

County Board Supervisor Resignation Requirements

—Andrew T. Phillips & Bennett J. Conard, von Briesen & Roper, s.c.

It is widely known that elected officials may resign from their public office during their term of office. However, most are probably unfamiliar with the process and legal requirements that must be satisfied in order to legally resign and vacate a public office. Further confusing the issue is the fact that different types of public offices have different requirements that must be satisfied.

An additional factor applicable to resignations that may cause confusion is that resignations are not always effective immediately, and may be conditioned upon the occurrence of a future event. In other words, resignations are not necessarily effective immediately upon presentment.

While counties maintain a variety of public offices, of particular interest is the resignation process and requirements that apply to county board supervisors. For this reason, this article will briefly outline the process required for a county board supervisor to legally resign and vacate a supervisor's public office. This article will also briefly discuss the effective time of a resignation and the ability to condition resignations upon the occurrence of a future event.¹

Resignation Requirements

A county board supervisor may resign from office pursuant to Wis. Stat. §§ 17.01(7) and (13). In order to resign, a county board supervisor must first provide a notice of resignation to the sheriff.² The resignation notice must be made in writing and must be addressed and delivered to the sheriff at the sheriff's public office or usual place of business.³ The sheriff

must then "immediately transmit a notice thereof...to the chairperson of the county board; and after such notices the sheriff shall file such resignations with the county clerk."⁴

Once a notice of resignation is provided, a resignation is effective at the time indicated in the written resignation, or immediately upon delivery of the written resignation if no time is specified.⁵ The office of county board supervisor is then deemed legally vacant immediately upon the effectiveness of the resignation provided by the supervisor.⁶

An attempt to resign by means other than as described above is ineffective because "the power to declare when an office shall be deemed to be vacant is vested in the Legislature."⁷ Section 17.03 in Wisconsin statute provides the explicit list of circumstances where the Legislature has provided that a public office is deemed vacated. If one of these circumstances has not occurred, the office has not been legally vacated, and, therefore, the incumbent still holds the position.

While resignation is a permitted means of vacating a public office, the only means of effectively resigning provided by the Legislature under Wis. Stat. Ch. 17 is as provided in Wis. Stat. § 17.01 (i.e., the process described above). Resignation by any other method would directly conflict with the Legislature's exclusive constitutional authority to determine when an office is deemed vacant.

For example, in *Kamermayer v. City of Milwaukee*, it was established that the plaintiff effectively resigned from her office with the city because she complied with the provisions of Wis. Stat § 17.01(13).⁸ The fact

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that she did not also comply with the department's own rules for resignation was irrelevant.⁹ The opposite would also be true—compliance with local rules, but not the statutory requirements, related to resignation would also not be sufficient for the resignation to be considered effective.¹⁰ For the same reason, a county is unable to impose additional requirements needed to resign because state law deems the office vacant immediately upon the effectiveness of a resignation made in compliance with Wis. Stat. § 17.01.

Conditional Resignations

Resignations may also be conditioned upon the occurrence of a future event. A future event may be a specific date and time, but it may also be the point at which something occurs (e.g., upon the adoption of the next county budget).

The clear language of Wis. Stat. § 17.01(13) establishes that a resignation may be conditioned upon the

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Resignation Requirements

occurrence of a future event (and not only a specific date and time) because the statute provides that a resignation is effective upon the *time* specified therein, not a particular date.¹¹ Indeed, the language of the statute does not provide that “a resignation is effective on the *date* indicated, but at the *time* indicated.”¹² While the word “time” can mean a definite moment and particular date, it also carries a broader meaning of “the point or period when something occurs.”¹³ This means that a resignation can be conditioned upon the occurrence of an event in addition to a particular date and time.

For example, in *Ortin v. Schuett* the Court determined that a town treasurer’s resignation could be conditioned on an independent audit being conducted. When the condition remained unfulfilled because an independent audit was not performed by the time provided in the resignation, the resignation was deemed ineffective.¹⁴ For this reason the *Ortin* Court concluded that the treasurer retained her office.

A conditional resignation may also likely be withdrawn prior to the stated effective date and time. In *Ortin*, the Court rejected the “Illinois precedent” asserted by the defendant, which prohibits withdrawal of a resignation on the basis that public policy requires certainty in who is and who is not a public officer. *Id.* The *Ortin* Court provided that such concerns are inapplicable to conditional resignations because a conditional resignation “is not effective immediately; it neither creates a vacancy nor causes immediate uncertainty about who is the public officer.”*Id.*

While the *Ortin* Court did not need to decide whether withdrawal is permissible (because the independent audit was not performed by the specified date), it is likely that this same analysis would apply to the permissibility of the withdrawal of a condition-

al resignation. There is not any uncertainty in who is the public officer prior to the effectiveness of the resignation. Indeed, a county board cannot take any action to fill a supervisor’s office until a vacancy actually occurs.¹⁵ Presumably, a county board would be permitted to begin the process to appoint a successor if a conditional resignation could not be withdrawn and the only condition was the occurrence of a specified date and time.

If you have any questions about the county board supervisor resignation process or any other governmental law needs, please contact the WCA or any member of the von Briesen & Roper Government Law Group (www.vonbriesen.com). ♦

Endnotes

1 This article does not address the resignation process for other state and local officials, some of whom are subject to different rules than those applicable to county board supervisors.

2 Wis. Stat. § 17.01(7).

3 Wis. Stat. § 17.01(13).

4 Wis. Stat. § 17.01(7).

5 Wis. Stat. § 17.01(13); **Note:** some public officers are required by law to remain in office until the public officer’s successor is chosen. However, county board supervisors are not subject to this requirement because supervisors are elected to a set term and vacate their office immediately upon expiration of such term. See *Ortin v. Schuett*, 157 Wis.2d 415, 418, 459 N.W. 2d 596 (Ct. App. 1990). An example of a public officer that remains in office until a successor is chosen is the sheriff because Wis. Stat. § 59.20(2)(b) provides that the sheriff will serve for “4 years *and until his or her successor qualifies*.” (emphasis added).

6 Wis. Stat. § 17.03(2).

7 *State ex rel. Thompson v. Gibson*, 22 Wis.2d 275, 290, 125 N.W. 2d 636, 643 (1964) (citing Wis. CONST., art. XIII, § 10).

8 *Kamermayer v. City of Milwaukee*, 2008 WI App 17, ¶26, 745 N.W. 2d 88.

9 *Id.*

10 The fundamental proposition in this analysis is that under the preemption doctrine, where a matter is of statewide concern, local control must yield to state law if any of the following apply: (1) the Legislature has clearly and expressly withdrawn the power of municipalities to act; (2) the local regulation logically conflicts with state legislation; (3) the local regulation defeats the purpose of state legislation; or (4) the local regulation violates the spirit of state legislation. *American Transmission Co., LLC v. Dane County*, 2009 WI App 126, ¶9, 722 N.W. 2d 731, 735 (citing *DeRosso Landfill Co. v. City of Oak Creek*, 200 Wis.2d 642, 657, 547 N.W. 2d 770 (1996)).

11 *Ortin v. Schuett*, 157 Wis.2d 415, 419.

12 *Id.*

13 *Id.*

14 *Id.* at 420.

15 Wis. Stat. § 59.10(3)(c).

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