

FILLING VACANCIES IN ELECTIVE OFFICES

❖ STATE OFFICIALS

• Governor

In case of a vacancy in the office of governor, the Lieutenant Governor succeeds to the office of Governor. The line of succession to the office of governor proceeds from the Lieutenant Governor to the President of the Senate and then to the Speaker of the House of Representatives.

Ohio Constitution,
Art. III, §15(A);
Art. XVII, §2

• Lieutenant Governor

Whenever there is a vacancy in the office of the lieutenant governor, the governor shall nominate a lieutenant governor, who shall take office upon confirmation by vote of a majority of the members elected to each house of the General Assembly.

Ohio Constitution,
Art. III, §17a;
Art. XVII, §2

Offices of *both* the governor and lieutenant governor vacant *election for remainder of unexpired term (even-numbered years):*

If the offices of *both* the governor and lieutenant governor become vacant during the first 20 months of a term, an election for the remainder of the unexpired term will be held at the next general election in an even-numbered year to elect a new governor-lieutenant governor team.

Ohio Constitution
Art. III, §17

• Attorney General

• Auditor of State

• Secretary of State

• Treasurer of State

A vacancy that occurs in any of these state executive offices shall be filled by appointment by the governor.

Ohio Constitution,
Art. III, §18
Art. XVII, §2

Election for remainder of unexpired term (even-numbered years):

If a vacancy occurs more than 40 days before the next general election in an even-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

❖ OHIO GENERAL ASSEMBLY

• Member, Ohio Senator

• Member, Ohio House of Representatives

A vacancy in the Senate or in the House of Representatives for any cause shall be filled by election by the members of the Senate or the members of the House, as the case may be, who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant.

Ohio Constitution,
Art. II, §11

The appointee serves until a successor is elected and qualified or, if no election for the unexpired term is held, through the end of the term.

Election for remainder of unexpired State Senate term (even-numbered years):

A vacancy occurring before or during the 20 months of a Senatorial term shall be filled temporarily by election by the eligible members of the Senate. An election for the remainder of the unexpired term shall be held at the next general election in an even-numbered year and the member-elect shall take office on January 1 following such election.

Election for remainder of unexpired State Representative term: None.

❖ **UNITED STATES CONGRESS**

• **U. S. Senate**

A vacancy in the office of U.S Senator shall be filled by appointment by the governor. At the next regular state election held more than 180 days after the vacancy occurs, a special election to fill the vacancy shall be held, provided, that when the unexpired term ends within one year immediately following the date of such regular state election, an election to fill the unexpired term shall not be held, and the appointment shall be for the unexpired term. The newly elected U.S. Senator term begins on December 15.

U.S. Constitution,
Art. I, §2 and §3,
Am. XVII;
R.C. 3521.02

• **U.S. House of Representative**

When a vacancy in the office of representative to congress occurs, the governor shall issue a writ of election directing that a special election be held to fill such vacancy in the territory entitled to fill it on a day specified in the writ. Such writ shall be directed to the board of elections within such territory. The board shall give notice of the time and places of holding such election as provided in R.C. 3501.03. The election shall be conducted as in case of a regular state election.

U.S. Constitution,
Art. I, §2 and §3,
Am. XVII;
R.C. 3521.03

❖ **JUDICIAL OFFICIALS**

- **Ohio Supreme Court** (Statewide)
- **Court of Appeals** (District)
- **Court of Common Pleas** (County)

The governor fills the vacancy by appointment and gives notice of such appointment to the Secretary of State.

Ohio Constitution,
Art. IV, §13
R.C. 107.08

Election for remainder of unexpired term (even-numbered years):

If a vacancy occurs more than 40 days before the next general election in an even-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

• **County Court Judge**

(NOT the same as a Judge of County Court of Common Pleas)

The governor fills the vacancy by appointment and gives notice of such appointment to the Secretary of State.

Ohio Constitution,
Article IV, § 13
R.C. 1907.11
R.C. 107.08

Election for remainder of unexpired term (even-numbered years):

If a vacancy occurs more than 40 days before the next general election in an even-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

- **Municipal Court Judge**

The governor fills the vacancy by appointment and gives notice of such appointment to the Secretary of State.

Ohio Const.,
Art. IV, § 13
R.C. 1901.10
R.C. 107.08

Election for remainder of unexpired term (odd-numbered years):

If a vacancy occurs more than 40 days before the next general election in an odd-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

- **Municipal Clerk**

In certain municipal courts, a vacancy in the office of municipal court clerk is filled by appointment of the central committee of the political party which nominated the last occupant of the office. If the office was not held by a person nominated at a primary election, the court makes the appointment.

R.C. 1901.10,
R.C. 1901.31(B)

Election for remainder of unexpired term (odd-numbered years):

If the vacancy is subject to an election for the remainder of the unexpired term, that election will be held at the first general election in an odd-numbered year more than 135 days after the vacancy occurs.

NOTE: In certain municipal court districts the municipal court clerk is not elected but is appointed by the court. Please check the statutes for the proper procedures for a particular municipal court clerk.

