

**ASK THE LEAGUE**

**What happens when a town fails to elect someone to an open seat in a town office?**

The temptation is to say that this would create a vacancy which the selectboard would have to fill by appointment until an election is held. The law of vacancies, however, does not take into account a town's failure to elect someone as a basis for creating a vacancy. A vacancy in a town office can only be created when a town officer:

- resigns his or her office;
- has been "removed" from the office;
- dies;
- becomes insane; or
- "removes from town."

Since there is no mention of a vacancy created by a failure to elect, we must look to either 17 V.S.A. § 2646 or § 2682(d), depending on the method by which a town elects its officers.

If a town elects its officers from the floor, 17 V.S.A. § 2646 will control. That statute provides that "(a) the annual meeting, a town shall choose from among its legally qualified voters the following town officers, who shall serve until the next annual meeting and until successors are chosen, unless otherwise provided by law. ..." When voters don't elect someone at a traditional town meeting, they have failed to choose a successor. Since the previous office holder serves until a new one is chosen, the incumbent will remain in office "until successors are chosen." This choice of successor occurs either at a special town meeting called by the selectboard or upon receipt of a valid voter-backed petition, but in any event no later than the next annual town meeting.

It should be noted that the holdover incumbent can always resign his or her office, in which case the law governing vacancies would come into play.

If a town elects its officers by Australian ballot, 17 V.S.A. § 2682(d) will usually control. This law provides that a selectboard may appoint a town voter to fill the office until the next annual meeting so long as two conditions are met: (1) no person filed a petition to become a candidate for the office; and (2) no person was "otherwise" elected to the office.<sup>1</sup> Unlike appointments made to fill a vacancy, where service continues until an election is had (24 V.S.A. § 963), an individual appointed under this law will serve until the next annual meeting. 17 V.S.A. § 2682(d). If someone is elected by Australian ballot but refuses to serve (see 17 V.S.A. § 2654), the provisions of 17 V.S.A. § 2646 described above will control.

Garrett Baxter, Senior Staff Attorney  
VLCT Municipal Assistance Center

---

<sup>1</sup> When voting by Australian ballot, a person may still be elected despite not filing a petition to appear on the ballot as a write-in candidate. To prevail, a write-in candidate must receive both the greatest number of voters and 30 votes or the votes of one percent of the town whichever is less. 17 V.S.A. § 2682(c).