majority (i.e., a majority of the members of the governing body at a meeting). However, in some municipalities, the vote must consist of a majority of the entire board, not just those who are in attendance at a meeting. Thus, for a five-person board with a single vacancy, a vote of three elected officials would be required, even if only three are in attendance at the public meeting. If the vote to fill a vacancy results in a tie, the vacancy has not been filled.

If, for whatever reason, the Board is unable to vote to appoint a replacement within 30 days, the next 15 days provide an opportunity for the municipality's vacancy board to fill the position. At the start of every year, each municipality must appoint a vacancy board chair to serve in this specific capacity. They then chair a meeting with the remaining members of the board. Ideally, this allows them to break any tie and render a decision. If, however, the municipality is still unable to fill the position, then the Court of Common Pleas of the County may fill the vacancy upon the request of the municipality. The Court may also act upon a petition by ten or more qualified electors.

### **Term of Office**

The timing of the vacancy raises one more question. How long does the appointed official serve? This rule is governed by 53 Pa.C.S. § 3132, which designates that an appointed official shall serve until the first Monday in January following the next municipal election that occurs at least 50 days after the date of the vacancy. While awkwardly phrased, this procedure is simple. Municipal appointments run through a calendar year and expire with the swearing in of a successor at a reorganization meeting. A municipal election in Pennsylvania occurs in the fall of each odd-numbered year. What this means in practical terms is that, if a vacancy occurs more than 50 days before the fall municipal election, the appointment will last until the following January, when a new successor is sworn in. That successor will then serve the remainder of the prior official's term, or a full term if the prior official's term would have been completed by that point. If, however, the vacancy occurs less than 50 days before the next municipal election, the selection of the successor will be two years forward to the next municipal election.

One final complication, however, concerns the question of how candidates for any special election are named on the ballot. If the vacancy occurs prior to the primary, candidates can be named on the ballot via nominating petitions or papers, as in any other election. If, however, it occurs too late for candidates to appear on the primary ballot, there will be no municipal primary election. Instead, the candidates will be chosen by the major political parties in proceedings governed by their respective bylaws, and there will be no primary to select nominees.

While the above covers the broad outlines of filling a vacancy, this area of law is filled with nuance, and a precise reading of the specific codes must be followed. In addition, coordination with County election bureaus is vital to ensure that the correct positions and terms are listed on the ballot.

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