❖ COUNTY OFFICIALS

- **Auditor**
- **Clerk of Court of Common Pleas**
- **Commissioner**
- **Coroner**
- **Engineer**
- **Prosecuting Attorney**
- **Recorder**
- **Sheriff**
- **Treasurer**

The county central committee of the political party that nominated the last occupant of the office as a candidate of the office has the authority to appoint a replacement for that office. The committee's appointment must be made between five and 45 days after the vacancy occurs and must be certified in writing to the board of elections and the Secretary of State.

R.C. 305.02

If the last occupant of the office was elected as an independent candidate, the county commissioners make the appointment. *Exception:* In the case of a vacancy in the office of county commissioner who was elected as an independent candidate, the appointment is made by the prosecuting attorney and the remaining commissioners, or a majority of them. The appointment must be at the time the vacancy occurs and certified by the appointing authority in writing to the board of elections and the Secretary of State.

Election for remainder of unexpired term (even-numbered years):

If a vacancy occurs in a county elective office more than 40 days before the next general election in an even-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

❖ **TOWNSHIP OFFICIALS**

- **Trustee**
- **Fiscal Officer**

- The initial authority for filling a vacancy in *any* township office is vested in the board of township trustees. A majority of the board members may fill the vacancy by appointment. R.C. 503.24
- However, if the township is without a board, or if the board fails to make the appointment within 30 days after the vacancy, a majority of the persons designated as the committee of five on the last filed nominating petition of the township officer whose vacancy is to be filled, shall appoint a person to fill the vacancy.
- If that committee fails to make an appointment within 10 days after the expiration of the first 30 days, the probate judge shall make the appointment.

Election for remainder of unexpired term (odd-numbered years):

If a vacancy occurs in a township elective office more than 40 days before the next general election in an odd-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

❖ **MUNICIPAL OFFICIALS – Statutory Cities**

- **Mayor** R.C. 733.08

Partisan: Residents of the city who are members of the city central committee (if one exists) or the county central committee of the political party that nominated the last occupant of the office for the current term may fill the vacancy by appointment between 5 and 45 days after the vacancy occurs.

Independent: If the last occupant of the office was elected as an independent candidate to serve for the current term, the legislative authority fills the vacancy by appointment. R.C. 733.31(C), (D), (E)

- **President of Council**
- **Law Director**
- **Auditor**
- **Treasurer**

Partisan: Residents of the city who are members of the county central committee of the political party that nominated the last occupant of the office as a candidate for the current term may fill the vacancy by appointment between 5 and 45 days after the vacancy occurs.

Independent:

- If the last occupant of the office was elected to serve the current term as an independent, the mayor fills the vacancy by appointment.

Election for remainder of unexpired term (odd-numbered years):

If a vacancy occurs in any of these municipal elective offices more than 40 days before the next general election in an odd-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

• **Member, City Legislative Authority (e.g., City Council)**

Partisan: A vacancy in office is filled for the remainder of the unexpired term by city resident members of the county central committee of the party which nominated the last occupant of the office. The appointment must be made between five and 45 days after the vacancy occurs. R.C. 731.43(B), (C)

In the following circumstances, the legislative authority would have authority to make the appointment to fill the vacancy:

- (1) if the office were elected at a nonpartisan election, or,
- (2) if the office was occupied by a person elected as an independent, or,
- (3) if the appointment was not filled by the political party committee members in accordance with the R.C. 731.43(B).

If the legislative authority failed to fill the vacancy within 30 days, the mayor shall fill it by appointment.

Note: Vacancy in the office of a ward representative in a city

If the vacancy occurs in the office of a ward representative in a city where the political party which nominated the last occupant of that office is organized into a city controlling committee with more than one member from the ward where the vacancy exists, the members of the city controlling committee representing that ward shall choose the person to fill the vacancy.

Election for remainder of unexpired term: None.

❖ **MUNICIPAL OFFICIALS – Statutory Villages**

• **Mayor**

When the office of mayor becomes vacant for any reason, the president pro tempore of the village council becomes mayor until a successor is elected and qualified. R.C. 733.25

Election for remainder of unexpired term (odd-numbered years):

If a vacancy occurs in the office of village mayor more than 40 days before the next general election in an odd-numbered year, a successor shall be chosen at that election to fill the unexpired term, provided the term does not expire within one year from the day of the election.

- **President Pro Tempore**

Subject to the situation discussed in the *Note*, immediately below, a vacancy in this office creates a vacancy on village council that is filled by the remaining members of council for the unexpired term. If council fails to act within 30 days of the vacancy, the mayor may appoint. If the vacancy occurred because the president pro tempore became mayor by operation of law, the successor holds office only while the president pro tempore holds the office of the mayor.

R.C. 731.11
R.C. 731.43

Note: Village with Population under 2,000

R.C. 731.43(A)(2) provides that, in a village with a population under 2,000, if the president pro tempore becomes mayor by operation of R.C. 733.25, at the time of becoming mayor, the president pro tempore shall decide whether the president pro tempore wishes to serve the remainder of his/her unexpired term on village council when the mayor's successor is elected and qualified.

