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LOCAL GOVERNMENT SERVICES

# Elective Office in Local Government

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# Elective Office in Local Government

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# Foreword

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There are nearly 30,000 elected offices in Pennsylvania local government — county, municipal and school. The men and women who fill these offices make important decisions about the future of their communities. They set policies on schools, land use and the appropriate level of local government services. Every municipal election year, a very large number of public-spirited citizens consider running for local office.

The purpose of this publication is to gather together, in a single place, important information about elective government offices in Pennsylvania. The book outlines what offices are filled by election in each type of local unit and for how long, who may or may not run for office, how vacancies are filled and how officials can be removed before the end of their terms.



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# I. General Provisions

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In general, Pennsylvania local governments are small operations. More than 77 percent of the state's 2,562 municipalities serve populations of less than 5,000. In such governments, local elected officials often are citizens who serve on a volunteer basis and whose chief occupation and expertise is in some other field. In its role of providing information and assistance to local governments, the Governor's Center for Local Government Services has developed a series of handbooks and manuals. This publication lists the various elected offices in each type of local government, their terms, qualifications and incompatibility, how vacancies are filled and procedures for removal from office. These issues are the ones most often raised by local officials, candidates and citizens.

The publication begins with a discussion of general provisions that affect all types of local governments equally. Then a series of sections describes the provisions specific to each type of government. In the final section there is a listing of publications which set out in detail the powers and duties of elective local government offices.

## Disqualification by Criminal Conviction

Article II, Section 7 of the Pennsylvania Constitution prohibits persons convicted of embezzlement of public monies, bribery, perjury or other infamous crimes from holding any office of trust or profit in the Commonwealth. This prohibition extends to include local government offices. Conviction is held to occur at the time a court sentences the defendant on the basis of a guilty verdict. The Pennsylvania Supreme Court has held this provision of the Constitution is self-operating.<sup>1</sup> Individuals convicted of these crimes can also be removed from office by *quo warranto* actions.<sup>2</sup> Challenge to candidate petitions is also an appropriate method to determine disqualification under this section.<sup>3</sup>

The Pennsylvania Supreme Court has moved away from the old pattern of distinguishing between crimes in respect to the ability to hold the public trust and other unrelated crimes. In 2000, the Court ruled that "a crime is infamous for purposes of Article II, Section 7, if its underlying facts establish a felony, a *crimen falsi* offense, or a like offense involving the charge of falsehood that effects the public administration of justice."<sup>4</sup> *Crimen falsi* is defined as referring to crimes in the nature of perjury or subordination of perjury, false statement, criminal fraud, embezzlement, false pretense or any other offense which involves some element of deceitfulness, untruthfulness or falsification bearing on a witness' propensity to testify truthfully.<sup>5</sup>

## Removal from Office

All elected officials in Pennsylvania, including county, municipal and school district officials are subject to an exclusive method for removal established in Article VI, Sections 6 and 7 of the Pennsylvania Constitution.<sup>6</sup> Elected officials are removable from office only: (1) by impeachment in the General Assembly; (2) by the Governor for reasonable cause after due notice and full hearing on the address of two thirds of the Senate, or (3) upon conviction of misbehavior in office or of any infamous crime in accordance with the Constitution. The Pennsylvania Supreme Court has ruled that recall procedures contained in home rule charters are unconstitutional since they violate Sections 6 and 7, of Article VI. The Court has also overruled the leading case that had previously upheld the judicial removal provisions in the township and school codes.



## Resignation and Reappointment

Any public officer who resigns from office shall be ineligible for reappointment to that office during the remainder of the term for which he was appointed or for a period of one year, whichever is less, if such reappointment would increase his salary. However, nothing would prevent the officer from being reappointed to the same office if the reappointment does not result in a higher salary.<sup>7</sup>

## Incompatibility

Holding of more than one public office is not in itself illegal. Two or more offices may be held concurrently by the same individual except where the Constitution or the General Assembly have declared the offices incompatible.<sup>8</sup> Courts have no power to declare offices incompatible as a matter of public policy. Offices are incompatible only if the legislature has acted to declare them so. Statutory declarations of incompatibility are numerous. They generally deal with two or more particular offices or offices in a particular type of political subdivision.

## Family Relationships

There is no provision in Pennsylvania law which prohibits a person from holding elective office in a government unit where their spouse or other family member is already an elected officer or employee. However, care must be taken in instances where there is a high potential for conflict of interest. For instance, where a person as elected auditor, is responsible for auditing the accounts of a family member who is township secretary or roadmaster, that auditor should not participate in that portion of the audit.

Likewise, no law prohibits a local government unit from hiring a family member of an elected officer as an employee. However, the Ethics Act prohibits any public official from using the authority of their office for the private pecuniary benefit of their immediate family.<sup>9</sup> Elected officers thus may not propose, discuss or vote on the hiring of a family member by the local government unit they serve. The Ethics Act defines “immediate family” to include a parent, spouse, child, brother or sister.

## References

1. *Shields v. Westmoreland County*, 98 A. 572, 253 Pa. 271, 1916.
2. *Commonwealth ex rel. Bionaz v. Burns*, 29 D.&C.2d 307, 1961, C.P. Cambria Co.
3. *In re Petition of Hughes*, 532 A.2d 298, 516 Pa. 90, 1987.
4. *Commonwealth ex rel. Baldwin v. Richard*, 561 Pa.489, 251 A.2d 647 (2000).
5. *Black's Law Dictionary*, 335 (5th ed.) 1979.
6. *In Re: Petition to Recall Reese*, 665 A.2d 1162, Pa., 1995.
7. 65 P.S. 79; 1982 P.L. 1354, No. 309.
8. *Commonwealth ex rel. Fox v. Swing*, 186 A.2d 24, 409 Pa. 241, 1962; *Commonwealth ex rel. Schermer v. Frank*, 166 A. 878, 311 Pa. 341, 1933; *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 868, 1993.
9. 65 P.S. 403(a); 1978 P.L. 883, No. 170 Section 3(a).

## II. County Offices

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### Elective Offices

In counties that have not reorganized under a home rule charter, the row offices are elected by the qualified voters of the county as follows.<sup>1</sup>

Three county commissioners

Three auditors or, in all counties where the office of auditor has heretofore been or shall hereafter be abolished, one controller

- One treasurer
- One coroner
- One recorder of deeds
- One prothonotary
- One clerk of court of quarter sessions and of the court of oyer and terminer
- One clerk of the orphans' court
- One register of wills
- One sheriff
- One district attorney
- Two jury commissioners (except where abolished by referendum)<sup>2</sup>

Where provisions of the County Code or other law provide for two or more offices to be held by the same person, only one person is elected to the combined office.<sup>3</sup> Unless otherwise provided by local laws, several judicial support offices are combined. In counties of the second, second class A, third and fourth class, the offices of register of wills and clerk of orphans' court are combined. In fifth class counties, prothonotary and clerk of courts are held by one person and register of wills and clerk of orphans' court are combined. In sixth and seventh class counties, prothonotary and clerk of courts are combined and the offices of register of wills, recorder of deeds and clerk of orphans' court are held by one person. In eighth class counties one person holds the offices of prothonotary, clerk of courts, register of wills, recorder of deeds and clerk of orphans' court.<sup>4</sup>

### Term of Office

All county officers are elected at the municipal election before the expiration of the terms of the current office holders. The term of office begins the first Monday of January after their election and extends for four years.

