



Municipal Law for Clerks

Introduction



Instructor

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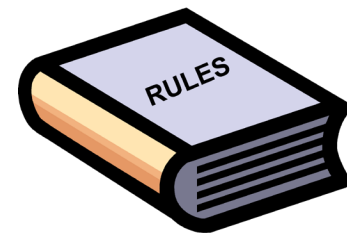
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- Instructor for Maine Town & City Clerks' Association since 2006

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Resources



- Municipal Clerk's Manual, revised in 2013
- Your town's ordinances and Charter (if you have one)
- Maine Revised Statutes (MRSA)
- Code of Maine Rules (CMR)
- Maine Court Cases
- Maine State Law & Reference Library
- Maine Municipal Association (MMA) Legal Staff or your town's attorney
- Clerk mentors





Municipal Law for Clerks

Chapter 1

Office of the Clerk



History of the Office

- In 1639, the Massachusetts General Court required that each town record births, deaths and ownership of houses and land.
- When Massachusetts established its commonwealth, the clerk became concerned with the preparation and care of town records.
- In 1820, Maine was set off from Massachusetts, and the function of the clerk remained the same.
- In 1821, the municipal clerk was authorized to record all proceedings and votes cast at town meetings, and was authorized to assume some duties related to state elections.



Eligibility for Office

- U.S. Citizen
- Resident of the State
- At least 18 years of age
- Must be sworn in to office by someone who has authority to administer oaths, such as a town meeting moderator, a dedimus justice or an attorney.



Incompatible Positions



- Two offices are deemed incompatible if one office authorizes or reviews the duties performed by another, or if the functions are so inconsistent that one individual could not perform the duties of both offices with undivided loyalty.
- Some incompatibilities are stated in statute.
- Most incompatibilities are covered by common law doctrine of incompatibility, which requires a factual analysis of the actual duties of the two positions.



Incompatibility Doctrine Limited to Public “Offices”



- Limited to public offices, not employment positions.



- Certain combinations of employment positions and elected offices are prohibited by state statute.



Method of Selection



- Clerks may be elected or appointed.
- Cities and towns that operate under a Charter may specifically provide for the method of appointment or election. Any change in the method of selection will require a charter amendment.
- With no Charter, to change the clerk's position from elected to appointed, or vice versa, the change must be approved by a town meeting vote held at least 90 days before the annual meeting at which the change will become effective.



Election of Clerk

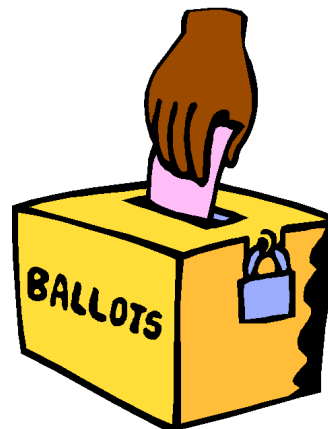


- Open town meeting
 - Nominated from the floor, (if the town has not voted to use written ballot at least 90 days before town meeting) voted by show of hands or voice vote
 - 4,000 or less, must receive a majority of votes cast (more than 50%)
 - Over 4,000, elected by plurality (one more vote than any other candidate)



Election of Clerk

- Secret ballot election
- The clerk may be elected by secret (Australian) ballot if the town has voted to adopt this voting process, and has included the clerk's position as one to be elected by this method.
- Regardless of the size of the municipality, the clerk elected by secret ballot is elected by plurality.



Failure to Elect



- If the town meeting adjourns finally without electing a clerk, the office is considered vacant.
- The municipal officers can fill the vacancy by appointing someone to serve as clerk.



Appointment

YOU'RE
NEXT

- A municipality may provide, through a warrant article, ordinance, or charter, that the clerk is appointed by the municipal officers.
- In municipalities that have adopted the town manager plan, the town manager will appoint the clerk, unless the voters adopt an ordinance that specifically provides the municipal officers with that authority.



Term

- The clerk's term is one year, unless a different term has been specified by town meeting vote, ordinance or charter.



Bond



- A municipality may require its clerk to be bonded before assuming the duties of office.
- The bond must be conditioned on the clerk's faithful discharge of all the duties of office, and must conform to additional criteria set out in 30-A MRSA 5601.



