



# Getting into Office

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Being Elected or Appointed  
into Office in Washington  
Counties, Cities, and Towns

Municipal Research and Services Center

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# Foreword

This publication, *Getting into Office: Being Elected or Appointed into Office in Washington Counties, Cities, and Towns*, is a new publication that addresses issues relating to: qualifying and running for elective office in cities, towns, and counties; assuming office vacancies in office; and appointments to fill vacancies.

Legal Consultant Paul Sullivan prepared this publication with considerable help from the Municipal Research legal consultants. Special thanks are given to Holly Stewart, Desktop Publishing Specialist, who designed and produced this publication, all of the MRSC's consultants and especially to Bob Meinig, who provided both substantive and editorial advice and assistance.

Richard Yukubousky  
Executive Director

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# Introduction

How does one “get into office”? Simple, you open the door to the county courthouse or the city hall and just walk in. But, of course, it really isn’t that simple. In addition to having the desire to serve others, the abilities to do so, and the time necessary to accomplish all of the responsibilities of the office, actually getting there involves a variety of legal steps or procedures that begin months, if not years, before being sworn in.

An initial concern has to be whether a person is even qualified to seek or assume office. If a person is a 15 year-old, foreign born and not naturalized, convicted of a felony, and new to the jurisdiction, running for or being appointed into office is not a possibility, regardless of the community’s desire to have that person serve. Holding another office or having a continuing contractual relationship with the jurisdiction, while maybe not disqualifying a candidate, may require the person, if elected, to take curative action before being able to be sworn into office. Qualification, though, is just the initial hurdle to assuming office.

If a person seeks office through election, he or she may have to campaign in both a primary and general election. The person will need to file for office and, likely, pay a filing fee. It sounds simple enough, but a range of issues may arise at this early stage. What happens if no one else files for office, or, for that matter, if no one files at all? What happens if a successful candidate moves or dies after the primary or general election, or during the term of office? Can a person’s candidacy be challenged after he or she files for office, and how? What are the reporting requirements for candidates?

Even after the election itself is over, there can be problems. What happens if there is a tie, or the vote is very close? What are the rules for recounts? When does a successful candidate assume office?

At the end of the “assuming office” spectrum, there are more issues and rules that must be considered. How does an office become vacant? How does one resign from office? What happens if a recall is sought? And how are vacancies filled outside the election process?

As one can see, there are many questions or issues that require attention. This publication will address the above questions, as well as others, and provide general guidance on how a person gets into office. Once elected, the successful candidate will have many other issues and problems to contend with; many of those issues are dealt with in other Municipal Research and Services Center (MRSC) publications and the MRSC website ([www.mrsc.org](http://www.mrsc.org)). For now, though, let’s get started and get into office!

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# **Chapter 1**

## **Can I Seek Office?**

### **General Qualifications for Office**

While there may not be many, there are certain qualifications that must be met before a person can seek either election or appointment to elective office. There are similarities in the requirements, but one must carefully review and meet the requirements of each jurisdiction before filing for or obtaining appointment to office. A candidate must be eligible to hold the office at the time he or she files a declaration in order to participate in the election process.<sup>1</sup>

### **Cities and Towns<sup>2</sup>**

In addition to any specific qualifications that might be set by statute for a particular type of municipality, no person is eligible for elective office unless he or she is a citizen of the United States, the state of Washington and an elector<sup>3</sup> of such county, district, precinct, or municipality in which the office sought is located.<sup>4</sup> Most of the “other” qualifications for office set out by statute are consistent with the general requirement and are similar among the different government classifications.

### **Towns**

No person shall be eligible to hold an elective office in a town unless he or she is a resident and registered voter in the town.<sup>5</sup>

### **Second Class Cities**

No person is eligible to hold an elective office in a second class city unless the person is a resident and registered voter in the city.<sup>6</sup>

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<sup>1</sup>*Defilipis v. Russell*, 52 Wn. 2d 745, 746 (1958).

<sup>2</sup>This publication reviews the qualifications for office in second class cities, towns, and noncharter code cities. There are ten first class cities (Aberdeen, Bellingham, Bremerton, Everett, Richland, Seattle, Spokane, Tacoma, Vancouver, and Yakima), one charter code city (Kelso), and one unclassified city that operates under its territorial charter (Waitsburg). Reference should be made to the charters of each of these cities to determine whether there are additional qualifications set by the charter for elective office.

