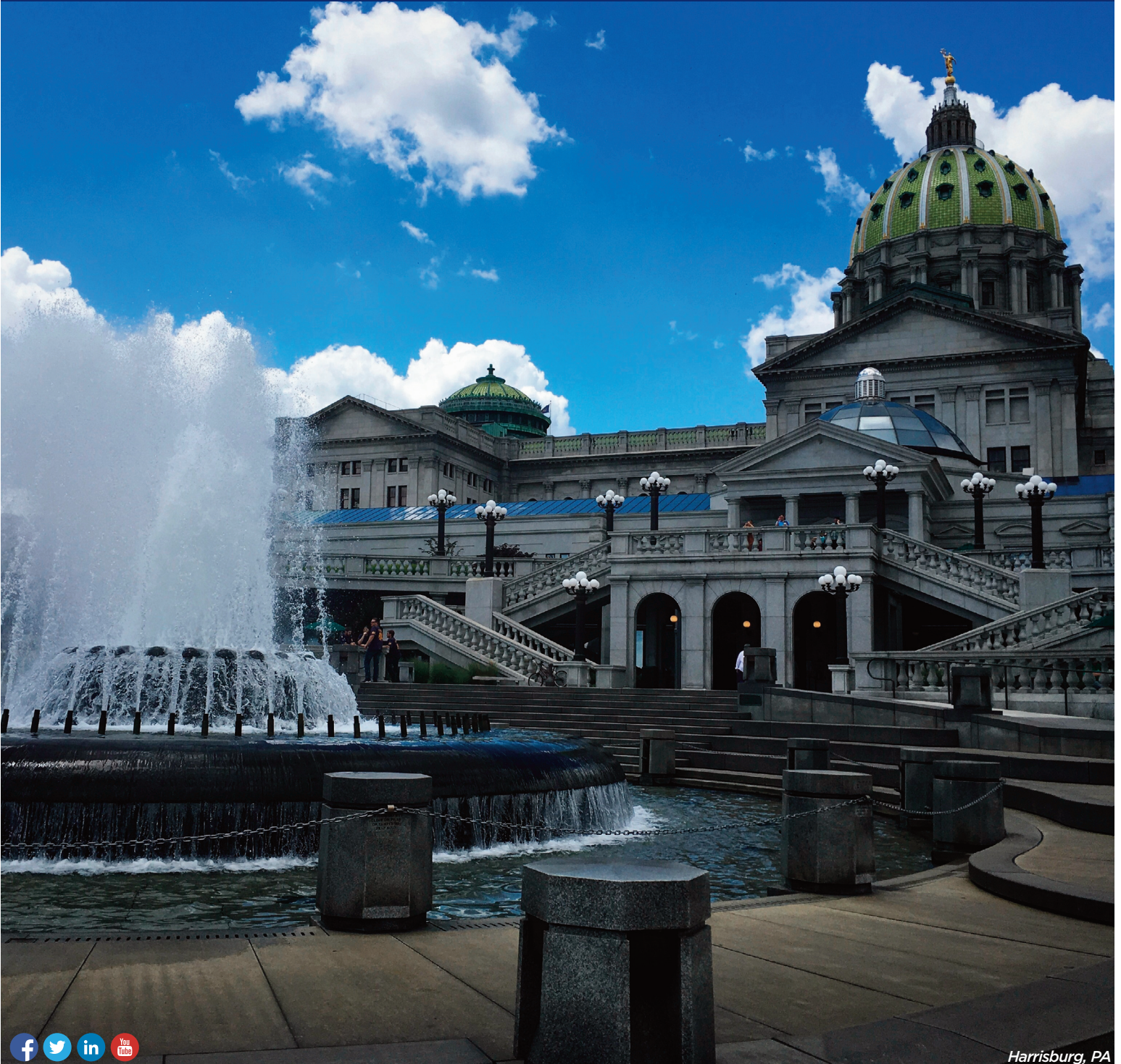


# ELECTIVE OFFICE IN LOCAL GOVERNMENT

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Comments or inquiries on the subject matter of this publication should be addressed to:

Governor's Center for Local Government Services  
Department of Community and Economic Development  
Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, Pennsylvania 17120-0225

(717) 787-8158  
1-888-223-6837  
E-mail: [ra-dcedclgs@pa.gov](mailto:ra-dcedclgs@pa.gov)  
[dced.pa.gov](http://dced.pa.gov)

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## Foreword

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There are thousands of elected offices in local governments --- counties, municipalities and school districts --- throughout Pennsylvania. The men and women who fill these offices make important decisions about the future of their communities. They set policies on countless issues, including taxes, schools, land use, and the appropriate level of local government services.

