

AGENDA ITEM 20

Date 8/12/2020

32-560. Elective office; vacancy; when.

Every elective office shall be vacant, except as provided in section [32-561](#), upon the happening of any one of the following events at any time before the expiration of the term of such office:

(1) Resignation of the incumbent;

(2) Death of the incumbent;

(3) Removal of the incumbent from office;

(4) Decision of a competent tribunal declaring the office of the incumbent vacant;

(5) Incumbent ceasing to be a resident of the state, district, county, township, or precinct in which the duties of his or her office are to be exercised or for which he or she may have been elected;

(6) Failure to elect at an election when there is no incumbent to continue in office until his or her successor is elected and qualified;

(7) The candidate who received the highest number of votes is ineligible, disqualified, deceased, or for any other reason unable to assume the office for which he or she was a candidate;

(8) Forfeiture of office as provided by law;

(9) Conviction of a felony or of any public offense involving the violation of the oath of office of the incumbent; or

(10) Incumbent of a high elective office assuming another elective office as provided in subsections (2) through (4) of section [32-604](#).

Source:Laws 1994, LB 76, § 156; Laws 1997, LB 221, § 1; Laws 1997, LB 764, § 51; [Laws 2002, LB 251, § 1](#).

Cross References

Political subdivisions, civil offices, applicability of provisions, see section [13-404](#).

State civil offices, applicability of provisions, see section [81-2901](#).

Annotations

1. Right to hold over

2. Vacancies by removal

3. Miscellaneous

1. Right to hold over

A sheriff appointed by the county board, to fill a vacancy caused by the death of the incumbent, is an incumbent to continue in office until his successor is elected and qualified under subdivision (6) of this section. *State ex rel. Boone County Attorney v. Willott*, 103 Neb. 798, 174 N.W. 429 (1919).

The county commissioners, elected at the first election for officers of a new county, hold their offices only until their successors are elected, at the next general election, and have qualified. *State ex rel. Nichols v. Field*, 26 Neb. 393, 41 N.W. 988 (1889).

2. Vacancies by removal

Question as to the removal by a district judge of his family residence from the judicial district ipso facto creating a vacancy in the office of district judge was raised but not decided. *Wustrack v. Hall*, 95 Neb. 384, 145 N.W. 835 (1914).

Redistricting of county, where there was no removal by incumbent, does not vacate office of commissioner. *State ex rel. Connolly v. Haverly*, 62 Neb. 767, 87 N.W. 959 (1901).

The removal of a county commissioner from the district in which he was elected vacates his office even though he may continue to reside within the county. *State ex rel. Malloy v. Skirving*, 19 Neb. 497, 27 N.W. 723 (1886).

3. Miscellaneous

This section is silent about compensation. *Hogan v. Garden County*, 268 Neb. 631, 686 N.W.2d 356 (2004).

This provision preserves office for the holder thereof engaged in military service upon his return under certain conditions. *State ex rel. Johnson v. Chase*, 147 Neb. 758, 25 N.W.2d 1 (1946).

Conduct on the part of nominee for the office of presidential elector which clearly indicates that his intention, if elected, is to vote for the candidates of another political party, creates a vacancy in the office of each as a candidate, and a judicial determination of the existence of the vacancy is necessary. *State ex rel. Nebraska Rep. State C. Com. v. Wait*, 92 Neb. 313, 138 N.W. 159 (1912), 43 L.R.A.N.S. 282 (1912).

The general law providing for the filling of vacancies was intended as a regulation for all vacancies and includes offices created after its enactment unless full provision is contained in the law creating the office. State ex rel. Mortensen v. Furse, 89 Neb. 652, 131 N.W. 1030 (1911).

An office does not become vacant for failure to elect a successor if there is an incumbent to continue in office until his successor is elected and qualified. State ex rel. Shaw v. Rosewater, 79 Neb. 450, 113 N.W. 206 (1907).

