

Chapter 17: MISCELLANEOUS DUTIES

Directive 2022-21

Section 17.01 Vacancy in Elective Office

A vacancy in a public elective office can be caused by the death, resignation, suspension, or removal of the holder of the office before the current term has expired. The vacancy usually is filled initially by appointment in accordance with the relevant legal provisions. The vacancy in office also may require the holding of an election for the remainder of the unexpired term, depending on: (1) the particular office in which the vacancy has occurred, and (2) when the vacancy occurred.

Various provisions of the United States Constitution, Ohio Constitution, Ohio Revised Code, and home rule charters set forth procedures for filling a vacancy in a particular office by appointment, either for the remainder of the term or until an election is held to select someone to serve for the remainder of the unexpired term.

When a vacancy occurs in a county office, the board's director provides notice of the party's right to make an appointment to fill the vacancy to the central committee of the political party with which the outgoing office holder is affiliated.

A board may use Secretary of State [Form 292](#) (Certification by Director of Board of Elections as to Political Party Affiliation of the Last Occupant of a County Office) to do so.

APPOINTING AUTHORITY'S DUTY

1. Generally

It is the duty of the entity entitled to appoint a person to a vacancy in office to determine what legal provisions apply to the appointment and to take the appropriate action. Examples of entities that have appointing authority under state law include, but are not limited to, a legislative authority of a municipal corporation, a village mayor, a board of township trustees, the county central committee of a political party, a school board, etc.

2. Notice of Appointment to Election Officials

When an elective office becomes vacant and is filled by appointment, the appointing authority shall immediately, but no later than seven days after



making the appointment, certify it both to the board of elections and the Secretary of State.

The Secretary of State has prescribed a form, Certification by Party Central Committee to Fill a Vacancy in County Office or City Office ([Form 291](#)) that the appropriate committee of a political party may use to give notice to election officials that a vacancy in city or county office has been filled by appointment.

Other appointing authorities must prepare a written notice of an appointment and certify that notice to the board of elections.¹

BOARD OF ELECTIONS POST-APPOINTMENT DUTIES

1. Issue Certificates of Appointments

The board of elections (or, in the case of an appointment to a statewide office, the Secretary of State) must issue a certificate of appointment to the appointee. Certificates of appointment shall be in the form prescribed by the Secretary of State, using [Form 155-B](#) (Certificate of Appointment to Fill Vacancy in Elective Office).²

2. Submit Documents and Fee for Governor's Commission

Persons appointed to any county office or to a judgeship also must receive a governor's commission before entering upon the duties of the office.³

The board of elections must collect from any person appointed to one of those offices the commission fee mandated by [R.C. 107.06](#). The fee for the commission is \$5, except in the case of county court judges⁴ for whom it is \$2.

Note: "County court" is defined in [R.C. 1907.01](#). A court of common pleas is not the same as a "county court;" therefore, a judge of a court of common pleas pays the \$5 commission fee.

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

- ☐ The appropriate commission fee collected from the appointee, (checks are acceptable as long as the check is not issued to or signed by a board of elections' employee)
- ☐ The notice of appointment executed by the appointing authority,
- ☐ The certificate of appointment executed by the board of elections, and

¹ [R.C. 3.02\(B\)](#).

² [R.C. 3.02\(B\)](#).

³ [R.C. 107.05](#).

⁴ [R.C. 1907.01](#).



- ☐ Any other necessary documentation (for example, [Form 292](#), Certification by Director of Board of Elections as to Political Party Affiliation of the Last Occupant of a County Office, if applicable).