The purpose of this publication is to gather together, in a single place, important information about elective local government offices in Pennsylvania so that citizens and elected officials alike have a better understanding of those offices. This publication outlines what offices are filled in each type of local government 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.

# I. General Provisions

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This publication begins with a discussion of general provisions that affect all types of local governments. The remaining sections describe those provisions specific to each type of local government.

## 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.<sup>1</sup> This prohibition extends to local government offices.<sup>2</sup> Conviction occurs when the court sentences an individual. Article II, Section 7 is self-operating, which means that a person automatically become ineligible to hold office once he or she is convicted. Article II, Section 7 also applies whether or not the person committed the criminal conduct while in office; its purpose is to ensure the good character of public officials.<sup>3</sup> Individuals convicted of these crimes can also be removed from office by quo warranto actions.<sup>4</sup> Those actions can include challenges to candidate petitions.<sup>5</sup>

The Pennsylvania Commonwealth Court recently reaffirmed 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.” Crimen falsi offenses include forgery, perjury, subordination of perjury, attain of false verdict, and other similar offenses which involve the charge of falsehood and affect the public administration of justice.<sup>6</sup>

## Removal from Office

The Pennsylvania Supreme Court has held that a municipal code governing the removal of civil officers was unconstitutional because it conflicted with the exclusive method for removal established in Article VI, Sections 6 and 7 of the Pennsylvania Constitution.<sup>7</sup> Elected officials are removable from office: (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 Pennsylvania Constitution. Appointed officers may be removed at the pleasure of the governing body by which they were appointed.<sup>8</sup>

## 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 or she was appointed or for a period of one year, whichever is less, if such reappointment would increase his or her salary or benefits. However, nothing would prevent the officer from being reappointed to the same office if the reappointment does not result in a higher salary.<sup>9</sup>

## Incompatibility

It is permissible to hold two or more offices at the same time except where those offices have been declared incompatible by the General Assembly.<sup>10</sup> There are many instances in which the General Assembly has done so, many of which will be identified later in this publication.

## Family Relationships

Pennsylvania law does not prohibit individuals from holding elective office in a local government where their spouse or other family member is already an elected officer or employee. However, they must take care in those instances because there is a high potential for conflict of interest. For instance, where an individual is an elected auditor, and is therefore responsible for auditing the accounts of a family member who is the township secretary or roadmaster, that individual should not participate in that portion of the audit.

Likewise, no law prohibits a local government from hiring a family member of an elected officer as an employee. However, the State Ethics Act prohibits public officials from using the authority of their office for the private pecuniary benefit of their immediate family.<sup>11</sup> Elected officers thus may not propose, discuss or vote on the hiring of a family member by the local government they serve. The State Ethics Act defines “immediate family” to mean a parent, spouse, child, brother or sister.<sup>12</sup>

## REFERENCES

1. PA. CONST., art. II, § 7.
2. *In re* Petition of Hughes, 532 A.2d 298, 516 Pa. 90 (1987).
3. *Commonwealth ex rel. Pennsylvania Attorney General Corbett v. Griffin*, 946 A.2d 668, 596 Pa. 549 (2008).
4. *Commonwealth ex rel. Kearney v. Rambler*, 32 A.3d 658, 613 Pa. 32 (2011).
5. *Commonwealth ex rel. Baldwin v. Richard*, 751 A.2d 647, 561 Pa. 489 (2000).
6. *In re Humane Society of Harrisburg Area, Inc.*, 92 A.3d 1264 (Pa.Cmwlt. 2014).
7. *South Newton Tp. Electors v. South Newton Tp. Sup’r, Bouch*, 838 A.2d 643, 575 Pa. 670 (2003).
8. PA. CONST., art. VI, §§ 6 and 7.
9. 65 P.S. § 79.
10. *Commonwealth ex rel. Fox v. Swing*, 186 A.2d 24, 409 Pa. 241 (1962); *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 293 (1993).
11. 65 Pa.C.S.A. § 1103.
12. 65 Pa.C.S.A. § 1102.

## II. County Offices

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### Elective Offices

In counties that have not reorganized under a home rule charter, the row officers are elected by the qualified voters of the county as follows:

- Three county commissioners
- Three auditors or, in all counties where the office of auditor has been or will later be abolished, one controller
- One treasurer
- One coroner
- One recorder of deeds
- One prothonotary
- One clerk of the 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>1</sup>

Where provisions of the County Code or other laws provide for two or more offices to be held by the same person, only one person is elected to the combined office.<sup>2</sup> Unless otherwise provided by local laws, several judicial support offices are combined. In counties of the third and fourth class, the offices of register of wills and clerk of the orphans' court are combined.<sup>3</sup> In counties of the fifth class, the offices of the prothonotary and clerk of courts are held by one person and the positions of register of wills and clerk of the orphans' court are combined.<sup>4</sup> In counties of the sixth and seventh class, the positions of prothonotary and clerk of courts are combined and the offices of register of wills, recorder of deeds and clerk of the orphans' court are held by one person.<sup>5</sup> In counties of the eighth class, one person holds the offices of prothonotary, clerk of courts, register of wills, recorder of deeds and clerk of the orphans' court.<sup>6</sup>