Except for commissioners and auditors, if a new officer fails to qualify or if no successor is elected, then the chief deputy assumes office until a successor is appointed or elected to fill the vacancy. In the case of commissioners or auditors, the office is declared vacant.<sup>5</sup>

### Qualifications

County Officers. All persons elected to any county office must be at least 18 years of age, citizens of the United States, and residents of the county for one year next preceding their election.<sup>6</sup>

**District Attorney.** District attorneys must be residents of the county and learned in law. They must reside in the county for which elected or appointed for two years before their election or appointment.<sup>7</sup> In counties of the seventh and eighth classes, the residency requirement is one year before election or appointment.<sup>8</sup>

In counties of the third, fourth, fifth and sixth classes, the district attorney must have been admitted to practice before the Supreme or Superior court for at least two years prior to taking the oath of office; or must have been admitted to practice before the Supreme or Superior Courts for at least six months prior to taking the oath of office and have practiced law before a court of record for at least five years. A district attorney in counties of the seventh class must have been admitted to practice before the Supreme Court or Superior Court for six months and have practiced before a court of record for at least two years prior to taking the oath of office. In eighth class counties, the district attorney must have been admitted to practice before the Supreme Court or Superior Court prior to taking the oath of office and have practiced law before a court of record for eighteen months prior to taking the oath of office.<sup>9</sup>

**Coroner.** Prior to taking the oath of office, newly elected coroners must attend a course of instruction and pass an examination given by the Coroner's Education Board. In the event the elected coroner does not take the required course or fails the examination, the position shall be deemed vacant. Each coroner must annually take at least eight credit hours of continuing education. Failure to comply will result in the office being declared vacant.<sup>10</sup>

## Incompatible Offices

**County Officers.** Elected county officers are prohibited from serving as a member of the legislative body of a city, borough, town or township, municipal treasurer or tax collector, school director of any school district<sup>11</sup> or member of a board of health.<sup>12</sup> A county officer may not be a member of the county zoning hearing board.<sup>13</sup>

No member of Congress, nor any person holding or exercising any office or appointment of trust or profit under the United States, can hold or exercise any compensated county office at the same time. This does not apply to U.S. reserve officers or enlisted personnel not called into active duty.<sup>14</sup>

No county officer may serve as a district election officer during his or her term of office or within two months after leaving office.<sup>15</sup>

**County Commissioner.** County commissioners may be appointed to serve as members of municipal authorities created by the county.<sup>16</sup> However the articles of incorporation of an authority may prohibit elected officials from serving on the authority board and these provisions are enforceable in the courts.<sup>17</sup> Commonwealth Court has ruled an elected official violated the state Ethics Act when he voted to appoint himself to an authority board where he received compensation.<sup>18</sup>

The offices of recorder of deeds and county commissioner were held to be compatible. The court held any two county offices could be held concurrently except where specifically prohibited by the legislature.<sup>19</sup>

**District Attorney.** The district attorney is not eligible to a seat in the legislature or to any other office under the laws and Constitution of the Commonwealth, except an office in the militia, while in office.<sup>20</sup>

When the county commissioners establish the office of district attorney as full time, the district attorney is prohibited from deriving any other income from private legal practice and must completely sever any affiliations with any law firm. In counties without full-time district attorneys, they are permitted to have an outside practice.<sup>21</sup>

**Controller.** No person holding office under the United States is eligible to the office of county controller while in such office, nor until one year thereafter. County commissioners, county treasurer, prothonotary, clerk of courts, register of wills, recorder of deeds, sheriff and district attorney and their chief clerks or deputies are ineligible to be county controller during their term of office, or for two years after the end of the term.<sup>22</sup>

**Auditors.** No person is eligible to be county auditor who was county treasurer within the previous two years. A county auditor cannot at the same time hold or be employed in any county office, by the county institution district, any school district, any board of health or any municipal authority of which the county is a member.<sup>23</sup>

**Treasurer.** No judge, clerk or prothonotary of any court, register of wills, recorder of deeds, county commissioner or county controller can serve as county treasurer at the same time.<sup>24</sup>

## Vacancies

**County Officers.** In vacancies in any county office not otherwise provided for by law, the Governor appoints a suitable person to fill the office until the first Monday of January following the next municipal election or for the balance of the unexpired term whichever period is shorter. If the vacancy occurs more than 90 days before the municipal election the office is filled for the balance of the unexpired term at the election. Such appointee must be confirmed by the Senate if in session.<sup>25</sup> This provision includes the clerk of courts, controller, recorder of deeds, register of wills, prothonotary, treasurer, sheriff and coroner. Vacancies are filled by the principal deputy until a successor is qualified.<sup>26</sup>

Any county official who resigns from office is ineligible for reappointment to that office during the remainder of the term or for a period of one year, whichever is less, if reappointment would increase their salary.<sup>27</sup>

**County Commissioner.** Any vacancy in the office of county commissioner is filled by the court of common pleas for the balance of the unexpired term. The appointee must be a member of the same political party as the commissioner replaced.<sup>28</sup>

**Auditors.** Where the office of controller has not been established, any vacancy in the office of auditor is filled for the balance of the unexpired term by the court of common pleas by the appointment of an elector who voted for the auditor whose place is to be filled.<sup>29</sup>

**District Attorney.** For a vacancy in the office of district attorney, the judges of the court of common pleas appoints a competent person to fill the office for the unexpired term.<sup>30</sup>

**Jury Commissioner.** In the office of jury commissioner, the president judge of the court of common pleas appoints a suitable person to fill any vacancy. The person appointed must be of the same political party as the jury commissioner whose place is to be filled.<sup>31</sup>

**Sheriff.** Where a vacancy in the office of sheriff exists, the chief deputy sheriff shall execute the office of sheriff until another sheriff is commissioned.<sup>32</sup>

## References

1. 16 P.S. 401; County Code, Section 401.
2. 16 P.S. 401(d); County Code, Section 401(d).
3. 16 P.S. 1301; County Code, Section 1301.
4. 16 P.S. 1302; County Code, Section 1302.
5. 16 P.S. 401(b); County Code, Section 401(b).
6. 16 P.S. 413; County Code, Section 413.
7. 16 P.S. 1401(a); County Code, Section 1401(a).
8. 16 P.S. 1401(b); County Code, Section 1401(b).
9. 16 P.S. 1401(c)(d)(e); County Code, Section 1401(c)(d)(e).
10. 16 P.S. 9525.3; 1988 P.L. 108, No. 22.
11. 16 P.S. 402(a); County Code, Section 402(a); 24 P.S. 3-322; Public School Code, Section 322.
12. 16 P.S. 2185; County Code, Section 2185.
13. 53 P.S. 10903; Pennsylvania Municipalities Planning Code, Section 903.
14. 16 P.S. 402(b); County Code, Section 402(b).
15. 25 P.S. 2672; Pennsylvania Election Code, Section 402.
16. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 868, 1993.
17. *Ross Township v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlth. 686, 1991.

