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How do we fill a vacancy (or vacancies) on the selectboard?

The process that must be used to fill vacant selectboard seats depends on the number of vacancies that exist. Following are three scenarios that illustrate the different procedures that may be required.

Assume that the selectboard consists of three members. One member resigns, creating a single vacancy. State law provides that the selectboard must give notice of the vacancy by posting such notice within ten days of the creation of the vacancy in the town clerk's office and at least two public places in town. 24 V.S.A. § 961(a). The notice serves to inform the public of the change in leadership and of the right to petition for a special town meeting to elect someone to the position. 24 V.S.A. § 961(a). Interestingly, even though the public has the right to demand an election to fill the vacant seat, the selectboard has an obligation to appoint someone to that seat "forthwith" (i.e., as soon as possible). 24 V.S.A. § 963. It is up to the remaining selectboard members to decide whether to solicit or interview candidates for the vacant seat, and they may use the public notice of vacancy to advertise the availability of the office to interested applicants. Note that the selectboard may fill the vacancy prior to posting notice, though not prior to the creation of the vacancy. Posting the notice of vacancy is required in all instances, regardless of whether the selectboard fills the vacancy prior to posting the notice.

The appointee will remain in office until the next annual town meeting (if no special town meeting is called), at which time the voters will elect a replacement to fill the balance of the unexpired term, if any, or to a new term. If a special town meeting is called before the next annual town meeting, the newly elected selectboard member will still only serve the remainder of the original term.

Now, imagine a situation where *two* of the three members of the selectboard resign simultaneously, creating a majority of vacant seats on the board. In this situation, another provision of the statute applies: "... [I]n the event of vacancies in a majority of the selectboard at the same time, such vacancies shall be filled by a special town meeting called for that purpose." 24 V.S.A. § 963.

Selectboards have authority under state law to call special town meetings; however, to do so requires the selectboard to take action, i.e., take a vote to set a date for the special town meeting. This type of action – indeed any binding selectboard action – requires a quorum of the selectboard. (A quorum is the majority of the total membership of the board – in this example, a quorum is two.) How then does less than a quorum of the selectboard call a special town meeting? Out of necessity, we think the statute impliedly grants the remaining selectboard member the authority to act on behalf of the board in order to call a special town meeting. 17 V.S.A. § 2643(a). Alternatively, special town meetings may also be called by a petition of five percent of the voters in town. 17 V.S.A. § 2643(a).

In a final example, assume that all *three* members of the selectboard resign at the same time. State law provides that in such a (rare) situation “the Secretary of State shall call a special election to fill any vacancies....” To ensure the town continues to function in the interim, the Secretary of State must also “appoint and authorize the town clerk or another qualified person to draw orders for payment of continuing obligations and necessary expenses until the [selectboard] vacancies are filled.” 24 V.S.A. § 963.

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