### Term of Office

All county officers are elected at the municipal election prior to the expiration of the terms of the current office holders. The terms of office begin the first Monday of January after their election and extend 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 the 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>7</sup>

### Qualifications

**County Officers.** All persons elected to any county office, except the district attorney, must be at least 18 years old, U.S. citizens, and residents of the county for at least one year prior to their election.<sup>8</sup>

**District Attorney.** District attorneys must be at least 25 years old, citizens of the United States, residents of the county for at least one year prior to their election or appointment, and admitted to practice before the Pennsylvania Supreme Court for least one year before 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 is declared vacant. Each coroner must annually take at least eight credit hours of continuing education. Failure to comply also results in the office being declared vacant.<sup>10</sup>

## Incompatible Offices

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

No member of Congress, nor any person holding or exercising any federal office or appointment, 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>13</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>14</sup>

**County Commissioner.** County commissioners may be appointed to serve as members of municipal authorities created by the county.<sup>15</sup> However, the articles of incorporation of an authority may prohibit elected officials from serving on the board.<sup>16</sup> An elected official violates the State Ethics Act if he votes to appoint himself to an authority board from which he will receive compensation.<sup>17</sup>

**District Attorney.** The district attorney is not eligible to be a member of the General Assembly or to hold any other office under the laws and constitution of the commonwealth, except an office in the militia, while in office.<sup>18</sup>

Full-time district attorneys are prohibited from deriving any income from private legal practice and must completely sever any affiliations with any law firm. In counties without full-time district attorneys, district attorneys are permitted to have an outside legal practice. Their part-time salaries are a fixed percentage of that earned by the judges in the county.<sup>19</sup>

**Controller.** No person holding federal office is eligible to hold the office of county controller while in federal office or for one year thereafter. The 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 and for two years after the end of the term.<sup>20</sup>

**Auditors.** No person is eligible to be county auditor if they were county treasurer within the prior 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>21</sup>

**Treasurer.** No judge, clerk of courts, prothonotary, register of wills, recorder of deeds, county commissioner or county controller can serve as county treasurer at the same time.<sup>22</sup>

## Vacancies

**County Officers.** When there are vacancies in any county office, unless otherwise provided for by law, the Governor appoints a suitable person to fill the office until the first Monday in 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, then the office is filled for the balance of the unexpired term at the election. The appointee must be confirmed by the Senate if it is in session.<sup>23</sup> Vacancies for county officers that are authorized or required to appoint a deputy, such as coroners and sheriffs, are filled by the principal deputy until a successor is qualified.<sup>24</sup>

**County Commissioner.** The court of common pleas fills any vacancy in the office of county commissioner for the balance of the unexpired term. The appointee must be a member of the same political party as the commissioner who is replaced.<sup>25</sup>

**Auditors.** Where the office of controller has not been established, the court of common pleas fills any vacancy in the office of auditor for the balance of the unexpired term. The appointee must be an elector who voted for the auditor whose place is to be filled.<sup>26</sup>

**District Attorney.** In the event of a vacancy in the office of district attorney in a county of the third class, the court of common pleas appoints a competent person for the unexpired term. In counties of the fourth through eighth class, the first assistant district attorney shall become the district attorney until the first Monday in January following the next municipal election occurring not less than 90 days after the vacancy is created.<sup>27</sup>

**Jury Commissioner.** In the event of a vacancy, the president judge of the court of common pleas appoints a suitable person who must be of the same political party as the jury commissioner whose place is to be filled.<sup>28</sup> The governing body of counties of the second class A through eighth class may adopt a resolution abolishing the office of jury commissioner. If they do so, the office expires at the end of the then-current commissioners' terms of office.<sup>29</sup>