Deputy Clerk



- Clerk may appoint one or more persons as deputy clerk.
- Deputy appointments must be in writing.
- Deputies must be sworn before assuming duties.
- Deputy serves at the will of the clerk.
- If the clerk is no longer in office, the deputy loses authorization to perform functions for the municipality.
- Clerk can designate specific duties that the deputy can perform.



Assistant Clerk



- The clerk may appoint one or more assistants who may perform any duties of the office prescribed by the clerk.
- Appointments needs to be made in writing.
- Assistant must be sworn and the oath recorded.



Expenses

- Each municipality must pay the reasonable expense of its clerk and deputy clerk to attend the annual meetings of the Maine Municipal Association and the Maine Town & City Clerks' Association 30-A MRSA Section 2650



Compensation/Job Description

- Fee based
 - The clerk may be paid in whole, or in part, by fees collected. All fees should be deposited into the municipal treasury, then the clerk should submit a payroll draw.

- Salary
 - It is recommended that the municipality adopt a clear written policy regarding the clerk's compensation, so that no doubt exists regarding the use of funds received from fees. This policy should also include a description of the duties the clerk is to perform.



Office – Hours, Location, Record Protection



- Elected
 - Only the municipal legislative body can dictate the hours and location of the clerk's office, unless that authority has been delegated to the municipal officers by town vote.

- Appointed
 - Office location and hours the clerk will be available to the public may be dictated by the appointing authority.

- Protection of Records
 - The municipality must provide a fireproof safe or vault for the preservation of municipal records.



Vacancies

- Non-acceptance
- Resignation
- Death
- Removal
- Permanent disability
- Incompetence
- Failure to qualify for the office within 10 days after written demand by the municipal officers
- Failure of the municipality to elect or appoint a clerk to office

**Resignation
Letter**



Vacancies

- The municipal officers may appoint a qualified person to fill the vacancy, unless a municipal charter or ordinance provides otherwise.
- In municipalities that have adopted the town manager form of government, the town manager is usually the appointing authority.



Neglect of Duty

- A municipal clerk who neglects or refuses to perform a duty of office commits a civil violation which may be punished by a fine of not more than \$100 for each offense, which is payable to the municipality
 - 30A MRSA 2607



Maine Tort Claims Act

- 14 MRSA Section 101, et seq. provides a general grant of immunity for claims against a municipality, unless liability is expressly provided by statute.
- Municipal Officials and employees are liable unless immunity is specifically provided.



Tort Claims Act



- A municipal official or employee will not be held personally liable for an action or a failure to act which fits into the following categories:
 - Undertaking or failing to undertake any legislative or quasi-legislative act (ex. adoption of an ordinance)
 - Undertaking or failing to undertake any judicial or quasi-judicial act (granting of a license or permit)
 - Performing or failing to perform a discretionary function or duty
 - An intentional act or omission within the course and scope of the official's employment, provided that the act or omission was in good faith
 - Performing or failing to perform any prosecutorial function involving civil, criminal, or administrative enforcement
 - Any act by a member of the Maine National Guard within the course and scope of employment



Defense and Indemnification

- 14 MRSA 112 requires the municipality to assume the defense of and indemnify an employee for claims arising within the scope of the employee's employment, if the municipality is not also liable.
- An official may be required to pay for his/her own defense and any damages awarded to an injured party if the official's actions were outside the scope of duties, if the official acted in bad faith, or is determined to be criminally liable.



Federal Law Overrides Protections of Maine Tort Claims Act

- Any municipal official may be held personally liable for a violation of another person's rights granted by the federal constitution or federal statute.



Test your knowledge

- Qualifications of the office of clerk
- Incompatible positions
- Two methods of selection of clerk
- Qualification and appointment of Deputy or assistant clerks
- How vacancies are created and how they can be filled
- Tort Claims Act



Thank You



- You have reached the end of Module 1 of Municipal Law for Clerks.
- For specific questions on any topic in this module, please contact the legal department at Maine Municipal Association, your town's attorney, or a clerk mentor.
- Please print this final page as proof of completion of this module.
- You may submit this final page to MMA along with the other ten modules' completion pages to obtain a certificate to be used for certification points.

