

ASK THE LEAGUE, APRIL 2016

How does – and how should – a town officer resign?

“Oh, what? What? That? Are you kidding? I didn’t quit. What? You took that seriously?”
—George Costanza. *Seinfeld*. Episode 12, “The Revenge,” April 18, 1991.

Public service, in all its myriad forms, is as rewarding as it is exacting. And while nobody assumes office with the intent of resigning, sometimes politics, health, family, career or other factors make it unworkable for a person to hold office. Unfortunately, Vermont statutes and courts have so far been silent as to the proper way to resign. The leading treatise on municipal law states that “[w]here the holding of an office is not compulsory, in the absence of legal provision, resignation upon delivery to the proper authorities takes effect without acceptance; and in such case a successor may be appointed or elected without the formal acceptance of the resignation.” McQuillin, *Municipal Corporations*, § 12.125. There being no “legal provision” in Vermont to the contrary, it seems appropriate to focus on receipt rather than acceptance of a resignation. This makes sense given that resignation is an act of one’s own volition and the alternative would be to force someone to keep serving against their will. Still, that answers only one of the many questions surrounding resignation. There are still the questions of how should it be given and to whom; whether it can take effect at some later date; and if it can be rescinded. If the town officer is an employee or elected or appointed officer covered by the town’s personnel policy, that document may answer some or all of those questions. Otherwise, we look to logic, practical considerations, and best practices for guidance.

As a best practice, a resignation should be given in writing and include an effective date and time that the resignation will take effect. This will avoid any uncertainty as to when the office will become vacant and when exactly a replacement can be selected. Using a written document will also help deal with the fact that people sometimes say things in the heat of the moment that they later regret. Confirming a verbal resignation in writing is the cleanest course of action, even if the verbal resignation was recorded in the minutes of a meeting. The words and actions of an officer taken together indicate that an officer intends to resign. A letter of resignation certainly helps solidify that intention.

A resignation letter should be addressed and presented to the public body or officer who appointed the officer or who has authority to appoint a successor. If the officer is elected, the resignation should go to the selectboard as it has a statutory duty to post notice of the vacancy and to fill it “forthwith by appointment in writing ... until an election is had[.]” Additionally, the town clerk, depending on the office, may have to notify the State. 24 V.S.A. §§ 961, 963.

Finally, since a resignation is completely voluntary and does not have to be accepted, a court would likely hold that when an officer has given a specified date for resignation, that officer is free to rescind his or her resignation at any time before the stated effective date. With respect to elected officers, adopting this practice takes into account that the resigning officer was elected by the people to serve a defined term of office and the voters’ will should be honored whenever possible. It also recognizes that sometimes a public officer may pull a “Constanza” and later want to change his or her mind before the effective date of the resignation.

Garrett Baxter, Senior Staff Attorney
VLCT Municipal Assistance Center