## REFERENCES

1. 16 P.S. § 401 (County Code, Section 401).
2. 16 P.S. § 1301 (County Code, Section 1301).
3. 16 P.S. § 1302(a) (County Code, Section 1302(a)).
4. 16 P.S. § 1302(b) (County Code, Section 1302(b)).
5. 16 P.S. § 1302(c) (County Code, Section 1302(c)).
6. 16 P.S. § 1302(d) (County Code, Section 1302(d)).
7. 16 P.S. § 401(b) (County Code, Section 401(b)).
8. 16 P.S. § 413 (County Code, Section 413).
9. 16 P.S. § 1401(a) (County Code, Section 1401(a)).
10. 16 P.S. §§ 9525.2 and 9525.3.
11. 16 P.S. § 402(a) (County Code, Section 402(a)); 24 P.S. § 3-322 (Public School Code, Section 322).
12. 53 P.S. § 10903(a).
13. 16 P.S. § 402(b) (County Code, Section 402(b)).
14. 25 P.S. § 2672(a).
15. *Ross Tp. v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlt. 686 (1991).
16. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 293 (1993).
17. *Koslow v. Commonwealth, State Ethics Commission*, 540 A.2d 1374, 116 Pa.Cmwlt. 19 (1988), *appeal denied*, 553 A.2d 971, 520 Pa. 609 (1988).
18. 16 P.S. § 1401(f) (County Code, Section 1401(f)).
19. 16 P.S. § 1401(k) and (l) (County Code, Section 1401(k) and (l)).
20. 16 P.S. § 602 (County Code, Section 602); *Commonwealth ex rel. Toole v. Yanoshak*, 346 A.2d 304, 464 Pa. 239 (1975).
21. 16 P.S. § 702 (County Code, Section 702).
22. 16 P.S. § 801 (County Code, Section 801).
23. 16 P.S. § 409 (County Code, Section 409); *Commonwealth ex rel. Foreman v. Hampson*, 143 A.2d 369, 393 Pa. 467 (1958).
24. 16 P.S. §§ 408, 1214 and 1249 (County Code, Sections 408, 1214 and 1249).
25. 16 P.S. § 501 (County Code, Section 501).
26. 16 P.S. § 701 (County Code, Section 701).
27. 16 P.S. § 1404(a) (County Code, Section 1404(a)).
28. 42 Pa.C.S.A. § 2122(c).
29. 16 P.S. § 401(f) (County Code, Section 401(f)).

## III. Offices in Cities of the Third Class

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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, mayor-council or council-manager form, the elective offices are as follows:

- Mayor
- Council Members: four in commission cities, five, seven or nine in optional charter cities
- Controller
- Treasurer.<sup>1</sup>

In council-manager cities operating 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 beginning the first Monday of January after their election.<sup>3</sup>

### Qualifications

All elected officers must be at least 18 years old (except for the treasurer and controller, both of whom must be 21 years old), and residents of the city for at least one year before their election. They must continue to reside in the city during their term of office and sign an affidavit that they will do so.<sup>4</sup>

The city controller and city treasurer shall be competent accountants in order to qualify for their office.<sup>5</sup>

### Incompatible Offices

**City Officers.** No city officer, official or employee is eligible for appointment to any civil service board.<sup>6</sup>

Elected city officers, except for council members, may be appointed to serve as members of municipal authorities created by the city. However, the articles of incorporation of the authority may prohibit elected officials from serving on the board.<sup>7</sup>

Members of a zoning hearing board can hold no other office.<sup>8</sup> Similarly, the zoning officer may hold no elective office.<sup>9</sup>

No city officer may serve as an election officer during their term of office or within two months after leaving office.<sup>10</sup> No city officer may serve as a school director during their term of office.<sup>11</sup> The city council members or treasurer cannot also serve as an elected county officer or solicitor.<sup>12</sup> No magisterial district judge may hold any other elected or appointed office.<sup>13</sup>

**Council member.** No officer of the United States or of the commonwealth (except notaries public or officers of the militia), officers of the school district or county, or officers or employees of the city may serve as a council member.<sup>14</sup> It is unlawful for any member of the General Assembly to hold or exercise the office of council member in any incorporated city.<sup>15</sup> Council members are ineligible to hold any city or county offices while serving as a member of council.<sup>16</sup>

## **Vacancies**

Vacancies in the offices of council member and mayor are filled by council within 30 days.<sup>17</sup> Appointees serve the shorter of the remainder of the unexpired term or until the first Monday in January after the next municipal election occurring at least 30 days after the vacancy occurs.<sup>18</sup> 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 majority or more of city council, then the president judge of the court of common pleas must fill the vacancies.<sup>19</sup>

Vacancies in the offices of controller and treasurer are filled by council within 30 days.<sup>20</sup>

For cities operating under the Optional Third Class City Charter Law, vacancies in the council or the offices of mayor, treasurer or controller are filled by the remaining members of council within 30 days.<sup>21</sup>

