

## ***JP VACANCY***

### ***A justice of the peace has resigned. Who fills the vacancy?***

As with other town offices, a vacancy is created in the office of the justice of the peace when a justice “resigns his or her office, or has been removed therefrom, or dies, or becomes insane or removes from town...” 24 V.S.A. § 961(a). Generally, vacancies in town offices are remedied by a town’s legislative body which, after posting notice of the vacancy in at least two public places in town, and in and near the town clerk’s office, appoints a replacement. Alternatively, a vacancy may be filled by the voters at a special meeting.

However, a vacancy in the office of the justice of the peace is filled, not by a town’s legislative body or by the voters, but by Vermont’s governor. Why the difference?

The answer is that the justice of the peace is not a town officer, but a county officer who is elected and serves at the town level. Accordingly, it is 24 V.S.A. § 2623 concerning vacancies in state, county, or legislative office that controls. That statute provides, “the governor may request the political party of the person whose death or resignation created the vacancy to submit one or more recommendations as to a successor.” After a recommendation is made, the governor may appoint someone to fill the vacancy for the remaining portion of the justice’s two-year term. While it is customary for the governor to appoint a member of the party to which the former justice was a member, he is under no obligation to do so and may appoint a qualified person “whether or not the appointee is recommended by the party committee.” 17 V.S.A. § 2623(b).

Since a resignation is effective only when sent to the governmental unit authorized to fill the vacancy for the office resigned, the governor must be notified when a vacancy is created in the office of the justice of the peace. In addition to notifying the governor, we suggest that the justice also notify the town clerk as a courtesy, since it is he or she who certifies the election of a justice. 17 V.S.A. §§ 2592(I), 2623.

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