The Secretary of State's Office will obtain a governor's commission for the appointee and mail it to the clerk of the court of common pleas in the county where the appointee lives. The clerk will deliver the commission to the appointee.⁵

Section 17.02 Recall or Removal from Office

RECALL – LIMITED MUNICIPAL OFFICES

Recall is the procedure that allows voters to decide whether to remove (recall) a municipal official holding elective office. The use of recall is significantly limited. First, it is available only in a municipality whose voters have adopted both 1) a form of limited home rule – that is, a charter or one of the plans of government outlined in [Chapter 705 of the Revised Code](#) – and 2) the recall process as part of that home rule government.⁶

Note: Recall is not available in a statutory municipality or in a limited home rule municipality that has not adopted the recall process. Additionally, recall is not available for state, township or district offices, or for county offices, except in a county that has adopted a limited home rule charter that specifically provides for the recall.

Additional details on the recall process may be found in the [Ohio Ballot Questions & Issues Handbook](#).

REMOVAL – ALL PUBLIC OFFICES

The General Provisions of the Revised Code provide that any person holding a public office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in [Section 38 of Article II of the Ohio Constitution](#) may be removed by judicial action for good cause shown. In order to be removed from office, a public officer must be found guilty by a court of competent jurisdiction of misconduct in office for one or more of the following reasons:

- ☐ Willfully and flagrantly exercising authority or power not authorized by law.
- ☐ Refusing or willfully neglecting to enforce the law or to perform any official duty imposed upon the public officer by law.
- ☐ Gross neglect of duty.
- ☐ Gross immorality.
- ☐ Drunkenness.

⁵ [R.C. 107.07](#).

⁶ *Lockhart v. Boberek* (1976), 45 Ohio St.2d 292; [R.C. 705.91-92](#).



- ☐ Mifeseance.
- ☐ Malfeseance.
- ☐ Nonfeseance.⁷

Additional details on initiating a judicial action for removal may be found in the [Ohio Ballot Questions & Issues Handbook](#).

REMOVAL – PUBLIC OFFICIALS WITH FISCAL DUTIES

There are also provisions in Ohio law that provide for the removal of a person who holds a public office with fiscal duties. These public offices include: county auditors, county treasurers, township fiscal officers, village fiscal officers, village-clerk treasurers, village clerks, city auditors, city treasurers, and fiscal officers of chartered municipalities who have duties and functions similar to the city or village fiscal officers of statutory municipalities.⁸ A person holding one of these offices may be removed for:

1. Purposely, knowingly, or recklessly failing to perform a fiscal duty expressly imposed by law with respect to the fiscal duties of the office; or
2. Purposely, knowingly, or recklessly committing any act expressly prohibited by law with respect to the fiscal duties of the office.⁹

This type of removal is initiated by the filing of a sworn affidavit and evidence with the Auditor of State by a person or persons authorized by law to file such an affidavit and evidence. The person or persons authorized by law to file an affidavit and evidence are:

- ☐ The county treasurer or county commissioner against the county auditor;¹⁰
- ☐ A county commissioner or county auditor against the county treasurer;¹¹
- ☐ Four residents of a township against a township fiscal officer;¹² and
- ☐ A member of the legislative authority of a municipality against a village or city fiscal officer.¹³

An individual with questions regarding this removal process might want to consult with private legal counsel, the county prosecuting attorney (for county and township officials), legal counsel for the municipality (for municipal officials), or the Office of the Auditor of State.

⁷ [R.C. 3.07](#).

⁸ [R.C. 319.26](#); [R.C. 321.37](#); [R.C. 507.13](#); [R.C. 733.78](#).

⁹ [R.C. 319.26\(A\)](#); [R.C. 321.37\(A\)](#); [R.C. 507.13\(A\)](#); [R.C. 733.78\(B\)](#).

¹⁰ [R.C. 319.26\(A\)](#).

¹¹ [R.C. 321.37\(A\)](#).

¹² [R.C. 507.13\(A\)](#).

¹³ [R.C. 733.78\(B\)](#).



REMOVAL – MUNICIPAL OFFICER

Additionally, a judicial complaint can be filed against a municipal officer pursuant to [R.C. 733.72](#). This method for removal is available only when the municipal officer is receiving illegal compensation for services, has a private interest in a city contract, or is guilty of misfeasance or malfeasance in office.