18. *Koslow v. Commonwealth, State Ethics Commission*, 540 A.2d 1374, 116 Pa.Cmwlth. 19, appeal denied 533 A.2d 971, 520 Pa. 609.
19. *In re: Incompatibility of Office of Recorder of Deeds and County Commissioner in Bucks County*, 36 D.&C.3d 233, C.P. Bucks Co., 1984.
20. 16 P.S. 1401(f); County Code, Section 1401(f).
21. 16 P.S. 1401(g); County Code, Section 1401(g).
22. 16 P.S. 602(a)(b); County Code, Section 602(a)(b); *Com. ex rel. Toole v. Yanoshak*, 346 A.2d 304, 464 Pa.239, 1975.
23. 16 P.S. 702(a)(b); County Code, Section 702(a)(b).
24. 16 P.S. 801; County Code, Section 801.
25. 16 P.S. 409, County Code, Section 409; *Com. ex rel. Foreman v. Hampson*, 143 A.2d 369, 393 Pa. 467, 1958.
26. 16 P.S. 408, 1249, 1214; County Code, Sections 408, 1249 and 1214.
27. 65 P.S. 79; 1982 P.L. 1354, No. 309.
28. 16 P.S. 501; County Code, Section 501.
29. 16 P.S. 701; County Code, Section 701.
30. 16 P.S. 1404; County Code, Section 1404.
31. 42 Pa. C.S.A. 2122(c); Judicial Code, Section 2122(c).
32. 16 P.S. 1249; County Code, Section 1249.

## III. Third Class City Offices

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### Elective Offices

For cities operating under the Third Class City Code or the Optional Third Class City Charter Law with the commission form, mayor-council form or council-manager form, the elective offices are as follows.<sup>1</sup>

- Mayor
- Council Members: four in commission cities, five, seven or nine in optional charter cities.
- Controller
- Treasurer

In council-manager cities under the Optional Third Class City Charter Law, the mayor may be chosen by council from among its members instead of being elected directly by the voters.<sup>2</sup>

### Term of Office

The city officers are elected at large by the voters of the city at the municipal election held in odd-numbered years. They serve for a term of four years from the first Monday of January after their election.<sup>3</sup>

### Qualifications

All elected officers must be at least 21 years of age, and have resided in the city one year prior to their election. They must continue to reside in the city during their term of office.

The city controller and city treasurer shall be competent accountants to qualify for their office.<sup>4</sup>

### Incompatible Offices

**City Officers.** Except as otherwise provided in the Third Class City Code, membership on the board of health is incompatible with every other city office.<sup>5</sup> Whenever a nonprofit corporation acts as the board of health, not more than two members of council and one member of the school board may serve as members of the city's board of health.<sup>6</sup> No city officer, official or employee is eligible for appointment to any civil service board.<sup>7</sup>

Elected city officers other than council members may be appointed to serve as members of municipal authorities created by the city. However the articles of incorporation of an authority may prohibit elected officials from serving on the authority board and these provisions are enforceable in the courts.<sup>8</sup> Council members are prohibited from serving on authority boards.

Members of a zoning hearing board can hold no other office in the municipality.<sup>9</sup> The zoning officer may hold no elective office in the municipality.<sup>10</sup>

No city officer may serve as an election officer during their term of office or within two months after leaving office.<sup>11</sup> No city officer may serve as school director during their term of office.<sup>12</sup> No elected county officer may serve as city council member or treasurer.<sup>13</sup> No district justice may hold any other elected or appointed office.<sup>14</sup>

**Council member.** No officer of the United States or of the Commonwealth (except notaries public or officers of the militia), no officers of the school district or county, or no officers or employees of the city or municipal authority may serve as a council member.<sup>15</sup> It is unlawful for any member of the legislature to hold or exercise the office of council member in any incorporated city of the Commonwealth.<sup>16</sup> Council members are ineligible to hold any city or county offices while serving as a member of council.<sup>17</sup>

## Vacancies

Vacancies in the office of council member and in the office of mayor in commission and council-manager cities are filled by the remaining members of council within 30 days. Appointees serve until the first Monday in January after the next municipal election occurring at least 30 days after the vacancy occurs, when a successor is elected. The successor serves for the remainder of the original term.

In cases where a majority or more of the positions on council become vacant, the remaining members fill the vacancies one at a time. Each new appointee is given reasonable notice of the appointment to enable them to meet with the then qualified members of city council in making further appointments until a majority of council members have qualified. Then the remaining vacancies are filled at once.

If the vacancy has not been filled by council within the time limit, ten or more qualified voters can petition the court of common pleas to fill the vacancy. If vacancies occur in the entire membership of city council, the court of common pleas appoints a city council, including a mayor, who serve until the next municipal election.<sup>18</sup>

Vacancies in the offices of controller and treasurer and the office of mayor in mayor-council cities are filled by council within 30 days. The appointee serves until the first Monday in January after the next municipal election occurring at least 200 days after the vacancy occurs, where a successor is elected. The elected successor serves for the remaining two years of the original term. In commission cities, the person elected to fill a vacancy for controller or treasurer takes office immediately after the election. If the vacancy is not filled by council within the time limit, the court of common pleas upon the petition of ten or more qualified voter fills the vacancy.<sup>19, 20, 21</sup>

Any city official who resigns from office is ineligible for reappointment to that office during the remainder of the term or for a period of one year, whichever is less, if reappointment would increase their salary.<sup>22</sup>

## References

1. 53 P.S. 35701; Third Class City Code, Section 701; 53 P.S., 41402, 41502, 41504; Optional Third Class City Charter Law, Sections 402, 502 and 504.
2. 53 P.S. 41213; Optional Third Class City Charter Law, Section 213.
3. 53 P.S. 35701; Third Class City Code, Section 701; 53 P.S. 41403, 41503, 41404, 41504; Optional Third Class City Charter Law, Sections 403, 503, 404, 504.
4. 53 P.S. 36001, 36201, 36401, 36701; Third Class City Code, Sections 1001, 1201, 1401, 1701.
5. 53 P.S. 37301; Third Class City Code, Section 2301.
6. 53 P.S. 37331; Third Class City Code, Section 2331.
7. 53 P.S. 39402; Third Class City Code, Section 4402.
8. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 868, 1993; *Ross Township v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlt. 686, 1991.
9. 53 P. S 10903; Pennsylvania Municipalities Planning Code, Section 903.
10. 53 P.S. 10614; Pennsylvania Municipalities Planning Code, Section 614.
11. 25 P.S. 2672; Pennsylvania Election Code, Section 402.
10. 24 P.S. 3-322; Public School Code, Section 322.
13. 16 P.S. 402(a); County Code, Section 402(a).
14. 42 Pa.C.S.A. 3302; Judicial Code, Section 3302.