- If the president pro tempore decides to serve the remainder of his/her unexpired term as a member of village council, the vacancy on council shall not be filled and the president pro tempore shall resume serving the unexpired council term as soon as the mayor's successor is elected and qualified.
- If the president pro tempore decides not to resume serving the remainder of his/her unexpired term as a member of village council as soon as the mayor's successor is elected and qualified, then the vacancy in the office of member of council shall be filled in accordance with law.

- **Member, Village Legislative Authority (e.g., Village Council)**

A vacancy is filled by appointment by the remaining council members for the remainder of the unexpired term. If council fails to act within 30 days after the vacancy, the mayor may fill the vacancy by appointment.

R.C. 731.43(A),
731.11

Note: If the vacancy on council occurs because the president pro tempore has become mayor by operation of R.C. 733.25, the successor holds office only while the president pro tempore holds the office of the mayor. See also, R.C. 731.43(A)(2), discussed in the *Note*, immediately above.

Election for remainder of unexpired term: None.

- **Village Clerk**
- **Village Treasurer**
- **Village Clerk-Treasurer**
- **Village Fiscal Officer**

Any vacancy in office is filled by appointment by the mayor for the remainder of the unexpired term.

R.C. 733.31

Election for remainder of unexpired term: None.

- **Member, Village Board of Public Affairs**

The vacancy is filled by appointment by the mayor, subject to confirmation by the legislative authority, for the remainder of the unexpired term.

R.C. 735.28

Election for remainder of unexpired term: None.

❖ MEMBERS OF BOARDS OF EDUCATION

• State Board of Education

The vacancy (elected member) is filled by appointment by the governor (with advice and consent of the senate) within 30 days after the vacancy occurs. The person so appointed serves until the next general election at which members of the state board of education are elected. At that time a qualified elector of the district shall be elected for the unexpired term and shall assume office at the next succeeding meeting of the board. (Even-numbered year.)

R.C. 3301.06

• City, Local, or Exempted Village Board of Education

• Educational Service Center Governing Board

The following information applies only to elected board members only, not members appointed pursuant to R.C. 3311.71 (B) or (F):

R.C. 3313.11

R.C. 3313.85

A majority vote of the remaining members of the board is required to fill a vacancy. The meeting is to be held not earlier than ten days after the vacancy occurs. The person selected will hold office for the shorter of the following periods:

(1) completion of the term, or

(2) January 1st following the next general election in an odd-numbered year that occurs more than 90 days after the person is selected to fill the vacancy.

If the board members fail to fill the vacancy within 30 days, the county probate court shall fill the vacancy.

Election for remainder of unexpired term (odd-numbered years): Yes, unless the unexpired term ends on or before the first day of January immediately following the next regular board of education election in an odd-numbered year.

❖ PARTY CONTROLLING COMMITTEES

• Member, Party Executive or Central Committee

Vacancies in party committees are filled by a majority vote of the members of the controlling committee or, if authorized, the executive committee and serve for the unexpired term.

R.C. 3517.05

Election for remainder of unexpired term: None.

Board of Elections' Duty Upon Receiving Written Notice of Appointment to Fill Vacancy in Office

- **Appointing Authority Must Provide Written Notice to Election Officials**

When an elective office becomes vacant and is filled by appointment, the appointing authority shall, immediately but no later than seven days after making the appointment, certify it to both the board of elections and the secretary of state. See R.C. 3.02(B).

The secretary of state has prescribed Form No. 291, *Certificate by Party Central Committee to Fill Vacancy in County Office or City Office*, that the appropriate committee of a political party may – but is not required to – use to certify to election officials that a vacancy in city or county elective office has been filled by appointment.

Other appointing authorities must prepare a written notice of an appointment and certify that notice to the election officials in accordance with R.C. 3.02(B).

- **Board of Elections' Duties After Receiving Certification of Appointment**

- a. Issue Certificates of Appointments**

The board of elections (or, in the case of an appointment to a statewide office, the secretary of state) must issue a certificate of appointment to the appointee. Certificates of appointment shall be in the form prescribed by the secretary of state, such as Form No. 155-B (*Certificate of appointment to fill vacancy in elective office*). See R.C. 3.02(B).

- b. Submit documents and fee for Governor's Commission**

Persons appointed to any county office or to a judgeship must receive a governor's commission before entering upon the duties of the office. R.C. 107.05.

The board of elections must collect from any person appointed to one of those offices the filing fee mandated by R.C. 107.06:

- Judges of county courts created pursuant to R.C. Chapter 1907 - \$2.
- Judges of all other courts of record - \$5.
- County offices - \$5.

The board then sends to the Elections Division of the Office of the Secretary of State the following materials:

- (1) Check or money order payable to the Secretary of State for the appropriate commission fee,
- (2) Notice of appointment executed by the appointing authority certifying the appointment,
- (3) Certificate of appointment executed by the board of elections, and
- (4) Any other necessary documentation (for example, SoS Form 292, *Certificate by Board of Elections - Political Party Affiliation of Last Occupant of County Office*, if applicable).

The Secretary of State's office will obtain a governor's commission for the appointee and mail it to the clerk of the court of common pleas in the county where the appointee lives. The clerk will deliver the commission to the appointee. R.C. 107.07.