

Vacancies

SEAT III

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Plan for the class

- What is “Holding over”?
- What is a vacancy?
- How do you know when you have one?
- What if the officer disagrees?
- Not all vacancies are treated alike.
- Filling vacancies in certain offices.
- Resources

Holding Over

69.1A HOLDING OVER.

Except when otherwise provided, every officer elected or appointed for a fixed term shall hold office until a successor is elected and qualified, unless the officer resigns, or is removed or suspended, as provided by law.

Qualifying

- Each officer, elective or appointive, before entering upon the officer's duties, shall **qualify** by taking the prescribed oath.....

[63.1]

What is a vacancy?

- Official in an elective office dies, resigns, or in some other way leaves office before the end of the term
- Elective office = Election is the usual method for selecting the officer
- Vacancies in appointive offices (never elected) are not included in this discussion

Death

- For most offices there is no specific process for official notice of a death.
- However, if a something happens to create a vacancy in a state senate or house seat (except a resignation) the county auditor shall notify the governor of the vacancy and the cause. [69.5]

Resignations

- Question: To whom does an elected official submit a resignation?
- Answer: It depends.

Auditors & Resignations

Officer	Submits resignation to
Township Clerk or Trustee	County Auditor
County Attorney, Recorder, Sheriff, Treasurer, Supervisors	County Auditor
County Auditor	Board of Supervisors
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Other Resignations

See chart in vacancy section of

- **Auditor's Guide to Special Elections**

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What the Code says

69.2 What constitutes a vacancy...

1. Every civil office shall be vacant if any of the following occur:

WHAT CONSTITUTES A VACANCY

- a.* A **failure to elect** at the proper election, or to appoint within the time fixed by law, unless the incumbent **holds over**.

WHAT CONSTITUTES A VACANCY

b. A **failure** of the incumbent or holdover officer **to qualify** within the time prescribed by law.

Qualify means to take the oath of office.

See 63.1

WHAT CONSTITUTES A VACANCY

c. The **incumbent ceasing to be a resident** of the state, district, county, township, city, or ward by or for which the incumbent was elected or appointed, or in which the duties of the office are to be exercised. This section shall not apply to appointed city officers.

See also 39.26 & 39.27

WHAT CONSTITUTES A VACANCY

d. The **resignation or death** of the incumbent, or of the officer-elect before qualifying.

WHAT CONSTITUTES A VACANCY

e. The removal of the incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant.

**See Chapter 66—Removal from office
69.2(2) ...Hearing—Appeal**

WHAT CONSTITUTES A VACANCY

f. The **conviction of the incumbent** of a felony, an aggravated misdemeanor, or of any public offense involving the violation of the incumbent's oath of office.

See also 66.1A(5) Conviction of a felony as a reason for removal from office

WHAT CONSTITUTES A VACANCY

g. The board of supervisors declares a vacancy in an elected county office upon finding that the **county officer has been physically absent from the county for sixty consecutive days** except in the case of a medical emergency; temporary active military duty; or temporary service with another government service, agency, or department.

WHAT CONSTITUTES A VACANCY

h. The incumbent **simultaneously holding more than one elective office** at the same level of government. This subsection does not apply to the county agricultural extension council or the soil and water conservation district commission.

See 39.11

OAG 93-9-1(L)

WHAT CONSTITUTES A VACANCY

- i.* An incumbent statewide elected official or member of the general assembly simultaneously **holding more than one elective office.**

Prohibited by 39.11

Summary—Vacancy Causes

a. Failure to elect	f. Conviction of crime
b. Failure to qualify	g. Absent 60 days (county only)
c. Incumbent ceases to be a resident	
d. Resignation or death	h. >1 office (local)
e. Removal from office	i. > 1 office (state)

How do we know?

69.2 WHAT CONSTITUTES VACANCY -- HEARING -- APPEAL.

2. If the status of an officeholder is in question, the entity or officer responsible for making an appointment to fill the vacancy shall decide whether a vacancy exists.

Starting the process

- **Motion** by the appointing entity or officer.
- **Petition signed by twenty-five registered voters of the jurisdiction.** The appointing entity or officer shall convene within thirty days to consider whether a vacancy exists.

Details

- Process
 - Publish notice of a public hearing
 - Notify the officer whose status is in question
 - Conduct a public hearing
- Publish decision

If Decision = vacancy

Must include

- Date the vacancy occurred and
- What action be taken to fill the vacancy.

Officer may appeal

- May appeal to District Court within 20 days
- Bond required to delay execution of decision

When there is a vacancy

How do we replace
the officer?

Two basic choices

- Election
- Appointment until
 - Next regular election
 - Next pending election

Appoint until regular election

- County public hospital trustees
- Soil and water conservation Commission
- Township officers

Filling Township Vacancies

- Township offices can be either elective or appointive.
- Voters must approve change from election to appointment.

Filling Township Vacancies

- Never hold a special election
 - Never add township vacancy to the ballot at a special election
 - Appointment is until the next general election
- 69.8(5)

Filling Township Vacancies

- Appointments are made by
 - By township trustees (if only 1 trustee is gone)
 - Board of Supervisors
 - Trustees fail to appoint within 30 days
 - Two or more trustees gone
 - Supervisors may take over township functions until the next general election

Appoint until next pending

- Agricultural extension council
- Merged area school board members
- School board members—with exception
 - If the board fails to make the appointment within 30 days the school secretary calls a special election. Special election must be 30 to 40 days later.

69.12(1) Vacancies, 1st sentence

- When a vacancy occurs in any nonpartisan elective office of a political subdivision of this state, and the statutes governing the office in which the vacancy occurs require that it be filled by election or are silent as to the method of filling the vacancy, it shall be filled pursuant to this section.

69.12(1), second sentence

- As used in this section, "*pending election*" means any election at which there will be on the ballot either the office in which the vacancy exists, or any other office to be filled or any public question to be decided by the voters of the same political subdivision in which the vacancy exists.

Same political subdivision

Political subdivision =

Township

City

School District

County

Tenure of appointee

- An officer filling a vacancy in an elective office shall continue to hold until the next election at which such vacancy can be filled, as provided in section 69.12, and until a successor is elected and qualified.

[69.11]

69.12 Officers Elected to fill Vacancies—Tenure

- When a vacancy in a nonpartisan office must be filled by election
- Filing deadlines
- More details

69.12(1), first sentence

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69.12(1), first sentence

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69.12(1), first sentence

- it shall be filled pursuant to this section.

How to fill vacancies

- Back to the Auditor's Guide

Auditor's Duty to Report

331.510 REPORTS BY THE AUDITOR.

The auditor shall make:

- (2) A report to the secretary of state of the name, office, and term of office of each appointed or elected county officer within ten days of the officer's election or appointment and qualification.