15. 53 P.S. 36001; Third Class City Code, Section 1001.
16. 65 P.S. 11; 1874 P.L. 186, Section 10.
17. 65 P.S. 14; 1874 P.L. 186, Section 14.
18. 53 P.S. 35801; Third Class City Code, Section 801; *DiGiacinto v. City of Allentown*, 406 A.2d 520, 486 Pa. 436, 1979.
19. 53 P.S. 35802; Third Class City Code, Section 802.
20. 53 P.S. 41406; Optional Third Class City Charter Law, Section 406.
21. 53 P.S. 41506; Optional Third Class City Charter Law, Section 506.
22. 65 P.S. 79; 1982 P.L. 1354, No. 309.



## IV. Borough Offices

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### Elective Offices

The registered voters of a borough elect officers as follows.<sup>1</sup>

- Mayor
- Council members (number varies)
- Tax collector
- Three auditors or one controller (except where the office has been abolished by appointment of an independent auditor)
- Assessor (only in boroughs located within fourth through eighth class counties.)

In boroughs not divided into wards, seven council members are elected. However, if the last official census shows the population less than 3,000, the number of council members can be reduced from seven to five or three on petition of five percent of the registered voters of the borough to the court of common pleas. After a hearing the court may reduce the number of council seats. If the population of the borough goes above 3,000 again, the number of council members will automatically revert to seven.<sup>2</sup>

In boroughs divided into wards, one, two or three council members are elected from each ward. Boroughs may be divided into a maximum of thirteen wards.<sup>3</sup>

When a borough council elected by wards consists of more than nine members, five percent of the registered voters of the borough can petition the court of common pleas to reduce the size of council. After a hearing, the court may reduce the number of council members selected from each ward from three to two or one, or from two to one.<sup>4</sup>

In boroughs not divided into wards, all officers are elected at large by the voters of the entire borough. In boroughs divided into wards, council members are elected by the voters of each ward, and other officers are elected at large.<sup>5</sup>

### Term of Office

Borough officials are elected at the municipal election held in odd-numbered years. With the exception of auditors whose terms run for six years, all other elected officials serve a four-year term. The term of office begins the first Monday of January after the election.<sup>6</sup> In each borough, half the council is elected every two years, so council members have overlapping terms.<sup>7</sup> One auditor is elected at each municipal election.<sup>8</sup>

### Qualifications

Only registered voters of a borough are eligible to hold elective offices. This means borough officers must be 18 years of age and residents of the borough. All elected borough officers must have resided in the borough continuously for at least one year before their election. Council members are required to be residents of the ward from which they are elected where the borough is divided into wards.<sup>9</sup> The controller must be a competent accountant and have resided in the borough for at least four years prior to election.<sup>10</sup>

## Incompatible Offices

**Borough Officers.** No individual is permitted to hold more than one elective borough office. Any borough official, however, is eligible to hold any appointive borough office where there is no incompatibility in fact.<sup>11</sup> Neither the mayor nor council members may receive compensation for any borough appointive office. This is the case even in boroughs under 3,000 in population. No elected official may serve as an employee in a borough with a population 3,000 or more. A school director shall not be eligible for an elective borough office.<sup>12</sup> No borough officer may be a member of a zoning hearing board.<sup>13</sup> The zoning officer may not hold any elective office in the borough.<sup>14</sup> No elective county officer may serve as borough council member, treasurer or tax collector.<sup>15</sup> No district justice may hold any other elected or appointed public office.<sup>16</sup>

Borough elected officers may be appointed to serve as members of municipal authorities created by the borough.<sup>17</sup> However the articles of incorporation of an authority may prohibit elected officials from serving on the authority board and these provisions are enforceable in the courts.<sup>18</sup> Also, Commonwealth Court has ruled an elected official violated the State Ethics Act when he voted to appoint himself to an authority board where he received compensation.<sup>19</sup>

An elective officer of a borough cannot hold the office of civil service commissioner. However, one member of the commission may be a member of the council of the borough.<sup>20</sup> No election officer is eligible for any civil office (except election officer) on the ballot at any primary or election where they are serving.<sup>21</sup>

**Mayor.** No member of Congress or person holding any office or appointment of profit or trust under the government of the United States, or any person holding the office of district justice can hold the office of mayor simultaneously.<sup>22</sup> A county court has ruled a mayor may not be appointed to the board of a municipal authority created by the borough.<sup>23</sup>

No mayor or member of council may serve as borough manager or as secretary or treasurer.<sup>24</sup>

## Vacancies

Whenever a vacancy occurs in any elective borough office, council fills the vacancy by appointing, by resolution, a registered voter of the borough, or the ward in case of a ward office. If council fails to fill the vacancy within 30 days, the vacancy is filled within 15 additional days by a vacancy board, consisting of the borough council, exclusive of the mayor, and one registered voter of a borough. The registered voter is selected by council at council's first meeting each calendar year (or as soon thereafter as practical) and acts as chair of the vacancy board. If the vacancy board fails to fill the vacancy within the allotted time, the chair of the vacancy board must petition the court of common pleas to fill the vacancy. In the case of a vacancy in the chair the remaining members of the vacancy board must petition the court of common pleas.