<sup>3</sup>An elector must be a United States citizen, 18 years of age or older, and a resident in the state, county, and precinct at least 30 days immediately preceding the election. Washington State Constitution Article VI, Section 1. A qualified elector need not be registered to vote, whereas a qualified voter must be actually registered. AGLO 1974 No. 55.

<sup>4</sup>RCW 42.04.020.

<sup>5</sup>RCW 35.27.080.

<sup>6</sup>RCW 35.23.031.

## Code Cities

No person is eligible to hold elective office under either the mayor-council or council-manager plans unless the person is a registered voter of the city at the time of filing his or her declaration of candidacy and has been a resident of the city for a period of at least one year preceding his or her election.<sup>7</sup> MRSC takes the position that the one-year period ends on Election Day and begins one year prior to that date.<sup>8</sup>

## Counties

For the most part, there are no special requirements that candidates must meet to seek a county office, other than the general statutory and state constitutional requirements: they must be a citizen of the United States and the state of Washington, and an elector of the county in which they live. Several county offices, however, do have special requirements. The county prosecuting attorney must be admitted as an attorney in the state of Washington.<sup>9</sup> A candidate for county sheriff is not required to meet any special qualifications to be elected; however, he or she must have a certificate of completion of a basic law enforcement training program within twelve months of assuming office.<sup>10</sup>

## Running for More than One Office and Dual Office-Holding

Even if a person satisfies all of the requirements for filing for office, there still may be a problem if he or she already is an officer and is elected into a second office.

The first problem may confront a candidate when he or she seeks to file for office. RCW 29A.36.201 provides in part that, except for the office of precinct committee officer or a temporary-elected position,<sup>11</sup> a candidate's name shall not appear more than once upon a ballot for a position regularly nominated or elected at the same election.

While a current officer, elected or appointed, may be able to file for another office (such as when a city councilmember, not currently up for re-election, files for the office of county commissioner or mayor), there may be statutory prohibitions against the person actually assuming the second office, if he or she wins election. For example, RCW 35A.12.030 and 35A.13.020 prohibit a mayor or councilmember in a code city from holding any other public office or employment within the city's government "except as permitted under the provisions of chapter 42.23 RCW," which deals with contractual conflicts of interest. If such a situation were to arise, the officer would need to resign from the first office in order to assume the second.

In addition to the statutory prohibitions against a person holding two offices at the same time, there are common law (court-made) prohibitions as well. Under the doctrine of incompatible offices, the same person may not simultaneously hold two or more public offices if those offices are considered incompatible with one another. This, of course, would not prohibit a current officeholder from seeking another office; there would be a problem, however, if he or she were elected or appointed to the other office, if it is incompatible with the first.

Although the Washington State Supreme Court has never had the occasion to apply the doctrine in a situation actually involving two "offices," the court in one case cited the doctrine approvingly and applied it in a different context. *Kennett v. Levine*, 50 Wn.2d 212, 216-217 (1957). As the court explained in its opinion:

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<sup>7</sup>RCW 34A.12.030 and RCW 35A.13.020. Residence and voting within the limits of any territory that has been included in, annexed to or consolidated into the city is construed to have been residence within the city.

<sup>8</sup>See, generally, *In re Contested Election of Schoessler*, 140 Wn.2d 368 (2000).

<sup>9</sup>RCW 36.27.010.

<sup>10</sup>RCW 36.28.025.

<sup>11</sup>Such as a charter review board member or freeholder.

Offices are incompatible when the nature and duties of the offices are such as to render it improper, from considerations of public policy, for one person to retain both. The question . . . is . . . whether the functions of the two are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest.

(Citations omitted.) Other authorities point out that the question is not simply whether there is a physical impossibility of discharging the duties of both offices at the same time, but whether or not the functions of the two offices are inconsistent, as where one is subordinate to the other, or where a contrariety and antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both. Incompatibility may arise where the holder cannot *in every instance* discharge the duties of both offices.<sup>12</sup>

Applying those tests, the Washington State Attorney General's Office has found various offices to be incompatible with one another, such as mayor and county commissioner<sup>13</sup>, county engineer and city engineer,<sup>14</sup> and others. Courts in other jurisdictions have held incompatible the positions of mayor and councilmember, mayor and city manager, city marshal and councilmember, to mention only a few.<sup>15</sup> As was true for the statutory prohibitions, the incompatible offices problem is cured by the officer resigning from the other incompatible office.