## **REFERENCES**

1. 53 P.S. § 35701 (Third Class City Code, Section 701); 53 P.S. §§ 41402, 41502 and 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, 41404, 41503 and 41504 (Optional Third Class City Charter Law, Sections 403, 404, 503 and 504).
4. 53 P.S. §§ 36001, 36201, 36401, and 36701 (Third Class City Code, Sections 1001, 1201, 1401, and 1701).
5. 53 P.S. §§ 36401 and 36701 (Third Class City Code, Sections 1401 and 1701).
6. 53 P.S. § 39402 (Third Class City Code, Section 4402).
7. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 293 (1993); *Ross Tp. v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwlt. 686 (1991).
8. 53 P.S. § 10903.
9. 53 P.S. § 10614.
10. 25 P.S. § 2672.
11. 24 P.S. § 3-322 (Public School Code, Section 322).
12. 16 P.S. § 402(a) (County Code, Section 402(a)).
13. 42 Pa.C.S.A. § 3302.
14. 53 P.S. § 36001(c) (Third Class City Code, Section 1001(c)).
15. 65 P.S. § 11.
16. 65 P.S. § 14.
17. 53 P.S. § 35801(a) (Third Class City Code, Section 801(a)).
18. 53 P.S. § 35801(c) (Third Class City Code, Section 801(c)).
19. 53 P.S. § 35801(b) (Third Class City Code, Section 801(b)).
20. 53 P.S. § 35802 (Third Class City Code, Section 802).
21. 53 P.S. § 41406 (Optional Third Class City Charter Law, Section 406).

## IV. Borough Offices

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### Elective Offices

The registered voters of a borough elect the following officers:

- Mayor
- Council members (number varies)
- Tax collector
- Three auditors or one controller (except where an independent auditor is appointed).<sup>1</sup>

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

In boroughs divided into wards, one or two (or three if they had that many per ward prior to January 1, 1966) council members are elected from each ward.<sup>4</sup>

When a borough council elected by wards consists of more than seven members, five percent of the registered voters of the borough can petition the court of common pleas to reduce the size of council from each ward, except that council may not consist of less than seven members. 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>5</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>6</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>7</sup> In each borough, half the council is elected every two years so that council members have overlapping terms.<sup>8</sup> One auditor is elected at each municipal election.<sup>9</sup>

### Qualifications

Only registered voters of a borough are eligible to hold elective offices. This means borough officers must be 18 years old and residents of the borough for at least one year prior to their election. Council members are required to be residents of the ward from which they are elected.<sup>10</sup> The residency requirements may be waived by boroughs with a population of less than 150 people.<sup>11</sup>

### Incompatible Offices

**Borough Officers.** No individual is permitted to hold more than one elective borough office.<sup>12</sup> Any borough official, however, is eligible to hold any appointive borough office where there is no incompatibility in fact.<sup>13</sup> However, no elected official may serve as an employee in a borough with a population of at least 3,000 people, unless they were employed prior to the 2010 census or a subsequent census that indicates an increase to 3,000 or more people.<sup>14</sup> A school director is not eligible for an elective borough office.<sup>15</sup> No borough officer may be a member of a zoning hearing board.<sup>16</sup> The zoning officer may not hold any elective office in the borough.<sup>17</sup> No elective county officer may serve as borough council member, treasurer or tax collector.<sup>18</sup> No magisterial district judge may hold any other elected or appointed public office.<sup>19</sup>

Borough elected officers may be appointed to serve as members of municipal authorities created by the borough.<sup>20</sup> However, the articles of incorporation of an authority may prohibit elected officials from serving on the board.<sup>21</sup> An elected official violates the State Ethics Act if he votes to appoint himself to an authority board from which he receives compensation.<sup>22</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 borough council.<sup>23</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>24</sup>

**Mayor.** According to at least one county court, a mayor may not be appointed to the board of a municipal authority created by the borough.<sup>25</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 the case of a ward-elected 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, but not the mayor, and one registered voter of the 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>26</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>27</sup>