This section and section 11-115 are in pari materia and should be construed together. Section 11-115 merely provides another cause of vacancy in addition to those included within this section. State ex rel. Berge v. Lansing, 46 Neb. 514, 64 N.W. 1104 (1895), 35 L.R.A. 124 (1895).

The ineligibility of a candidate declared elected does not create a vacancy where there is an incumbent to continue in office. Richards v. McMillin, 36 Neb. 352, 54 N.W. 566 (1893).

The words ceasing to be a resident of refer to an absence with an intention to remain away indefinitely as distinguished from a temporary absence for a definite period. Prather v. Hart, 17 Neb. 598, 24 N.W. 282 (1885).

32-567. Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

- (1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;
- (2) In county offices, by the county board;
- (3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;
- (4) In the membership of the city council, according to section [32-568](#) or [32-569](#), as applicable;
- (5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;**
- (6) In offices in public power and irrigation districts, according to section [70-615](#);
- (7) In offices in natural resources districts, according to section [2-3215](#);
- (8) In offices in community college areas, according to section [85-1514](#);

- (9) In offices in educational service units, according to section [79-1217](#);
- (10) In offices in hospital districts, according to section [23-3534](#);
- (11) In offices in metropolitan utilities districts, according to section [14-2104](#);
- (12) In membership on airport authority boards, according to section [3-502](#), [3-611](#), or [3-703](#), as applicable;
- (13) In membership on the board of trustees of a road improvement district, according to section [39-1607](#);
- (14) In membership on the council of a municipal county, by the council; and
- (15) For learning community coordinating councils, according to section [32-546.01](#).

Source: [Laws 1994, LB 76, § 163](#); [Laws 1996, LB 900, § 1046](#); [Laws 2001, LB 142, § 38](#); [Laws 2007, LB641, § 1](#); [Laws 2014, LB946, § 10](#); [Laws 2015, LB575, § 12](#).

Cross References

Public Service Commission, vacancy, how filled, see section [75-103](#).
State Board of Education, vacancy, how filled, see section [79-314](#).

Annotations

1. State offices

2. County and precinct offices

3. Township offices

4. Municipal offices

1. State offices

All vacancies in the office of railway commissioner should be filled by appointment by the Governor until the next general election at which a commissioner can be elected for the unexpired term. State ex rel. Mortensen v. Furse, 89 Neb. 652, 131 N.W. 1030 (1911).

Under former law, when a vacancy in the office of district judge was caused by the resignation of an incumbent more than thirty days before a general election, the Governor could fill the vacancy by appointment until the election, at which time the vacancy should be filled by election. State ex rel. Bates v. Thayer, 31 Neb. 82, 47 N.W. 704 (1891).

2. County and precinct offices

When a new position is created, and the act creating it does not provide otherwise, the position is vacant from the instant of its creation. *State ex rel. Redmond v. Smith*, 207 Neb. 21, 295 N.W.2d 297 (1980).

Upon an increase in number of county commissioner districts, appointment of additional commissioners should be made pending the next general election. *Ludwig v. Board of County Commissioners*, 170 Neb. 600, 103 N.W.2d 838 (1960).

Section 23-207, and not this section, governs vacancies in the office of county supervisor. *State ex rel. Hunker v. West*, 62 Neb. 461, 87 N.W. 176 (1901).

Under former law, a vacancy in the office of county judge should be filled by election where the unexpired term exceeded one year. *State ex rel. Berge v. Lansing*, 46 Neb. 514, 64 N.W. 1104 (1895), 35 L.R.A. 124 (1895).

The office of clerk of the district court is a county office and, under this section, the county board has the power to fill a vacancy therein. *State ex rel. Dodson v. Meeker*, 19 Neb. 444, 27 N.W. 427 (1886).

3. Township offices

A vacancy in the office of township supervisor may be filled in the manner provided by this section or by the electors at a special town meeting. *State ex rel. Godard v. Taylor*, 26 Neb. 580, 42 N.W. 729 (1889).