## Conflicts of Interest

While state statutes and the doctrine of incompatible offices may either prohibit a person from running for office or from holding certain offices simultaneously, any problem that may exist can be cured by the person resigning from one of the offices before filing for office or, if elected or appointed, before taking the oath of office. Conflicts of interest may pose an impediment to serving in office as well. Although a conflict of interest will not disqualify a person from running for or assuming office, if a candidate has a conflict or potential conflict, he or she should carefully consider the impact of the conflict before seeking office, as the conflict could result in a forfeiture of office.

RCW 42.23.030 prohibits officers from having an interest in any contract that may be made

by, through, or under the supervision<sup>16</sup> of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

This prohibition does have certain exceptions,<sup>17</sup> and some interests are deemed "remote," allowing the conflict to exist, provided the officeholder discloses the interest in the contract and limits his or her role in its award.<sup>18</sup>

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<sup>12</sup>McQuillin, *Municipal Corporations*, § 12.67 (2006).

<sup>13</sup>AGO 57-58 No. 91.

<sup>14</sup>Letter to the Prosecuting Attorney of Douglas County, July 16, 1938

<sup>15</sup>McQuillin, *Municipal Corporations*, § 12.67.05 (2006)

<sup>16</sup>The "supervision" here is that involved in the *making* of the contract, not in the supervision of the implementation of the contract. *Seattle v. State*, 100 Wn.2d 232, 245-47 (1983).

<sup>17</sup>See RCW 42.23.030(1)-(11). Perhaps the most applied exemption and the one providing the greatest potential risk is RCW 42.23.030(6). The statute allows "other contracts" where the amount received by the officer does not exceed \$1,500 in a calendar month, except for sales or leases by the municipality as seller or lessor. However, if the jurisdiction is a city with a population of less than 10,000 or a county with a population of less than 125,000, the total amount received may exceed the \$1,500 monthly limit, so long as the annual total does not exceed \$18,000 during a calendar year. It is important to note that in cities of 10,000 or more and counties with a population of 125,000 or more, the allowed interest in a contract is *zero*.

<sup>18</sup>RCW 42.23.040. An officer has a remote interest if his or her interest is that of a non-salaried officer of a nonprofit corporation; he or she is an employee or agent of a contracting party, where the compensation of such

(continued...)

Some officers may be little affected by the statutory prohibition, as they have little contracting authority. On the other hand, members of a county or city council and members of a board of county commissioners have broad contracting authority and thus are potentially covered by the statute's limitations.

The reason for concern regarding the state conflict laws is the potential penalty for violations. A violation may result in a civil penalty of \$500, the voiding of the contract, and possible forfeiture of office.<sup>19</sup> It is not possible to avoid the prohibition and its penalties by just not voting. If a conflict is present, and the conflict is neither excepted nor qualifies as being a remote interest, there is a violation, regardless whether the officer is present and voting or is away coaching a softball team. The only way to avoid the prohibition is to resign from office and proceed with the contract on a private basis or to forgo the contract and remain in office.

Some local governments have adopted their own ethics codes.<sup>20</sup> Candidates for office should familiarize themselves with such codes, if they have been adopted, as a violation could result in the imposition of a penalty or affect their ability to remain in office.

## Felony Convictions

The state constitution prevents individuals from holding public office in the event they are convicted of any felony. Article 6, section 3 of the state constitution states:

All . . . persons convicted of infamous crime, unless restored to their civil rights, are excluded from the elective franchise.

An infamous crime is defined in RCW 29.01.080 to mean "a crime punishable by death in the state penitentiary or imprisonment in a state correctional facility." Since an individual must be a registered voter at the time of filing a declaration of candidacy, it clearly would be impossible for a person who has lost the right to vote to hold elective office. Thus, conviction of a felony disqualifies an individual from holding an elective office, whether he or she seeks election or appointment. It should be noted, however, that it is possible to have civil rights restored pursuant to Ch. 9.96 RCW. Once restored, an individual is once again eligible to run for and hold elective office.