A person appointed to a vacancy holds office, if the term continues so long, until the first Monday in January after the first municipal election occurring more than 60 days after the vacancy occurs. At this election an eligible person is elected to fill the office for the remainder of the term. In the case where there are vacancies in more than a majority of the offices of council, the court of common pleas fills the vacancies upon presentation of a petition signed by not less than 15 registered electors of the borough.<sup>25</sup>

Any borough official who resigns from office is ineligible for reappointment to that office during the remainder of the term or for a period of one year, whichever is less, if reappointment would increase their salary.<sup>26</sup>

## Removal for Failure to Attend Meetings

The Borough Code authorizes council to remove a member of council who refuses or neglects to attend two successive regular council meetings, unless detained by illness or absence from the borough. It can also remove a council member who, though attending council meetings, neglects or refuses to vote, withdraws from council or otherwise refuses to act in an official capacity. The individual to be removed must be given a hearing before council with ten days' notice of the place and time of the hearing.<sup>27</sup> However, because of the Pennsylvania Supreme Court's ruling that the constitutional procedures for removal of elected officers are exclusive, superseding the municipal codes, the continued validity of this section is highly questionable.<sup>28</sup>

## References

1. 53 P.S. 45806; Borough Code, Section 806.
2. 53 P.S. 45818; Borough Code, Section 818.
3. 53 P.S. 45806; Borough Code, Section 806.
4. 53 P.S. 45815; Borough Code, Section 815.
5. 53 P.S. 45806; Borough Code, Section 806(1)(2).
6. 53 P.S. 45811, 45821, 45831, 45841, 45851, 45861; Borough Code, Sections 811, 821, 831, 841, 851, 861.
7. 53 P.S. 45811; Borough Code, Section 811.
8. 53 P.S. 45831; Borough Code, Section 831.
9. 53 P.S. 45801, 45806(2); Borough Code, Sections 801 and 806(2).
10. 53 P.S. 45841, Borough Code, Section 841.
11. 53 P.S. 45801, 46104; Borough Code, Sections 801 and 1104.
12. 24 P.S. 3-322; Public School Code, Section 322; 53 P.S. 45801; Borough Code, Section 801.
13. 53 P.S. 10903; Pennsylvania Municipalities Planning Code, Section 903.
14. 53 P.S. 10614; Pennsylvania Municipalities Planning Code, Section 614.
15. 16 P.S. 402(a); County Code, Section 402(a).
16. 42 Pa.C.S.A. 3302; Judicial Code, Section 3302.
17. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 868, 1993.
18. *Ross Township v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlth. 686, 1991.
19. *Koslow v. Commonwealth, State Ethics Commission*, 540 A.2d 1374, 116 Pa.Cmwlth. 19, appeal denied 533 A.2d 971, 520 Pa. 609.
20. 53 P.S. 46173; Borough Code, Section 1173.
21. 25 P.S. 2672; Election Code, Section 402; *In re Ganzman*, 574 A.2d 732, 133 Pa.Cmwlth. 33, 1990.
22. 53 P.S. 46022; Borough Code, Section 1022.
23. *Pennsylvania Department of State v. Mount Joy Borough*, 66 D.&C. 251, 1958, C.P. Dauphin Co.
24. 53 P.S. 46143; Borough Code, Section 1143; 53 P.S. 46005(1); Borough Code, Section 1005(1).
25. 53 P.S. 45901; Borough Code, Section 901; *In re Gianoplos*, 11 D.&C.3d 436, 1979, C.P. Clinton Co.
26. 65 P.S. 79; 1982 P.L. 1354, No. 309.
27. 53 P.S. 45904; Borough Code, Section 904; *Zaffarano v. Ambler Borough Council*, 216 A.2d 24, 420 Pa. 275, 1966.
28. *In Re: Petition to Recall Reese*, 665 A.2d 1162, Pa., 1995.

## V. First Class Township Offices

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### Elective Offices

In townships of the first class voters elect officials as follows.<sup>1</sup>

- Commissioners: five elected at large, or in townships divided into wards, one per ward
- Treasurer
- Three auditors or one appointed auditor, or one controller where such office has been created
- An assessor and assistant assessor (only in fourth to eighth class counties)

In townships not divided into wards, five commissioners are elected at large. In townships divided into less than five wards, one commissioner is elected from each ward and the remainder of the five-person board is elected at large. In townships with five or more wards, one commissioner is elected from each ward. First class townships may be divided into a maximum of fifteen wards.<sup>2</sup>

### Term of Office

All elected township officials serve for a four-year term, except auditors who are elected for a term of six years. Township elections occur at the municipal election held in odd-numbered years. Half the board of commissioners is elected every two years so board members have overlapping terms. In townships with auditors, one auditor is elected every two years.<sup>3</sup>

### Qualifications

All elected officers must be registered voters of the township, which means they must be 18 years of age and residents of the township.<sup>4</sup> Township commissioners must have resided in the township continuously for at least one year before their election.<sup>5</sup> In townships divided into wards, commissioners must have resided in their ward continuously for at least one year before election.<sup>6</sup> Controllers are required to be competent accountants.<sup>7</sup>

### Incompatible Offices

**Township Officers.** No township officer can hold the office of civil service commissioner, except one member of the civil service commission may be a member of the township board of commissioners.<sup>8</sup> No officer of the township may be a member of the zoning hearing board.<sup>9</sup> The zoning officer may not hold any elective office in the township.<sup>10</sup>

No election officer is eligible for any civil office (other than election officer) on the ballot at any primary or election where they are serving.<sup>11</sup> No township officer may serve as school director.<sup>12</sup> No elected county officer may serve as township commissioner or treasurer.<sup>13</sup> No district justice may hold any other elected or appointed public office.<sup>14</sup>

**Commissioners.** A member of the board of commissioners cannot be appointed by the board as secretary.<sup>15</sup> Township commissioners may be appointed to serve as members of municipal authorities created by the township.<sup>16</sup> However the articles of incorporation of an authority may prohibit elected officials from serving on the authority board and these provisions are enforceable in the courts.<sup>17</sup> Also, Commonwealth Court has

ruled an elected official violated the state Ethics Act when he voted to appoint himself to an authority board where he received compensation.<sup>18</sup>

**Treasurer.** No township treasurer is allowed to hold any other township office. The same person may, however, hold the office of township treasurer and treasurer of a school district.<sup>19</sup>

**Auditor.** No auditor can hold any other elective or appointive office.<sup>20</sup>

## Vacancies

Whenever a vacancy occurs in any elective township office, the board of commissioners fills the vacancy by appointing, by resolution, a registered voter of the township, or ward, as the case may be. If the board of commissioners fails to fill the vacancy within 30 days, the vacancy is filled within 15 additional days by a vacancy board, consisting of the board of commissioners and one registered voter of the township. The registered voter is selected by the township commissioners at the board's first meeting each calendar year or as soon thereafter as practical and acts as chair of the vacancy board. If the vacancy board fails to fill the vacancy within the allotted time, the chair of the vacancy board must petition the court of common pleas to fill the vacancy. In the case of a vacancy in the chair the remaining members of the vacancy board must petition the court of common pleas.

A person appointed to a vacancy holds office, if the term continues so long, until the first Monday in January after the first municipal election occurring more than 60 days after the vacancy occurs. At this election an eligible person is elected for the remainder of the term.<sup>21</sup>

In the case where there are vacancies in a majority of the offices of commissioner, the court of common pleas fills the vacancies upon presentation of a petition signed by not less than 15 registered electors of the township.