## REFERENCES

1. 8 Pa.C.S.A. § 806(a) (Borough Code, Section 806(a)).
2. 8 Pa.C.S.A. § 806 (Borough Code, Section 806).
3. 8 Pa.C.S.A. § 818 (Borough Code, Section 818).
4. 8 Pa.C.S.A. § 806(a)(5) (Borough Code, Section 806(a)(5)).
5. 8 Pa.C.S.A. § 815 (Borough Code, Section 815).
6. 8 Pa.C.S.A. § 806 (Borough Code, Section 806).
7. 8 Pa.C.S.A. §§ 806 and 811 (Borough Code, Sections 806 and 811).
8. 8 Pa.C.S.A. § 811 (Borough Code, Section 811).
9. 8 Pa.C.S.A. § 806 (Borough Code, Section 806).
10. 8 Pa.C.S.A. § 801(a) (Borough Code, Section 801(a)).
11. 8 Pa.C.S.A. § 801(c) (Borough Code, Section 801(c)).
12. 8 Pa.C.S.A. § 801(b) (Borough Code, Section 801(b)).
13. 8 Pa.C.S.A. § 1104(a) (Borough Code, Section 1104(a)).
14. 8 Pa.C.S.A. § 1104(b) (Borough Code, Section 1104(b)).
15. 24 P.S. § 3-322 (Public School Code, Section 322); 8 Pa.C.S.A. § 801 (Borough Code, Section 801).
16. 53 P.S. § 10903.
17. 53 P.S. § 10614.
18. 16 P.S. § 402(a) (County Code, Section 402(a)).
19. 42 Pa.C.S.A. § 3302.
20. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 293 (1993).
21. *Ross Tp. v. Menhorn*, 588 A.2d 1347, 138 Pa.Cmwth. 686 (1991).
22. *Koslow v. Commonwealth, State Ethics Commission*, 540 A.2d 1374, 116 Pa.Cmwth. 19 (1988), *appeal denied*, 533 A.2d 971, 520 Pa. 609 (1988).
23. 8 Pa.C.S.A. § 1173 (Borough Code, Section 1173).
24. 25 P.S. § 2672; *In re Ganzman*, 574 A.2d 732, 133 Pa.Cmwth. 33 (1990).
25. *Pennsylvania Department of State v. Mount Joy Borough*, 66 D.&C. 251 (Dauphin C.C.P. 1958).
26. 8 Pa.C.S.A. § 901 (Borough Code, Section 901).
27. 65 P.S. § 79.

## V. Offices in Townships of the First Class

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### Elective Offices

In townships of the first class voters elect the following officials:

- Commissioners: at least five, depending on whether the township is divided into wards
- One tax collector
- Three auditors or one appointed auditor, or one controller where such office has been created.<sup>1</sup>

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 board is elected at large. In townships with five or more wards, one commissioner is elected from each ward.<sup>2</sup> Townships of the first class may be divided into a maximum of fifteen wards.<sup>3</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 of the board of commissioners is elected every two years. In townships with auditors, one auditor is elected every two years.<sup>4</sup>

### Qualifications

All elected officers must be registered voters of the township, 18 years old and residents of the township for at least one year before their election.<sup>5</sup> In townships divided into wards, commissioners must have also resided in their ward for at least one year before their 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 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 magisterial district judge 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 board.<sup>17</sup> An elected official violates the State Ethics Act if he votes to appoint himself to an authority board from which he receives compensation.<sup>18</sup>

**Auditor.** No auditor can hold any other elective or appointive office.<sup>19</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.<sup>20</sup> 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.

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.<sup>21</sup>

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>

## **REFERENCES**

1. 53 P.S. § 55503 (First Class Township Code, Section 503).
2. 53 P.S. § 55504 (First Class Township Code, Section 504).
3. 53 P.S. § 55401 (First Class Township Code, Section 401).
4. 53 P.S. §§ 55504, 55505, 55510, 55520 and 55525 (First Class Township Code, Sections 504, 505, 510, 520 and 525).
5. 53 P.S. §§ 55501 and 55505 (First Class Township Code, Sections 501 and 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.
10. 53 P.S. § 10614.
11. 25 P.S. § 2672; 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.
15. 53 P.S. § 55901 (First Class Township Code, Section 901).
16. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 283 (1993).
17. *Ross Tp. 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 (1988), *appeal denied*, 533 A.2d 971, 520 Pa. 609 (1988).
19. 53 P.S. § 55530 (First Class Township Code, Section 530).
20. 53 P.S. § 55530(a) (First Class Township Code, Section 530(a)).
21. 53 P.S. § 55530(b) (First Class Township Code, Section 530(b)).
22. 53 P.S. § 55530(c) (First Class Township Code, Section 530(c)).
23. 65 P.S. § 79.



## VI. Offices in Townships of the Second Class

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### Elective Offices

In townships of the second class the voters elect the following:

- Three (or five supervisors if approved by voters)
- Three auditors
- One tax collector.<sup>1</sup>

Upon a resolution of the board of supervisors or a petition of at least five percent of the registered voters of the township, as well as a majority of those voting in the next municipal election, a township may add two additional supervisors. 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 overlapping six-year terms.<sup>3</sup> 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 18 years of age and residents of the township.<sup>5</sup> All 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 elected or appointed 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 or county solicitor may serve as township supervisor, treasurer or tax collector.<sup>12</sup> No magisterial district judge 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> However, supervisors may neither perform the duties of a manager or auditor nor be employed as township police officers.<sup>15</sup> 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 board.<sup>17</sup> An elected official violates the State Ethics Act if he votes to appoint himself to an authority board from which he receives compensation.<sup>18</sup>

**Managers.** Managers may also hold the office of secretary, treasurer or any other township office or employment, except that of supervisor, auditor or township police officer.<sup>19</sup>

**Auditors.** Auditors are not permitted to hold any elective or appointive office within the township or be employed by the township in any capacity.<sup>20</sup>

### Vacancies

If a vacancy occurs in any elective township office, the board of supervisors appoints a successor who must be a registered voter who has resided in the township for at least one year prior to the appointment. If the board of supervisors fails to fill the vacancy within 30 days, a vacancy board consisting of the board of supervisors and one

registered voter has 15 days to fill the vacancy. That voter is appointed at the board of supervisors' first meeting every 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 that election an eligible person is elected for the unexpired term.

