

Board and Committee Vacancies in Local Government

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Part 1: Governing Boards



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Problem #1

- Ebenezer Scrooge, a member of the Miser Town Council, dies 7 months before the town elections. The remaining councilmembers wish to leave the seat vacant for fear that Scrooge's wife – every bit as unpleasant as Scrooge was – will apply to succeed her husband. Must the council fill the vacancy?



- G.S. 160A-63: “A vacancy that occurs in an elective office of a city **shall** be filled by appointment of the city council.” (Emphasis added.)

- What if the vacancy had been on a board of county commissioners?
- G.S. 153A-27: “If a vacancy occurs on the board of commissioners, the remaining members of the board **shall** appoint a qualified person to fill the vacancy.” (Emphasis added.)
- G.S. 153-27.1(a): “If a vacancy occurs on the board of commissioners, the remaining members of the board **shall** appoint a qualified person to fill the vacancy.” (Emphasis added.)

Problem #2



- The council decides to fill the seat vacated by Scrooge and announces that it will accept applications to fill the vacancy. Longtime Miser resident Britney Spears submits an application to fill the vacancy, but she wants her application to be kept confidential. May the town honor her wish?

- Frayda Bluestein, Filling a Vacancy on the Town Council:
- “Whatever method the council uses to identify candidates for appointment, the city may receive or create records of the names and qualifications of those candidates. These materials are public records, and are probably not protected under the personnel privacy statutes.”
- Exceptions?

Problem #3

- A councilmember is concerned that an applicant to fill Scrooge's seat may have a criminal record. The mayor wants the council to discuss the matter in closed session. Is that permissible?



- G.S. 143-318.11(a)(6): “. . . . A public body may not consider the qualifications, competence, performance, character, fitness, **appointment**, or removal of a member **of the public body** or another body and may not consider or fill a vacancy among its own membership except in an open meeting.” (Emphases added.)

Problem #4



- The council finally gets around to voting on a replacement for Scrooge. Of the council's 4 remaining members, only 3 are present. One member moves to appoint surprise applicant David Hasselhoff to the vacant seat. The vote is 2 to 1 in favor of the motion. (The mayor may vote only in the case of a tie.) Has Hasselhoff been appointed to the council?

Problem #5

- Scrooge's term would not have ended until December 2019. As Scrooge's replacement, when will Hasselhoff's term end?



G.S. 160A-63

- If next city regular election will occur within 90 days of vacancy, appointee fills remainder of unexpired term.
- Otherwise, appointee serves only until elected successor takes office.

What if Scrooge had been a county commissioner and had died 2 months into a 4-year term?

■ G.S. 153A-27

- If 2-year term, appointee completes term.
- If 4-year term, and vacancy occurred < 60 days before midterm election, appointee completes term.
- If 4-year term, and vacancy occurred > 60 days before midterm election, appointee's term is up in December following midterm election.

Problem #6

- Stanley County Commissioner Andy Taylor resigns. He ran as the Democratic Party nominee. The party's county executive committee recommends Boss Hogg to fill the vacancy. The board commissioners opposes the recommendation, as Mr. Hogg is widely thought to be corrupt. What are its options?



- G.S. 153A-27: Board must consult party executive committee but isn't bound by its recommendation.
- G.S. 153A-27.1: Board must appoint the person recommended by the party executive committee, if the recommendation comes within 30 days of the vacancy's occurrence.
 - This rule applies to 42 counties named in G.S. 153A-27.1(h)

Part 2: Appointed Boards

G.S. 160A-146

- City council may “create, change, abolish, and consolidate” boards and commissions “to promote orderly and efficient administration of city affairs.”
- But it may not abolish any board or commission required by law.
- Similar rules apply to a board of county commissioners under G.S. 153A-76.

Scope of Authority Over Appointed Boards

- *Bd. of Adjustment v. Town of Swansboro*, 334 N.C. 421 (1993).
- HELD: Governing board could abolish board of adjustment and then reestablish it and appoint new members to the new board.
- NOTE: Notice and hearing requirements for proposed changes to zoning ordinance were satisfied.

Appointed Bd. Vacancies: General Rules

- Governing board has broad discretion to create appointed boards and dictate their procedures.
- This authority typically includes the power to determine how vacancies on appointed boards will be filled.
- Usual practice is for the governing board to fill vacancies.

Statutory Considerations

- Statutes for certain boards or commissions sometimes address vacancies.
- G.S. 130A-35(d): Vacancy on county board of health shall be filled for unexpired portion of the term.
- G.S. 160A-388(a): In appointing members to fill vacancies on a BOA, city council may appoint certain members to serve less than 3 years.

Statutory Considerations (cont'd)

- G.S. 18B-700(e): Individual appointed to fill vacancy on local ABC board serves remainder of unexpired term.
- G.S. 105-322(a): Resolution providing for appointment of BOER must provide for the filling of vacancies.

Common Legal Questions

- May a governing board enter closed session to discuss applicants for appointed boards?
- Answer: No.

Common Legal Questions (cont'd)

- G.S. 143-318.11(a)(6): “. . . . A public body may not consider the qualifications, competence, performance, character, fitness, **appointment**, or removal of a member of the public body **or another body** and may not consider or fill a vacancy among its own membership except in an open meeting.” (Emphases added.)

Common Legal Questions (cont'd)

- Are applications to fill positions on appointed boards confidential?
- Answer: Probably not.

Common Legal Questions (cont'd)

- “Citizens serve . . . on a variety of [local gov’t] boards and commissions. . . . A local [gov’t] is likely to have a variety of documents relating to individual volunteers: application forms, performance [evals] [I]t is probable that the personnel privacy statutes **do not** extend to the personnel-like records [of] volunteers”
- Lawrence, Public Records Law for NC Local Gov’ts, (2nd ed. 2009) (emphasis added).

Common Legal Questions (cont'd)

- Pursuant to G.S. 132-1.10(b)(5) & 14-113.20(b) certain “identifying information” may not be released, including:

Social Security #	Employer Tax ID #
Driver’s License numbers (except on law enforcement records)	State ID card numbers
Passport numbers	Checking account #
Savings account numbers	Credit/Debit card #
PINs	Digital signatures
Numbers/info to access a person’s financial resources	Biometric data
Fingerprints	Passwords

Common Legal Questions (cont'd)

"[I]dentifying information" does **not** include:

- Name
- Address
- Telephone/Cellphone number
- E-mail address
- Internet ID names

Discussion Questions

- How do you recruit individuals to serve on your appointed boards?
- What training do you provide to members of appointed boards?
- Other than finding people to serve, what is the biggest challenge posed by appointed boards?
- What do you do well where appointed boards are concerned?

Questions?

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