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<sup>18</sup>(...continued)

employee or agent consists entirely of fixed wages or salaries; he or she is a landlord or tenant of a contracting party (e.g., a county commissioner who rents an apartment from a contractor who bids on a county contract); or the officer is a holder of less than one percent of the shares of a corporation or cooperative that is a contracting party. If the officer's interest qualifies as a remote interest, he or she must fully disclose the nature and extent of the interest, and it must be noted in the official minutes or similar records before the contract is made; the contract must be authorized, approved, or ratified after that disclosure and recording; the authorization, approval, or ratification must be made in good faith; where the votes of a certain number of officers, e.g., councilmembers or commissioners, are required to transact business, that number must be met without counting the vote of the member who has a remote interest; and the officer having the remote interest must not influence or attempt to influence any other officer to enter into the contract.

<sup>19</sup>RCW 42.23.050.

<sup>20</sup>See, e.g., Marysville Municipal Code Ch. 2.80 and Whatcom County Code Ch. 2.104.

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## Chapter 2

# Election Schedules

This chapter briefly discusses some of the dates that candidates for election should be aware of. There are other dates that may apply to a person seeking a *partisan* office; for these dates, candidates are encouraged to contact their political party and the Secretary of State’s office. In addition, the Secretary of State maintains an election calendar web page that shows when important election dates occur during the current year, along with the statutory references for those dates. See [http://www.secstate.wa.gov/elections/calendar\\_full.aspx](http://www.secstate.wa.gov/elections/calendar_full.aspx).

Elections for city and town offices are held in odd-numbered years.<sup>21</sup> Elections for county offices are generally held in even-numbered years.<sup>22</sup> However, elections to fill vacancies in partisan county elective offices may be held in odd-numbered years, as may elections for county offices as provided in a county charter.<sup>23</sup>

## The Primary Election

### Filing Declaration of Candidacy

The very first step that needs to be taken when seeking election to local office is for the candidate to *complete and file a declaration of candidacy* with the filing officer, who, for local elections, is the county auditor or the head of the county elections’ office. The declaration form, which can also be filed electronically<sup>24</sup> or by mail,<sup>25</sup> requires the candidate to provide, among other things, a declaration that he or she is a registered voter within the jurisdiction of the office for which he or she is filing; the name of the position sought; his or her party designation, if the position sought is partisan; the filing fee accompanying the declaration (or that a nominating petition is being provided in lieu of the fee); a signature verifying that the information provided on the form is true; and a sworn or affirmed statement that the person will support the constitution and laws of the United States and the constitution and laws of the state of Washington.<sup>26</sup> The filing period is defined as “*no earlier than the 4th Monday in June and no later than the following Friday in the year in which the office is scheduled to be voted upon.*”<sup>27</sup>

A person who has filed for office may *withdraw* his or her candidacy “*at any time before the close of business on the Thursday following the last day for candidates to file.*”<sup>28</sup> However, the filing officer may allow the withdrawal of a filing for any city or town elected office at the request of the candidate at any time before a primary, if the primary ballots for that city or town have not been ordered. To withdraw, the candidate simply

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<sup>21</sup>RCW 29A.04.330.

<sup>22</sup>RCW 29A.04.321.

<sup>23</sup>*Id.*

<sup>24</sup>RCW 29A.24.040.

<sup>25</sup>RCW 29A.24.081.

<sup>26</sup>RCW 29A.24.031.

<sup>27</sup>RCW 29A.24.050.

<sup>28</sup>RCW 29A.24.131.

files a signed request that his or her name not be printed on the ballot.<sup>29</sup> There is no refund of the filing fee, however, if a candidate withdraws.

If no person has filed as a candidate for nomination to a partisan position and if it is for a county office to be voted on solely by the voters of a single county, the county central committee of the political party may select and certify a candidate to fill the vacancy.<sup>30</sup> The certificate must identify the cause of the vacancy on the ticket, the name of the person nominated, the office for which the person is nominated, and other pertinent information, and it must be filed *no later than the first Friday after the last day allowed for candidates to withdraw*, together with the applicable filing fee and a declaration of candidacy.<sup>31</sup>

## Special Filing Periods

There may be instances when there is a “void in candidacy” for a particular office. (A void in candidacy for a nonpartisan office occurs when an election for that office, except for the short term,<sup>32</sup> has been scheduled and either no valid declaration of candidacy has been filed for the position or all persons filing valid declarations of candidacy have died or been disqualified.<sup>33</sup>) In such instances, a special three-day filing period is set.<sup>34</sup> The last day when a void in candidacy or a vacancy in a nonpartisan office will cause filings to be reopened for a three-day filing period is the 11th Tuesday prior to a primary.<sup>35</sup> The names of candidates added during the three-day period will appear on the *primary ballot*.