The complaint is filed with the probate judge of the county in which the municipality or the larger portion the municipality is located.

An individual with questions on removing a municipal officer under [R.C. 733.72](#) might want to consult with private legal counsel.

Section 17.03 Advisory Elections

An advisory election is a non-binding election on a question that municipal officials submit to the electorate to gauge voter attitudes on a particular topic. An advisory election is not intended as a substitute for the election on a municipal ordinance, resolution, charter amendment, or other measure. Rather, the advisory election only tests the appeal of the proposed legislation, with a second election on the legislation itself to follow, if municipal officials so choose.¹⁴

Please note that only a municipality may conduct an advisory election; an advisory election may not be held by any other political subdivision (e.g., state, county, township, school district, etc.).

When municipal officials certify an advisory question to the board of elections, the board should review the municipality's charter, if it has one, to determine whether the charter prohibits an advisory election. If the charter does not specifically prohibit an advisory election, the board should proceed with the election. If the charter appears to prohibit the advisory election, the board should consult with its legal counsel, the county prosecuting attorney.

The heading "Advisory Election" must be placed on the ballot for an advisory election.

Section 17.04 Voter File for Commissioner of Juries

On the date ordered by the common pleas court, the director of the board of elections shall prepare the current voter file for the county and file it with the commissioner of jurors.

The file compiled by the board of elections must include all electors registered in that county for the most recent general election regardless of active status (i.e., include

¹⁴ In *State ex rel. Bedford v. Cuyahoga Co. Board of Elections* (1991), 62 Ohio St.3d 17, the Court held that [Article XVIII, Section 3 of the Ohio Constitution](#) (commonly referred to as the "home rule" provision) grants a municipality the authority to hold an advisory election, absent a specific prohibition against holding such an election in the municipality's charter, the Ohio Revised Code, or the Ohio Constitution.



voters in both active-active and active-confirmation status), except that the board of elections must remove from the file any elector who has not voted in at least one election during the preceding four calendar years. In addition, the list may not include any elector who has a confidential voter record under the Safe At Home program.¹⁵ The file layout must include only full name, registration address, and date of birth, unless additional information is specifically requested. The file should be transferred in as secure a manner as possible.

In the event that a board does not have a standard report that meets these statutory requirements, it must contact your county voter registration system vendor to create one.

Section 17.05 Precinct Election Official Evaluations

To ensure that the performance of precinct election officials ("PEOs") can be fairly and consistently assessed, all boards of elections must adopt local performance standards along with uniform and non-discriminatory evaluation methods for their precinct election officials. Following are the minimum standards a board must use for monitoring and assessing the performance of their precinct election officials as a means to ensure the public that the precinct election officials have met the board's minimum standards in performing their duties for the public. These minimum standards also apply to those elections officials conducting early in-person absentee voting.

OPENING AND CLOSING OF POLLING LOCATIONS

- ☐ Did the polling location open and close on time;
- ☐ Did the PEOs print and appropriately sign a zero tape(s) and summary report(s);
- ☐ Did the PEOs sign the oath; and
- ☐ Did the PEOs open and close correctly the voting machines?

SELF-REPORTING OF PROBLEMS

- ☐ Did the PEOs follow required procedures for reporting any voting machine/device issues to the board, and
- ☐ Did the PEOs follow required procedures for reporting if/when the ballot supply ran low to the board?

HANDLING OF PROVISIONAL BALLOTS

- ☐ Did the PEOs issue properly provisional ballots to voters, including directing wrong-polling location voters to the correct location?

¹⁵ [R.C. 2313.06\(A\)\(1\)\(b\)](#); [R.C. 111.44](#).