This section governs vacancies in town offices created by the erection of new towns, and, where the town offices are all vacant, it is the duty of the county clerk to fill the vacancies by appointment. *State ex rel. Davis v. Forney*, 21 Neb. 223, 31 N.W. 802 (1887).

4. Municipal offices

Vacancies in the office of councilman in cities of the second class are to be filled by appointment by the mayor and council, and an appointment made by the councilman without the concurrence of the mayor is void. *State ex rel. Einstein v. Northup*, 79 Neb. 822, 113 N.W. 540 (1907).

A vacancy in the office of supervisor of a city in a county under township organization can be filled by appointment by the mayor and council. *State ex rel. Truesdell v. Plambeck*, 36 Neb. 401, 54 N.W. 667 (1893).

Vacancies in the office of city treasurer should be filled by appointment by the mayor and council until the next general election for city purposes. *State ex rel. Sexauer v. Buck*, 13 Neb. 273, 13 N.W. 406 (1882).

32-574. Vacancies.

Unless otherwise provided by law, all vacancies shall be filled within forty-five days after the vacancy occurs unless good cause is shown that the requirement imposes an undue burden.

Source: [Laws 2015, LB575, § 13.](#)

23-2,100. Termination of township board; public hearing; notice; resolution; termination date; conduct of business; disposal of property; discontinuance of township organization of county.

(1) If a township board has become inactive, the county board of supervisors shall hold a public hearing on the issue of termination of the township board. Notice of the hearing shall be published for two consecutive weeks in a newspaper of general circulation in the county. For purposes of this section, **a township board has become inactive when two or more board positions are vacant and the county board has been unable to fill such positions in accordance with sections 32-567 and 32-574 for six or more months.**

(2) If no appointment to the township board has been made within thirty days after the public hearing because no resident of the township has provided written notice to the county board that he or she will serve on the township board, the county board may adopt a resolution to terminate the township board. The resolution shall state the effective date of the termination.

(3) Between the date of the public hearing and the date of termination of the township board, the business of the township shall be handled according to this subsection. No tax distributions shall be made to the township. Such funds shall be held by the county board in a separate township fund and disbursed only to pay outstanding obligations of the township board. All claims against the township board shall be filed with the county clerk and heard by the county board. Upon allowance of a claim, the county board shall direct the county clerk to draw a warrant upon the township fund. The warrant shall be signed by the chairperson of the county board and countersigned by the county clerk.

(4) Upon termination of a township board, the county board shall settle all unfinished business of the township board and shall dispose of all property under ownership of the township. Any proceeds of such sale shall first be disbursed to pay any outstanding obligations of the township, and remaining funds shall be credited to the road fund of the county board. Any remaining township board members serving as of the date of termination shall deposit with the county clerk all township records, papers, and documents pertaining to the affairs of the township and shall certify to the county clerk the amount of outstanding indebtedness in existence on the date of termination. The county board shall levy a tax upon the taxable property located within the boundaries of the township to pay for construction and maintenance of township roads within the township and any outstanding indebtedness not paid for under this subsection. The county board shall have continuing authority to construct and maintain township roads within the township

and to perform the functions provided in section [23-224](#) until such time as the township board is reconstituted by general election that results in the filling of all vacancies on the township board.

(5) If more than fifty percent of the township boards in a county have been terminated, the county board shall file with the election commissioner or county clerk a resolution supporting the discontinuance of the township organization of the county pursuant to subsection (2) of section [23-293](#).

Source

- [Laws 2010, LB768, § 1;](#)
- [Laws 2012, LB936, § 1;](#)
- [Laws 2015, LB65, § 1;](#)
- [Laws 2015, LB575, § 4.](#)

Agenda Item # 20
Date 8/12/20

To: Fred Mitty
Dodge County Courthouse

8-7-2020

From: Nancy Schlotfeld

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2020 AUG -7 PM 12:19
FRED MITTY, COUNTY CLERK

Fred

For personal reasons I am tendering my resignation from the Elkhorn Township Board, effective immediately.

Thank you

Nancy Schlotfeld