If a vacancy in a partisan office occurs on or after the first day of the regular filing period, but before the 11th Tuesday prior to the primary election, and if the vacancy occurred mid-term, the unexpired term of that office will be filled by election following a special three-day filing period.<sup>36</sup> The filing period is set by the elections officer and must occur before the 11th Tuesday prior to the primary election. The candidates who file during the special three-day filing period will have their names listed on the *primary ballot*.

If, after the 11th Tuesday prior to the primary election, there is a void in candidacy for a non-partisan office (that is, one for which there is no political party designation) or a vacancy in a nonpartisan office that was not subject to the regular filing period, the position will be subject to a special three-day filing period, set by the elections officer on dates that occur prior to the 11th Tuesday before the general election. Those filing for office during the special filing period will have their names placed on the *general election ballot* and whoever receives a plurality of the votes cast for the position will be deemed elected.<sup>37</sup>

## Absentee Ballots

The county auditor or elections officer is required to make absentee ballots available for absentee voters at least 20 days ahead of the primary, general, or special election date.<sup>38</sup>

## Write-in Candidates

Voters are allowed to *write in the names of candidates for office*, even if the person written in has not filed for the office. However, for write-in votes to be counted, the person whose name is written in must have either *declared his or her candidacy* and paid any required filing fees by *no later than the day before the*

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<sup>29</sup> *Id.*

<sup>30</sup> RCW 29A.28.011.

<sup>31</sup> *Id.*

<sup>32</sup> A “short term,” which occurs only the election is to fill a position held by a person appointed to a vacant position, is the period between the certification of an election and the start of the full term that begins in January.

<sup>33</sup> RCW 29A.24.141.

<sup>34</sup> RCW 29A.24.171.

<sup>35</sup> RCW 29A.24.171.

<sup>36</sup> RCW 29A.24.211.

<sup>37</sup> RCW 29A.24.181.

<sup>38</sup> RCW 29A.40.070.

*primary or general election*,<sup>39</sup> or the person voting for a write-in candidate must, for partisan offices, include the office sought, the position number, and political party, if the manner in which the write-in is done does not make the office or position clear. Write-in votes cast for any other candidate, in order to be counted, must include a designation of the office sought and the position number or political party, if the manner in which the write-in is done does not make the office or position clear.<sup>40</sup>

## Election Date and Results

The *primary election* is held on the *third Tuesday of August* preceding the general election.<sup>41</sup>

*Results of the primary election are to be certified* by the county canvassing board *15 days after the election*.<sup>42</sup> The *following day*, the Secretary of State must *certify to the county auditor the names of all persons nominated for office at the primary* or at an independent candidate or minor non-partisan party convention.<sup>43</sup>

For nonpartisan elected offices, it is possible to have a “*lapsed election*.” A lapsed election takes place when there is either a void in candidacy (no candidate files or the only candidate dies or is disqualified) or a vacancy in office occurs *after the 11th Tuesday prior to a general election*.<sup>44</sup> No election is held and the incumbent continues in office until a successor is elected at the next election when officers are elected to full terms.<sup>45</sup> If the incumbent does not want to continue in office, he or she may, of course, resign, in which case a person would be appointed by the council or board to fill the vacant position.

## The General Election

The *general election* is held on the *first Tuesday after the first Monday of November*.<sup>46</sup> *Results* are to be certified by county canvassing board *within 21 days of the general election*<sup>47</sup> and by the Secretary of State *no later than 30 days following the election*.<sup>48</sup>

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<sup>39</sup>RCW 29A.24.311.

<sup>40</sup>*Id.*

<sup>41</sup>RCW 29A.04.311.

<sup>42</sup>RCW 29A.60.190(1).

<sup>43</sup>RCW 29A.52.321.

<sup>44</sup>RCW 29A.24.191.

<sup>45</sup>RCW 29A.24.201.

<sup>46</sup>RCW 29A.04.321.

<sup>47</sup>RCW 29A.60.190(1).

<sup>48</sup>RCW 29A.60.250.

