

Ask The League
How are new members added to the selectboard?

The voters must first approve a duly warned article at an annual or special town meeting to add any additional positions to the board. 17 V.S.A. § 2650(b). If the article is approved, the newly created vacancies must be filled either by appointment by the sitting selectboard or by election. 24 V.S.A. § 963.

Each town starts with at least three selectboard members, each of whom serves a three-year staggered term. 17 V.S.A. §§ 2646(4), 2649. A town may elect not more than two additional selectboard members if the voters so choose. 17 V.S.A. §§ 2649, 2650(b). Towns rarely add just one member, however, as doing so dramatically increases the likelihood of deadlocked (2-2) decisions.

If two additional members are added, they must serve for the same term of office, either one or two years. The warning for the addition of the two members must specify if their terms are to be for two years. If the warning is silent, then both members will only serve for one-year terms. If the terms for the new positions are to be for two years, then after their initial election, one member's term would be for one year and the other's would be for two years so that their terms are staggered. In other words, if two additional members are elected for a two-year term, then only one will actually serve out the entirety of the initial two-year term. The other member's term will expire after one year. Thereafter, however, each will be elected to a full two-year term. The reason for staggering these two positions is to ensure that these offices will not become vacant at the same time. 17 V.S.A. § 2650. When a new member is elected, the warning should clearly indicate the length of the term so there will be no confusion as to which member has the one-year term and which has the two-year term.

How a town fills these positions is a function of the method it utilizes to dispose of public questions and the election of officers at annual and special town meetings. If a town votes from the floor, the article to fill the office can follow the article creating the additional positions. If the first article fails, then the second article for the election of additional selectboard members could be passed over. When a town votes its public questions by Australian ballot, however, the town won't know how the voters answered the first question (whether the size of the selectboard has increased) until after the meeting. The approval of this article therefore would result in two open seats.

In the past, we've opined that this scenario results in the creation of two vacancies which are to be filled by selectboard appointment. The problem with this opinion, however, is that this situation doesn't neatly fall within the statutory definition of a "vacancy." By law, a vacancy is created "(w)hen a town officer 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). None of those prerequisites to qualifying for a statutory vacancy has been triggered. One could attempt to fit this situation into 17 V.S.A. § 2682(d), which states that "(i)n the event no person files a petition for an office

which is to be filled at the annual or special meeting of a municipality, and if no person is otherwise elected to fill the office, a majority of the legislative body of the municipality may appoint a voter of the municipality to fill the office until the next annual meeting.” But that piece doesn’t fit neatly into our puzzle either as the “office which is to be filled at the annual meeting” will not technically be “created” until after the meeting, not before it.

Because neither of these statutes – which would ordinarily transfer (at least temporarily) the electoral authority of the towns’ voters to the appointment authority of the selectboard – has a clear and direct application to this situation, this authority still lies with the voters of that town. This means that the only way to fill these seats is to hold a special town meeting following the annual town meeting at which the seats were added.

This creates a bit of a practical problem. Until that special town meeting is held, the size of the selectboard has still increased, though the number of members occupying the seats of that board has not. In other words, although the thresholds for both quorum requirements and the number of members needed to take binding action have increased, the ability of a selectboard to meet them has decreased. For example, if a selectboard increases in size from three to five, the number of members needed to reach a quorum or take binding action has increased from two out of three to now three out of five members. “When joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.” 1 V.S.A. § 172. Essentially therefore, the newly constituted selectboard will need perfect attendance in order to just hold a meeting and unanimous consent in order to do anything. Obviously, this may be difficult to accomplish until the new members are elected. Consequently, we would recommend warning a special town meeting to elect officers to the newly created seats as soon as possible following the annual meeting at which the new seats were added.

Regardless of the method employed to add the new selectboard seats (floor or Australian ballot voting), once these two new positions are created, they will remain in effect until such time as the town votes to eliminate them at an annual or special meeting. 17 V.S.A. § 2650(c).

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