In the case where a majority of the positions on the board are vacant, 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>21</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>22</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) and 65404(a) (Second Class Township Code, Sections 403(a) and 404(a)).
4. 53 P.S. § 65406(a) (Second Class Township Code, Section 406(a)).
5. 53 P.S. § 65401 (Second Class Township Code, Section 401).
6. 53 P.S. §§ 65403(c), 65404(a) and 65406(a) (Second Class Township Code, Sections 403(c), 404(a) and 406(a)).
7. 53 P.S. § 65402(a) (Second Class Township Code, Section 402(a)).
8. 53 P.S. § 10903.
9. 53 P.S. § 10614.
10. 24 P.S. § 3-322 (Public School Code, Section 322).
11. 25 P.S. § 2672; *In re Ganzman*, 574 A.2d 732, 133 Pa.Cmwlth. 33 (1990).
12. 16 P.S. § 402(a) (County Code, Section 402(a)).
13. 42 Pa.C.S.A. § 3302.
14. 53 P.S. § 65602(c) (Second Class Township Code, Section 602(c)).
15. 53 P.S. §§ 66301(c) and 66902 (Second Class Township Code, Sections 1301(c) and 1902).
16. *Commonwealth v. Lucas*, 632 A.2d 868, 534 Pa. 238 (1993).
17. *Ross Tp. 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 (1988), *appeal denied*, 533 A.2d 971, 520 Pa. 609 (1988).
19. 53 P.S. § 66301(c) (Second Class Township Code, Section 1301(c)).
20. 53 P.S. § 65404(b) (Second Class Township Code, Section 404(b)).
21. 53 P.S. § 65407 (Second Class Township Code, Section 407).
22. 65 P.S. § 79.

## VII. Constables

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Constables are locally-elected officials, but they are independent of any direction from any local government and carry out their duties according to the dictates of the laws under which they operate.<sup>1</sup> Constables are charged with conservation of the peace and are not employees of the commonwealth, the judiciary, the municipality or the county in which they work. Instead, they are independent contractors.<sup>2</sup>

Courts have held constables to be related staff of the judicial system (officers whose functions aid the judicial process), but not personnel entitled to costs of legal defense in matters relating to the conduct of their office.<sup>3</sup>

### Election and Term of Office

The term of a constable in cities of the second class, second class A and third class, boroughs, towns and townships is six years.<sup>4</sup> In cities of the second and third class, a constable is elected in each ward.<sup>5</sup> In boroughs divided into wards, a constable is elected in each ward and a high constable is elected by the entire borough.<sup>6</sup> A second constable may be elected in townships of the first class.<sup>7</sup>

### Qualifications

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.<sup>8</sup> The Constables' Education and Training Board determines the content of the program.<sup>9</sup> It must include a minimum of 80 hours of basic training and 40 hours of continuing education courses annually.<sup>10</sup> To maintain certification, constables are required to furnish proof of professional liability insurance coverage.<sup>11</sup> In townships, they must also give a bond of not less than \$500 nor more than \$3,000; the amount is set by the court of common pleas.<sup>12</sup> To carry and use firearms, constables must be certified under an approved firearms program.<sup>13</sup>

### Incompatible Offices

Constables are not allowed to serve as police officers in cities of the third class.<sup>14</sup> They may not be school directors,<sup>15</sup> borough or township auditors,<sup>16</sup> or magisterial district judges.<sup>17</sup> Constables cannot hold any federal office, except for military service.<sup>18</sup>

In addition, the Superior Court ruled that it was against public policy for a constable to carry on the business of a private detective. As a result, the constable's detective license was properly suspended during the term of office as constable.<sup>19</sup>

### Vacancies

When a vacancy occurs for any reason, at least ten qualified voters may petition the court of common pleas to appoint a suitable person to serve the remainder of the unexpired term.<sup>20</sup>

Constables may also appoint deputy constables who must be bona fide residents of the ward, borough or township. Those appointments are subject to the approval of the court of common pleas.<sup>21</sup>