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## **Chapter 3**

# **Filing for Office**

## **Declaration of Candidacy**

Election to office starts by filing a declaration of candidacy with the filing officer, which is usually the county auditor or elections office. The declaration form may be filed in person, electronically,<sup>49</sup> or by mail.<sup>50</sup> The form requires the candidate to provide: a declaration that he or she is a registered voter within the jurisdiction of the office for which he or she is filing; the name of the position sought; his or her party designation, if the position sought is partisan; the filing fee accompanying the declaration (or that a nominating petition is being provided in lieu of the fee); a signature verifying that the information provided on the form is true; and a sworn or affirmed statement that the person will support the Constitution and laws of the United States and the state of Washington.<sup>51</sup> The regular filing period occurs “no earlier than the fourth Monday in June and no later than the following Friday in the year in which the office is scheduled to be voted upon.”

## **Filing Fees**

The certificate of candidacy includes a place for the candidate to indicate either the amount of the filing fee that accompanies the declaration or the indication that he or she is filing a nominating petition in lieu of paying the fee.<sup>52</sup> Candidates for offices that do not have a fixed annual salary pay no filing fee. Candidates for any office with an annual salary of \$1,000 or less pay a filing fee of \$10; for all other offices, the fee equals one percent of the annual salary for the office.<sup>53</sup> For example, if a councilmember is paid \$50 per month (or \$600 per year), he or she would pay a filing fee of \$10, since the annual salary is less than \$1,000. If the mayor is paid \$100 per month (\$1,200 per year), the filing fee would be \$12. And, if a county commissioner’s annual salary is \$42,500, the filing fee would be \$425.

## **Filing a Petition Instead of Paying a Filing Fee**

Candidates who do not have sufficient assets or income to pay the filing fee may instead turn in a filing fee petition with their declaration of candidacy. The petition must be signed by registered voters from the jurisdiction in which the office sought is located. The number of signatures submitted must be at least equal to the number of dollars of the filing fee for the office (e.g., if the filing fee is \$10, the petition must be signed

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<sup>49</sup>RCW 29A.24.040.

<sup>50</sup>RCW 29A.24.081.

<sup>51</sup>RCW 29A.24.031.

<sup>52</sup>RCW 29A.24.031 and RCW 29A.24.091.

<sup>53</sup>RCW 29A.24.091.

by 10 registered voters from the jurisdiction).<sup>54</sup> A petition may be rejected if it: is not in the proper form; clearly bears insufficient signatures; is not accompanied by a declaration of candidacy; or the time within which the petition and the declaration of candidacy could have been filed has expired.<sup>55</sup>

## Issues Related to Filing

### **May a Person File for Two Offices?**

RCW 29A.36.201 provides that, except for the office of precinct committee officer or a temporary-elected position, such as a charter review board member or freeholder, a candidate's name may not appear more than once upon the ballot at the same election.

### **What If No One Files?**

If after the regular filing period (the fourth Monday in June through the following Friday) for a nonpartisan office, no one has filed, there is a “void in candidacy” for the office.<sup>56</sup> When such a void occurs, after notice has been given to the press, radio and television,<sup>57</sup> an additional filing period is opened by the election officer for a period of three normal business days.<sup>58</sup> So long as the additional filing period occurs before the 11th Tuesday prior to the primary election, the names filed during the period will appear on the primary ballot.<sup>59</sup>

If a void in candidacy occurs for a partisan office, the county central committee may select and certify a candidate to fill the vacancy. The certificate must set forth the cause of the vacancy, the name of the person nominated, the office for which the person is nominated, and other pertinent information required in an ordinary certificate of nomination and be filed in the proper office no later than the first Friday after the last day allowed for candidates to withdraw, together with the candidate's fee applicable to that office and a declaration of candidacy.<sup>60</sup>

### **What If after the Additional Filing Period No One Still Has Filed?**

If after the additional filing period no one still has filed for a nonpartisan office, the election for the position is considered “lapsed.”<sup>61</sup> The office is stricken from the ballot and no write-in votes are counted. The incumbent officeholder remains in office and continues to serve until the next election when the position is normally voted upon.<sup>62</sup> If there is an incumbent office holder in the position and he or she no longer desires to serve, that officer would need to resign from office in order to create a vacancy.

As is stated above, if the office is partisan, the county central committee may select and certify a candidate to fill the vacancy on the ballot, provided the certification is made by no later than the first Friday after the last day allowed for candidates to withdraw and is provided with the candidate's fee applicable to that office and a declaration of candidacy.<sup>63</sup>

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<sup>54</sup>*Id.* The form of the petition must substantially meet the requirements of RCW 29A.21.101.

<sup>55</sup>RCW 29A.24.111.

<sup>56</sup>RCW 29A.24.141.

