

GUIDELINES FOR FILLING COUNTY OFFICE VACANCIES

A. When a Vacancy Occurs

A vacancy occurs upon the:

1. resignation of the incumbent (made in writing to county board and which takes effect when accepted by the board—see Neb. Rev. Stat. §32-562);
2. death of the incumbent;
3. removal of the incumbent from office;
4. decision of a competent tribunal declaring in 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 a proper election when there is no incumbent to continue in office until his or her successor is elected and qualified;
7. failure of a candidate elected to an office to qualify for such office;
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;
10. incumbent of an elective office assuming another elective office as provided for by law (see Neb. Rev. Stat. §32-560);
11. disability of incumbent as determined by county board after hearing (see Neb. Rev. Stat. §23-2012); or
12. incarceration of an official for an offense other than otherwise described for which the county board has the discretionary authority to declare the office temporarily vacant (see Neb. Rev. Stat. §23-2013).

B. Who Fills Vacancy

Except for a vacancy in the county board itself, the county board fills the vacancy in any county office. See Neb. Rev. Stat. §32-567.

C. Time Frame for Filling Vacancy

All vacancies shall be filled within *45 days after the vacancy occurs* unless good cause is shown that this requirement imposes an undue burden. See Neb. Rev. Stat. §32-574.

D. Interim Authority/Appointment

Prior to a permanent successor being appointed, possession of all things pertaining to the office and the function of the office shall be exercised *by the deputy if there is one and, if not, by a temporary replacement* selected by the board until a permanent successor is duly appointed. See Neb. Rev. Stat. §32-563(1).



E. Considerations in the Appointment Process

1. Consult your County Attorney

It is always advisable to first consult with your county attorney before proceeding to fill any county vacancy.

2. Establish Time Frame for Decision

It is important to outline what must be done, when it will be done, and by whom so that the time frame applicable to making appointments is complied with.

3. Advertise for Position

Determine whether there is a need to advertise. There is no provision in the Nebraska vacancy statutes or elsewhere which requires that a vacancy in a county office be advertised or, for that matter, that any one or more candidates actually be interviewed before a selection is made. However, NACO recommends that county boards seriously consider doing both in order to attract a broader pool of candidates and to personally discuss and meet with qualified applicants so as to assess the skills and experience they might have which will assist them in performing the duties of the county office involved.

If you advertise, you will need to determine:

- a. How the job will be advertised—newspaper, magazine, posted notice, internal county notice, other media.
- b. Job qualifications/requirements
-Refer to applicable statutes; other credentials required
- c. How job inquiries will be handled and by whom
-Phone, mail, in person
-A particular county board, member, county clerk, administrative assistant, other.
- d. Whether an application and/or resume will be required

4. Screening Applications/Candidates

-Will any screening of applications/candidates be done: If so, by whom?



By subcommittee or board? Any background checks? If so, by whom and how reported?

5. Public Meetings/Records Requirements

a. Access to Application

Job application materials submitted by applicants, other than finalists who have applied for employment by any public body may be withheld from the public unless publicly disclosed in an open court, open administrative proceedings, or open meetings or disclosed by a public entity pursuant to its duties. Job application materials means employment applications, resumes, reference letters, and school transcripts. A finalist is an applicant who reaches the final pool of four or more applicants from which the successful applicant is to be selected, is an original applicant when there are four or fewer in the final pool of applicants, or is an original applicant when there are four or fewer original applicants. See Neb. Rev. Stat. §84-712.05(17)

b. Interviews

i. Questions

Initially, it is advisable to have a standardized list of questions prepared and available to all those individuals conducting the interviews so that each candidate will be dealt with similarly. Focus on the requirements of the job, past employment, working habits, knowledge, and skills which would assist an individual accomplish the job at hand, as well as each candidate's assessment of what s/he can bring to the position.

ii. Open Meeting Requirements

If a quorum of a governing board is present to conduct an interview of any candidate, the Attorney General has indicated that the Nebraska Open Meetings Law applies and the interviews should be conducted in public just like any other meeting of the board. (see Op. Att'y Gen. No. 94035)

If the vacancy is on the county board, the meetings of the county attorney, county clerk and county



treasurer must be conducted in public. (See Op. Att’y Gen. No. 97050)

Further, the Attorney General has stated that while the Open Meetings Law does permit a public body to conduct a closed session if necessary to prevent needless injury to the reputation of an individual (See Neb. Rev. Stat. §84-1410), this does not automatically mean that any and all job interviews can be conducted in this fashion. *“[A] closed session of a public body is not appropriate merely because matters requiring a closed session might arise. Rather a closed session is permitted only when such matters have arisen and must be dealt with.”* Therefore, only if during the course of an interview matters arise which might be injurious to the reputation of an individual, then and only then may a closed session of the county board be appropriate and even then, only to deal briefly with those specific issues. (See Op. Att’y Gen. No. 94035)

Obviously, any formal decision of the county board and the actual selection of the appointee must be made by the full county board in open, public session.

Possible Alternatives

Have candidate interviews conducted by something other than a quorum of the county board with perhaps that subcommittee or other group making a recommendation to the full board for final determination and action.



F. Other Legal Requirements

1. Wages/Benefits

Except for certain contract positions such as county attorneys and public defenders in some counties, the appointee must receive the same salary and benefits for the position as previously established by the county board for that term. The Nebraska Constitution prevents the compensation of any public officer from being increased or diminished during his/her term of office and this applies just as fully to appointees. As the Nebraska Supreme Court has stated in *Garotto v. McManus*, 185 Neb. 644, 177 N.W.2d 570 (1970), “the appointee for the remainder of the term comes within the prohibition of any increase or diminution of salary.”

2. Full-Time/Part-Time Status

The fact that a vacancy occurs in a county office does not by itself give the county board the opportunity to change the full-time/part-time status of the office. The vacancy to be filled must be reflective of the office vacated. Any separate statutes which might exist to change the working status of office would have to be followed.

3. Qualifications

No person shall be appointed to fill a vacancy unless he or she has the qualifications required to be elected to such office at the time of the appointment unless otherwise specifically provided. See Neb. Rev. Stat. §32-571; e.g. residency; certification; bond requirements.

4. Written Appointment

All appointments to fill a vacancy made by the county board must be in writing and shall continue for the unexpired term of the office and until a successor is elected and qualified except as otherwise provided. This written appointment must be filed with the county clerk. See Neb. Rev. Stat. §32-571.

No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same governing body during the remainder of his or her term of office. See Neb. Rev. Stat. §32-1308(5)