### Inquiries Regarding Conduct

The courts have authority, on petition of any citizen, to inquire into the official conduct of any constable. If the court determines the constable is incompetent to discharge the official duties, it may require additional security from the constable.<sup>22</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. *Rosenwald v. Barbieri*, 462 A.2d 644, 501 Pa. 563 (1983).
4. 44 Pa.C.S.A. § 7111.
5. 44 Pa.C.S.A. § 7112.
6. 44 Pa.C.S.A. § 7113.
7. 44 Pa.C.S.A. § 7114.
8. 44 Pa.C.S.A. § 7142(a).
9. 44 Pa.C.S.A. § 7143.
10. 44 Pa.C.S.A. §§ 7145 and 7146.
11. 44 Pa.C.S.A. § 7142(b).
12. 44 Pa.C.S.A. § 7114(c).
13. 44 Pa.C.S.A. § 7148.
14. 53 P.S. § 37001 (Third Class City Code, Section 2001).
15. 24 P.S. § 3-322 (Public School Code, Section 322).
16. 65 P.S. § 6.
17. 44 Pa.C.S.A. § 7131.
18. 65 P.S. § 1.
19. *In re Stanley*, 201 A.2d 287, 204 Pa.Super. 29 (1964).
20. 44 Pa.C.S.A. § 7121.
21. 44 Pa.C.S.A. § 7122.
22. 44 Pa.C.S.A. § 7172.

## VIII. School District Offices

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### Elective Offices

School directors are elected as follows (except in Philadelphia): nine directors in districts of the second class; seven directors in districts of the third class; and five directors in districts of the fourth class.<sup>1</sup> School directors may be elected at large, from regions or by a combination of at-large and regional representation.<sup>2</sup>

### Term of Office

In school districts of the second, third, and fourth class, there are nine school directors who are elected for four-year terms (Public School Code of 1949, as amended, 24 P.S. Section 3-303(a)). In a school district of the first class (Philadelphia), there are nine members of the Board of Education appointed by the mayor for four-year terms (Phila. Home Rule Charter, Sections 12-201 and 12-203). In a school district of the first class A (Pittsburgh), state law allows for an odd number of directors from seven to fifteen who are elected for four years, with the exact number set by a “school director apportionment commission”<sup>3</sup>

### 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>4</sup> Each person elected or appointed as a school director must take an oath before exercising the duties of their office.<sup>5</sup>

### Incompatible Offices

**Local Offices.** No elected county officer or county solicitor can serve as a school director at the same time.<sup>6</sup> No school director may hold an office or be employed by a city of the first class (Philadelphia) or any of the following local elective offices: county commissioner, district attorney, mayor, council member, township commissioner, township supervisor, tax collector, assessor, assistant assessor, comptroller, auditor or constable.<sup>7</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>8</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 a school director. 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.<sup>9</sup>

**Federal/State Offices.** Any person who has held any federal or commonwealth office is ineligible to be a school director.<sup>10</sup>

### Vacancies

If a vacancy occurs in the office of school director for any reason, 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 that 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 must fill the vacancy upon petition of ten or more resident taxpayers.<sup>11</sup> Where the offices of all or a majority of the members of the school board are vacant, the vacancies are also filled by the court of common pleas.<sup>12</sup>

## **Judicial Removal**

The courts of common pleas have the power to remove some or all of a board of directors if they determine that the directors have not done or neglected a mandatory duty imposed upon them.<sup>13</sup> For example, the Commonwealth Court ruled that a trial court's removal of a board of directors for failure to fulfill its duty was justified after the board of directors did not immediately elect a qualified person for school superintendent and there were no circumstances that excused its non-performance.<sup>14</sup>

### **REFERENCES**

1. 24 P.S. §§ 3-303, 3-304 and 3-305 (Public School Code, Sections 303, 304 and 305).
2. 24 P.S. § 3-303 (Public School Code, Section 303).
3. 24 P.S. §§ 3-303, 3-304 and 3-305 (Public School Code, Sections 303, 304 and 305).
4. 24 P.S. § 3-322 (Public School Code, Section 322).
5. 24 P.S. § 3-321 (Public School Code, Section 321).
6. 16 P.S. § 402(a) (County Code, Section 402(a)).
7. 24 P.S. § 3-322 (Public School Code, Section 322).
8. 25 P.S. § 2672.
9. 24 P.S. § 3-322 (Public School Code, Section 322).
10. 24 P.S. § 3-323 (Public School Code, Section 323).
11. 24 P.S. § 3-315 (Public School Code, Section 315).
12. 24 P.S. §§ 3-316 and 3-317 (Public School Code, Sections 316 and 317).
13. 24 P.S. § 3-313 (Public School Code, Section 313).
14. *Hetherington v. Rogers*, 6 A.3d 6 (Pa. Cmwlth 2010), *affirmed*, 48 A.3d 1218, 616 Pa. 416 (2012).

**Pennsylvania Department of Community & Economic Development  
Governor's Center for Local Government Services**

Commonwealth Keystone Building  
400 North Street, 4th Floor  
Harrisburg, PA 17120-0225

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