<sup>57</sup>RCW 29A.24.151.

<sup>58</sup>RCW 29A.24.171.

<sup>59</sup>*Id.*

<sup>60</sup>RCW 29A.28.011.

<sup>61</sup>RCW 29A.24.191 and RCW 29A.24.201.

<sup>62</sup>RCW 29A.24.201.

<sup>63</sup>RCW 29A.28.011.

## What Happens If There Is Only One Person Who Has Filed?

If after the last day allowed for candidates to withdraw their candidacy (before the close of business on the Thursday following the last day for candidates to file), there is only one candidate from a qualified political party filed for a partisan office *or* there are no more than two candidates filed for a nonpartisan office, there will be no primary election for that office.<sup>64</sup> After notification of the candidates, their names will be listed as nominees on the general election ballot.<sup>65</sup>

## What If a Candidate Dies or Is Disqualified after Filing for Office?

The death or disqualification of a candidate will result in the removal of that candidate's name from the ballot.<sup>66</sup> The death or disqualification of a candidate may result in a void in candidacy, if that candidate is the only person filed for a particular office. Depending upon when a void in candidacy occurs, whether it is before or after 11 weeks prior to the primary or general election, there may be a reopening of filing for the office for a special three-day period. If death or disqualification occurs before 11 weeks prior to the primary, a special filing period is called and candidates filing for the office during the period will appear on the primary ballot.<sup>67</sup> If the death or disqualification occurs less than 11 weeks prior to the primary but before 11 weeks prior to the general election, there is a special three-day filing period and those candidates filing will appear on the general election ballot. Whoever receives a plurality of the votes cast will be deemed elected.<sup>68</sup> If the void in candidacy occurs after 11 weeks prior to the general election, there is an election lapse, the office is stricken from the ballot, no write-in votes are counted, and the incumbent remains in office to serve until a successor is elected at the next election when such positions are voted upon.<sup>69</sup>

For partisan offices, if there is a void in candidacy caused by the death or disqualification of a candidate or nominee, the county central committee may appoint a person to fill the vacancy on the ballot at any time up to and including the day prior to the election.<sup>70</sup> Depending upon when the certification is made, the appointed candidate's name will either be placed on the ballot or the votes made in favor of the candidate who died or was disqualified will be counted in favor of the newly-certified candidate.<sup>71</sup>

## May a Person Who Has Filed for Office Withdraw His or Her Candidacy?

A candidate may withdraw his or her candidacy at any time before the close of business on the Thursday following the last day for filing by filing a signed request that his or her name not be printed on the ballot.<sup>72</sup> There is no withdrawal period for candidates who file during the reopened special three-day filing period.<sup>73</sup> The filing officer, however, may allow the withdrawal of a filing at the request of the candidate at any time prior to the primary, if the primary ballots have not been ordered. The filing fee is not refunded to a candidate who withdraws.<sup>74</sup>

The withdrawal of a candidacy may create a void in candidacy, if there are no other candidates for the office, and potentially a lapse in election.

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<sup>64</sup>RCW 29A.52.011 and RCW 29A.52.220.

<sup>65</sup>*Id.*

<sup>66</sup>RCW 29A.20.021.

<sup>67</sup>RCW 29A.24.171.

<sup>68</sup>RCW 29A.25.181.

<sup>69</sup>RCW 29A.24.201.

<sup>70</sup>RCW 29A.28.021.

<sup>71</sup>*Id.*

<sup>72</sup>RCW 29A.24.131.

<sup>73</sup>*Id.*

<sup>74</sup>*Id.*

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## Chapter 4

# Disqualification

While one would hope every candidate who files for office, survives a primary, receives the most votes at the general election, or is sworn into office possesses the qualifications for the office sought or won, that conclusion may not always be true. What can a citizen or a government official do if he or she believes a candidate or person elected is not legally qualified for the position?