No person who was convicted of or pled guilty or no contest to a felony is eligible for appointment to fill a vacancy on the board of commissioners for a period of three years from the date of the conviction or plea.<sup>22</sup>

Any township officer who resigns from office is ineligible for reappointment to that office during the remainder of the term or for a period of one year, whichever is less, if reappointment would increase their salary.<sup>23</sup>

## Judicial Removal for Failure to Perform Duties

The First Class Township Code contains a procedure for judicial removal of elected officials whenever an officer refuses or neglects to perform their duties. Action for removal is initiated by petition of at least 100 township residents who are owners of real estate in the township to the court of common pleas. The court may require the officer show cause why the office should not be declared vacant and another appointed to it. Upon at least two weeks notice a hearing is conducted, and if the facts alleged by the petitioners are proven true, the court may declare the office vacant and appoint another person to fill the unexpired term.<sup>24</sup> Sufficient evidence must be produced by the petitioners to justify the court finding the officer refused or neglected to perform mandatory duties.<sup>25</sup> However, because of the Pennsylvania Supreme Court's ruling that the constitutional procedures for removal of elected officers are exclusive, superseding the municipal codes, the continued validity of this section is highly questionable.<sup>26</sup>

## References

1. 53 P.S. 55503; First Class Township Code, Section 503.
2. 53 P.S. 55401; First Class Township Code, Section 401.
3. 53 P.S. 55504, 55505, 55510, 55515, 55520, 55525; First Class Township Code, Sections 504, 505, 510, 515, 520, 525.
4. 53 P.S. 55501; First Class Township Code, Section 501.
5. 53 P.S. 55505; First Class Township Code, Section 505.
6. 53 P.S. 55504; First Class Township Code, Section 504; In re Lincoln, 590 A.2d 1335, 139 Pa.Cmwlth. 413, 1991.
7. 53 P.S. 55525; First Class Township Code, Section 525.
8. 53 P.S. 55627; First Class Township Code, Section 627.
9. 53 P.S. 10903; Pennsylvania Municipalities Planning Code, Section 903.
10. 53 P.S. 10614; Pennsylvania Municipalities Planning Code, Section 614.
11. 25 P.S. 2672; Election Code, Section 402; In re Ganzman, 574 A.2d 732, 133 Pa.Cmwlth. 33, 1990.
12. 24 P. S. 3-322; Public School Code, Section 322.
13. 16 P.S. 402(a); County Code, Section 402(a).
14. 42 Pa.C.S.A. 3302; Judicial Code, Section 3302.
15. 53 P.S. 55901; First Class Township Code, Section 901.
16. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 868, 1993.
17. *Ross Township v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlth. 686, 1991.
18. *Koslow v. Commonwealth, State Ethics Commission*, 540 A.2d 1374, 116 Pa.Cmwlth. 19, appeal denied 533 A.2d 971, 520 Pa. 609.
19. 53 P.S. 55511; First Class Township Code, Section 511.
20. 53 P.S. 55520; First Class Township Code, Section 520.
21. 53 P.S. 55530; First Class Township Code, Section 530; *Commonwealth ex rel. Zimmerman v. Kleiman*, 402 A.2d 1343, 485 Pa. 421, 1979.
22. *Ibid*
23. 65 P.S. 79; 1982 P.L. 1354, No. 309.
24. Constitution of Pennsylvania, Article VI, Sections 6 and 7.
25. 53 P.S. 55604; First Class Township Code, Section 604.
26. *Re: Complaint ... Upper Darby Township*, 45 Del. 220, 1958.

## VI. Second Class Township Offices

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### Elective Offices

In townships of the second class officers are elected as follows.<sup>1</sup>

- Three (or five supervisors if approved by voters)
- One assessor (only in fourth to eighth class counties)
- Three auditors
- One tax collector

Two additional supervisors may be provided for by referendum. The referendum can be placed on the ballot either by a resolution of the board of supervisors or by petition of at least five percent of the registered voters of the township. This question cannot be voted on more than once in any three-year period.<sup>2</sup>

### Term of Office

All officers are elected at large by the voters of the township at municipal elections occurring in odd-numbered years. Supervisors and auditors serve for overlapping six-year terms.<sup>3</sup> Assessors and tax collectors serve for four years.<sup>4</sup> In each case terms of office begin the first Monday of January after the municipal election.

### Qualifications

All township officers must be registered voters of the township. This means they must be 18 years of age and residents of the township.<sup>5</sup> All township elected officers must have resided in the township for at least one year before their election.<sup>6</sup>

### Incompatible Offices

Township Officers. No person is permitted to hold more than one elective township office at the same time.<sup>7</sup> An officer of the township cannot be a member of a zoning hearing board.<sup>8</sup> The zoning officer may not hold any elective office in the township.<sup>9</sup> No elected township officers may serve as school directors during their term of office.<sup>10</sup> Election officers are not eligible for any civil office (other than election officer) on the ballot at any primary election where they are serving.<sup>11</sup> No elected county officer may serve as township supervisor, treasurer or tax collector.<sup>12</sup> No district justice may hold any other elected or appointed public office.<sup>13</sup>

**Supervisors.** A supervisor may hold certain appointive township offices or positions including roadmaster, laborer or secretary, treasurer or any other employee capacity not otherwise prohibited by law.<sup>14</sup> Supervisors may not perform manager's duties nor be employed as township police officers.<sup>15</sup> Township supervisors may be appointed to serve as members of municipal authorities created by the township.<sup>16</sup> However the articles of incorporation of an authority may prohibit elected officials from serving on the authority board and these provisions are enforceable in the courts.<sup>17</sup> Also, Commonwealth Court has ruled an elected official violated the state Ethics Act when he voted to appoint himself to an authority board where he received compensation.<sup>18</sup>

**Auditors.** Auditors are not permitted to hold any township elective or appointive office nor be employed by the township in any capacity.<sup>19</sup>

## Vacancies

If a vacancy occurs in any elective township office, the board of supervisors appoints a successor who is a registered voter and has resided in the township continuously for at least one year prior to their appointment. If the board of supervisors fails to fill the vacancy within 30 days after its occurrence, the vacancy is filled within 15 additional days by a vacancy board consisting of the board of supervisors and one registered voter who is appointed at the board's first meeting each calendar year or as soon thereafter as practical and acts as chair of the vacancy board. If the vacancy board fails to fill the vacancy within the allotted time, the chair of the vacancy board must petition the court of common pleas to fill the vacancy. In the case of a vacancy in the chair the remaining members of the vacancy board must petition the court of common pleas.

A person appointed to a vacancy holds office, if the term continues so long, until the first Monday in January after the first municipal election occurring more than 60 days after the vacancy occurs. At this election an eligible person is elected for the unexpired term.