RECONCILIATION AFTER POLLS ARE CLOSED

- ☐ Did the PEOs complete their reconciliation duties, and
- ☐ Did the PEOs sign the reconciliation certification document? Section 17.07 Voter Access to Public Information¹⁶

Each board of elections must offer the following minimum look-up tools on its website:

VOTER REGISTRATION STATUS

This functionality must allow a voter to identify the address within the county at which the voter is registered to vote. A successful search result must offer a link to the Secretary of State's Online Voter Registration System in the event the voter must update the voter's registration address. An unsuccessful search (i.e., the voter cannot be found in the county's voter file) must offer a link both to the voter registration form and the Secretary of State's Online Voter Registration System. This search functionality must be available to voters throughout the year. Boards of elections must continue to ensure that registration updates made in the county voter registration system (e.g., new registrations, changes of name, changes of address, etc.) are promptly sent to the Statewide Voter Registration Database.

ABSENTEE BALLOT STATUS

This functionality must allow all absentee voters in the county to identify the status of their absentee ballot from the date of application to the date the ballot was accepted for counting. Specifically, a successful search result must provide the voter with the following information:

- ☐ The date the voter's absentee application was approved;
- ☐ The date the voter's approved absentee application was processed by the board of elections (i.e., the date the board of elections mailed the ballot or otherwise issued it);
- ☐ The date the voter's voted absentee ballot was received by the board of elections; and
- ☐ The date the voter's voted absentee ballot was accepted for counting (or, if not accepted for counting, the reason it was determined to be ineligible for counting and the deadline by which the voter may correct any deficiency).

This search functionality must be available to voters beginning at least the 46th day before an election through the 35th day after that same election.

¹⁶ The confidential voter record of a Safe at Home participant is not public record and may not be included in this lookup function. [R.C. 149.43\(A\)\(1\)\(ee\)](#).



POLLING LOCATION LOOKUP

This functionality must allow a voter to identify the correct polling location assigned to the voter based upon the address at which the voter is registered to vote. Optional functionality may offer a link to online directions (e.g., Google, MapQuest, etc.) from the voter's registration address to the address of the correct polling location assigned to the voter. This search functionality must be available to voters throughout the year. Boards of elections must continue to ensure that registration updates made in the county voter registration system (e.g., changes to precinct assignments or changes to polling location locations, addresses, names, etc.) are promptly sent to the Statewide Voter Registration Database.

SAMPLE BALLOT

This functionality must allow a voter to view and print the correct sample ballot assigned to the voter for the upcoming election based upon the address at which the voter is registered to vote. This search functionality must be available to voters beginning the 46th day before the election.

ADDITIONAL REQUIREMENTS

Because election information changes from time to time, it is important that each board establish regular intervals by which the information necessary to populate the lookup tools established above is updated. Any change to a voter's registration information or absentee ballot status must be reflected in the lookup tool each business day. Any changes to the location of a polling location or to a sample ballot must be reflected promptly in the lookup tool.

Boards of elections must make the necessary arrangements to ensure that the IT infrastructure supporting its website and these lookup tools, as well as the internet "path" to them, are sufficiently robust and stable to support the traffic during peak election periods. Boards of elections should procure the appropriate personnel and resources (e.g., county Automatic Data Processing board personnel and other county or elections IT staff, county voter registration system vendor, local internet service provider personnel, etc.) to ensure that the board's online presence is scaled and supported appropriately to meet presidential-year activity levels.

Each board of elections must take all necessary steps to ensure that industry-standard security protocols for its website and lookup tools are implemented and followed. Boards should procure the appropriate resources (see above) to do so.

Each board of elections' website must have these baseline online voter information access tools with the end user – the voter – in mind. Each board needs to evaluate the following:



- ☐ Are users easily able to find the correct site when using online search engines (e.g., Google, Yahoo!, etc.);
- ☐ Are users easily able to navigate within the board of elections' own website (e.g., are links clearly labeled, is the content organized, and does it use plain language whenever possible); and
- ☐ Is the information easily displayed using various platforms (i.e., personal computer vs. mobile; iPhone vs. Android; Internet Explorer vs. Chrome)?

Boards of elections must work to ensure that its website and these baseline online voter information access tools can be accessed effectively and used by voters with disabilities.