In the case where two or more vacancies in the office of supervisor occur on a three-member board, or three or more vacancies on a five-member board, the court of common pleas fills the vacancies upon presentation of a petition signed by not less than 15 registered electors of the township.<sup>20</sup>

Any township officer who resigns from office is ineligible for reappointment to that office during the remainder of the term or for a period of one year, whichever is less, if reappointment would increase their salary.<sup>21</sup>

## Judicial Removal for Failure to Perform Duties

The Second Class Township Code contains a procedure for judicial removal of township officers refusing or neglecting to perform their duties. To initiate action against any township officer, a petition signed by at least five percent of the registered voters of the township is presented to the court of common pleas. The court can require the officer to show cause why the office should not be declared vacant. After at least two weeks notice and upon hearing and proof that the facts alleged in the complaint are true, the court may declare the office vacant and appoint another person for the rest of the term, or the court can take other action it considers just and proper.<sup>22</sup> However, because of the Pennsylvania Supreme Court's ruling that the constitutional procedures for removal of elected officers are exclusive, superseding the municipal codes, the continued validity of this section is highly questionable.<sup>23</sup>

## References

1. 53 P.S. 65402(a); Second Class Township Code, Section 402(a).
2. 53 P.S. 65402(b); Second Class Township Code, Section 402(b).
3. 53 P.S. 65403(a), 65404(a); Second Class Township Code, Sections 403(a) and 404(a).
4. 53 P.S. 65405(a); 65406(a); Second Class Township Code, Sections 405(a) 406(a).
5. 53 P.S. 65401; Second Class Township Code, Section 401; *Commonwealth ex rel. District Attorney v. Champaine*, 17 D.&C.3d 120, 1980, C.P. Chester Co.
6. 53 P.S. 65403(c), 65405(a), 65406(a); Second Class Township Code, Section 403(c), 405(a), 406(a).
7. 53 P.S. 65402(a); Second Class Township Code, Section 402(a).
8. 53 P.S. 10903; Pennsylvania Municipalities Planning Code, Section 903.
9. 53 P.S. 10614; Pennsylvania Municipalities Planning Code, Section 614.
10. 24 P.S. 3-322; Public School Code, Section 322.
11. 25 P.S. 2672; Election Code, Section 402; *In re Ganzman*, 574 A.2d 732, 133 Pa.Cmwth. 33, 1990.
12. 16 P.S. 402(a); County Code, Section 402(a).
13. 42 Pa.C.S.A. 3302; Judicial Code, Section 3302.
14. 53 P.S. 65602(c); Second Class Township Code, Section 602(c).



15. 53 P.S. 66301(c), 66902; Second Class Township Code, Sections 1301(c) and 1902; *Cotlar v. Warminster Township*, 303 A.2d 55, 8 Pa.Cmwlth. 162, 1973; *Lower Saucon Township v. Rasich*, 4 D.&C.3d 264, 1978, C.P. Northampton Co.
16. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 868, 1993.
17. *Ross Township v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlth. 686, 1991.
18. *Koslow v. Commonwealth, State Ethics Commission*, 540 A.2d 1374, 116 Pa.Cmwlth. 19, appeal denied 533 A.2d 971, 520 Pa. 609.
19. 53 P.S. 65404(b); Second Class Township Code, Section 404(b).
20. 53 P.S. 65407; Second Class Township Code, Section 407.
21. 65 P.S. 79; 1982 P.L. 1354, No. 309.
22. 53 P.S. 65503; Second Class Township Code, Section 503; Matter of Franklin Township Board of Supervisors, 379 A.2d 874, 475 Pa. 65, 1977; *North Strabane Township v. Sedmak*, 30 D.&C.3d 8, 1983, C.P. Washington Co.
23. *In Re: Petition to Recall Reese*, 665 A.2d 1162, Pa., 1995.

## VII. Constables

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The constable is an independent local elected official. While constables are elected from units of local government, they are independent of any direction from them and carry out their duties according to the dictates of the laws under which they operate.<sup>1</sup> The constable is an officer charged with conservation of the peace. Constables, having the status of independent contractors, are not employees of the Commonwealth, the judiciary, the municipality or the county in which they work.<sup>2</sup> Although by statute, constables may serve process in some instances and the job is related to the courts, the office belongs to the executive branch of the government.

Constables are not answerable to the governing body of the municipality from which they are elected.<sup>3</sup> Constables have been held to be related staff of the judicial system, officers whose functions aid the judicial process, but not personnel of the system entitled to costs of legal defense in matters relating to the conduct of their office.<sup>4</sup>

### Election and Term of Office

Constables are elected from each ward in cities of the second class, second class A, third class, and boroughs divided into wards.<sup>5</sup> One constable is elected in boroughs not divided into wards and in townships.<sup>6</sup> An additional constable may be elected in first class townships.<sup>7</sup> Constables are elected at the municipal election held in odd-numbered years to serve a term of six years.<sup>8</sup>

### Qualifications

There are presently no qualifications for election to the office of constable. All constables, in order to be able to discharge the duties of office and collect fees, must be certified after completion of a training program. The Constables' Education and Training Board determines the content of the program. It must include a minimum of 80 hours of basic training and 40 hours of continuing education courses annually.<sup>9</sup> To maintain certification, constables are required to furnish proof of professional liability insurance coverage. To carry and use firearms, constables must be certified under an approved firearms program.

### Incompatible Offices

Constables are not allowed to serve as police officers in third class cities.<sup>10</sup> They may not be school directors,<sup>11</sup> borough or township auditors<sup>12</sup> or district justices.<sup>13</sup>

Constables cannot hold any federal office, except for military service.<sup>14</sup> Although not declared incompatible by law, the Superior Court ruled that it was against public policy for a constable to carry on a business of private detective, and a detective's license was properly suspended during the constable's term of office.<sup>15</sup>

### Vacancies

When a vacancy occurs for any reason, the court of common pleas appoints a suitable person to serve as constable for the unexpired term upon petition of at least ten qualified voters.<sup>16</sup>

## Removal from Office

The court of common pleas has the power to decree the removal of a constable from office because of intemperance or neglect of duty upon petition of the surety. The courts also have full power, on petition of any citizen or citizens, to inquire into the official conduct of any constable. If any constable is found to be unfit or incompetent to discharge their official duties the courts can decree removal from office and appoint a suitable person to fill the vacancy until the next election.<sup>17</sup> Constables can also be removed from office for violating rules of court procedure.<sup>18</sup>

## References

1. Rosenwald v. Barbieri, 462 A.2d 644, 501 Pa. 563, 1983.
2. In re Act 147 of 1990, 598 A.2d 985, 528 Pa. 460, 1991.
3. The Constables of Pennsylvania. A Critical Survey. Administrative Office of Pennsylvania Courts, 1976.
4. Rosenwald v. Barbieri, 462 A.2d 644, 501 Pa. 563, 1983.
5. 13 P.S. 1; 1889 P.L. 83, Section 1.
6. 13 P.S. 2; 1889 P.L. 6, Section 1.
7. 13 P.S. 3; 1911 P.L. 727, Section 1.
8. 13 P.S. 14; 1943 P.L. 637, Section 1.
9. 42 Pa.C.S. 2942(a); 1994 P.L. 265, No. 44.
10. 53 P.S. 37001; Third Class City Code, Section 2001.
11. 24 P.S. 3-322; Public School Code, Section 322.
12. 65 P.S. 6; 1876 P.L. 179, Section 1.
13. 65 P.S. 17; 1955 P.L. 1382.
14. 65 P.S. 1; 1941 P.L. 231.
15. In re Stanley, 201 A.2d 287, 204 Pa.Super.29, 1964.
16. 13 P.S. 11; 1929 P. L. 32, Section 1.
17. 13 P.S. 31; 1841 P.L. 400, Section 14.

## VIII. School District Offices

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### Elective Offices

Except in Philadelphia, where school directors are appointed by the mayor, school districts elect nine school directors. Directors may be elected at large, from regions or by a combination of at-large and regional representation.<sup>1</sup>

### Term of Office

School directors are elected for four-year overlapping terms at the municipal elections occurring in odd-numbered years. Four directors are elected in one election and five in the subsequent election two years later. In each case, terms of office begin the first Monday of December following the election.

### Qualifications

School directors must be citizens of the Commonwealth, have a good moral character, be at least 18 years of age and have resided within the school district for at least one year prior to their election.<sup>2</sup> Each person elected or appointed as a school director must take an oath before entering upon the duties of their office.<sup>3</sup>

### Incompatible Offices

**Local Offices.** No elected county officer or county solicitor can serve at the same time as a school director.<sup>4</sup> No school director may hold an office or be employed by a first class city (Philadelphia). Persons holding the following local elective offices cannot at the same time be a school director: county commissioner, district attorney, mayor, council member, township commissioner, township supervisor, tax collector, treasurer, assessor, assistant assessor, controller, auditor or constable.<sup>5</sup> No election officer is eligible for any civil office (other than election officer) on the ballot at any primary or election where they are serving.<sup>6</sup>

**School Offices.** Persons who are employed by a school district as executive director or assistant executive director of an intermediate unit, district superintendent, assistant district superintendent, supervisor, teacher or employee of the school district may not serve as school director.<sup>7</sup> However, such persons may serve as school directors for districts other than the one in which they are employed. A supervisor, principal, teacher or employee of a vocational school, intermediate unit or community college may serve as a school director for one of the component or sponsoring school districts, but may not be appointed to the board of the vocational school, intermediate unit or community college.

### Vacancies

If a vacancy occurs in the office of school director by reason of death, resignation, removal from the district or otherwise, the vacancy is filled by appointment of a registered voter of the district by a majority vote of the remaining members of the school board within 30 days of the date of the vacancy. A person appointed to a vacancy holds office, if the term continues so long, until the first Monday in December after the first municipal election occurring more than sixty days after the vacancy occurs. At this election an eligible person is elected for remainder of the unexpired term. If the school board fails to fill the vacancy within 30 days, the court of

common pleas fills the vacancy upon petition of ten or more resident taxpayers.<sup>8</sup> Where the offices of all or a majority of the members of the school board are vacant, the vacancies are filled by the court of common pleas.<sup>9</sup> In Philadelphia, all vacancies are filled by the court of common pleas.

## Removal from Office

The Public School Code contains statutory procedures for removal of school board members. If any person elected or appointed as school director fails to qualify within ten days of the beginning of the term of office, the remaining members of the school board may declare the office vacant.<sup>10</sup> When a school director neglects or refuses to attend two successive regular meetings of the school board, unless detained by illness or necessary absence from the district, the remaining members of the board may declare the office vacant.<sup>11</sup>

Where the school board fails to organize, or it refuses or neglects to perform any duty required by law, its members are subject to judicial removal. Upon petition of ten resident taxpayers of the district which sets forth the facts of the alleged refusal or neglect of duty, after notice, the court holds a hearing. If the court determines the school board has neglected or failed to perform a mandatory duty, it can remove all or part of the board and appoint successors for the unexpired terms.<sup>12</sup> However, because of the Pennsylvania Supreme Court's ruling that the constitutional procedures for removal of elected officers are exclusive, superseding the statutory provisions, the continued validity of these sections is highly questionable.<sup>13</sup>

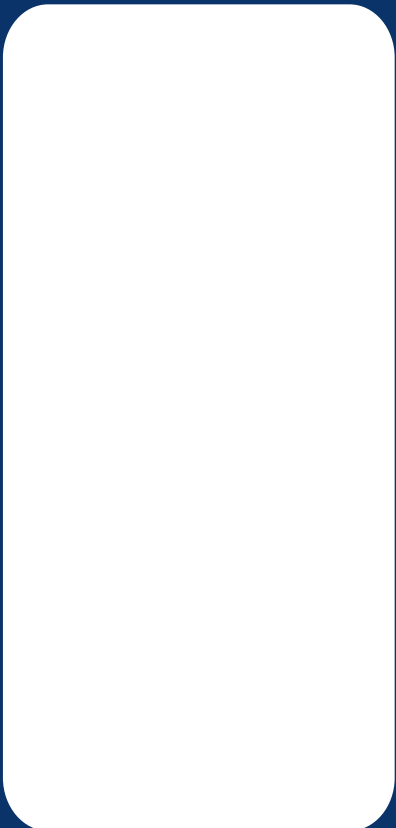
## References

1. 24 P.S. 3-303; Public School Code, Section 303.
2. 24 P.S. 3-322; Public School Code, Section 322.
3. 24 P.S. 3-321; Public School Code, Section 321.
4. 16 P.S. 402(a); County Code, Section 402(a).
5. 24 P.S. 3-322; Public School Code, Section 322; 53 P.S. 36001; Third Class City Code, Section 1001; 53 P.S. 45801; Borough Code, Section 801; 65 P.S. 8; 1874 P.L. 186; 65 P.S. 15; 1915 P.L. 879.
6. 25 P.S. 2672; Election Code, Section 402.
7. 24 P.S. 3-322; Public School Code, Section 322.
8. 24 P.S. 3-315; Public School Code, Section 315.
9. 24 P.S. 3-316,3-317; Public School Code, Section 316 and 317.
10. 24 P.S. 3-319; Public School Code, Section 319.
11. Ibid
12. 24 P.S. 3-318; Public School Code, Section 318; *Zerbe Township School District v. Thomas*, 44 A.2d 566, 353 Pa. 162, 1945; *DiPerna v. Dzadony*, 347 A.2d 750, 22 Pa.Cmwlth. 94, 1975.
13. *In Re: Petition to Remove Reese*, 665 A.2d 1162, Pa., 1995.

**Pennsylvania Department of Community & Economic Development**  
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