A challenge to the placement of a person's name on a ballot, either prior to the primary or general election, may be initiated by an elector<sup>75</sup> filing an affidavit with the state supreme court, court of appeals, or superior court, alleging that a candidate does not possess the qualifications for the office sought.<sup>76</sup> An affidavit relating to the primary election ballot must be filed by no later than the second Friday following the closing of the filing period for nominations for the office. An affidavit relating to the general election ballot must be filed no later than three days following the official certification of the primary election returns. Failure to file within the designated time deprives the court of jurisdiction to consider the contest.<sup>77</sup> However, if the facts that cause the alleged disqualification are of a continuing nature, such as when a candidate is a nonresident, a challenge to the person's candidacy need not be brought before the primary; it can be brought at a later date.<sup>78</sup> Once an affidavit is filed, it must be heard and finally disposed of by the court within five days.<sup>79</sup> The courts, and only the courts, have the power and authority to determine who may be a candidate for public office.<sup>80</sup>

The statutes do not direct how the court is to consider an affidavit filed prior to a candidate's election. Presumably the process would be similar to the process used for contesting a candidate's election, but within a more abbreviated timeframe: notice of court hearing date; the ability to subpoena witnesses; a hearing; and a judgment by the court.<sup>81</sup>

The obvious outcome of a disqualification hearing, if the allegations justifying the disqualification are proved, is that the disqualified candidate may not have his or her name placed on the ballot. The exact result of the disqualification depends upon when during the election process the disqualification is determined:

- If there is a primary conducted for the office:

If ballots for the general election have not been ordered, the candidate who received the third greatest number of votes at the primary qualifies as a candidate at the general election and will have his or her name printed on the ballot instead of the name of the disqualified candidate.

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<sup>75</sup>An elector is a United States citizen, 18 years of age or older, and a resident in the state, county, and precinct at least 30 days immediately preceding an election. Washington State Constitution, Article VI, Section 1.

<sup>76</sup>RCW 29A.68.011.

<sup>77</sup>*State ex rel. Mills v. Howell*, 93 Wash. 257, 261 (1916).

<sup>78</sup>*State ex rel. Pennick v. Hall*, 26 Wn.2d 172, 175 (1946).

<sup>79</sup>RCW 29A.68.011.

<sup>80</sup>*State ex rel. Anderson v. Chapman*, 86 Wn. 2d 189, 193 (1975).

<sup>81</sup>See RCW 29A.68.040-.050.

If general election ballots have been ordered, votes cast for the disqualified candidate at the general election for the office will not be counted.

If a primary is not conducted for the office:

If ballots for the general election for the office have not been ordered, the name of the disqualified candidate will not appear on the general election ballot.

If general election ballots have been ordered, votes cast for the disqualified candidate at the general election will not be counted.

If the disqualified candidate is the only candidate to have filed for the office during a regular or special filing period for the office, a void in candidacy for the office occurs.<sup>82</sup>

There is also the potential that a criminal action can be filed against the disqualified candidate. A person who knowingly provides false information on a declaration of candidacy or a petition for nomination is guilty of a class C felony.<sup>83</sup>

A discussion of the disqualification process after the general election has been held, and either before or after a certificate of election has been issued, is discussed in chapter 6, beginning at page 20.

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<sup>82</sup>RCW 29A.36.180.

<sup>83</sup>RCW 29A.84.311. If convicted, the person could face a jail sentence of up to five years, or a fine up to ten thousand dollars, or by both a jail sentence and a fine. RCW 9A.20.021(1)(c).

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## Chapter 5

# The Election Campaign

## Financial Disclosure

Filing for office may be only the beginning of a candidate's responsibilities; many candidates must disclose their financial affairs and report campaign contributions and expenses.

Within two weeks of filing for office, candidates, except as noted below, are to complete and file a Personal Financial Affairs Statement (Public Disclosure Commission Form F-1).<sup>84</sup> (The requirement to file a financial affairs statement also applies to persons appointed to fill a vacancy in an elective office.<sup>85</sup>) This form, which is filed with the Public Disclosure Commission, provides information regarding the candidate's occupation, employer, business address, bank or savings accounts, creditors, names of corporations and partnerships in which he or she has an ownership interest, and a list of real property in which the candidate has a financial interest, among other things.<sup>86</sup> There is one important exception, however; Personal Financial Affairs Statements are *not* required in political subdivisions with less than 1000 registered voters as of the date of the most recent general election in the jurisdiction.<sup>87</sup> The requirement for financial disclosure likewise does not apply to persons seeking election to the position of precinct committee officer.<sup>88</sup>

In addition, most candidates must, within two weeks of filing for office, file a Candidate Registration form (Public Disclosure Commission Form C-1) with both the Public Disclosure Commission and the county auditor.<sup>89</sup> There are also exceptions to this requirement, including candidates for precinct committee officer and for the office of a political subdivision of the state that does not encompass a whole county and that contains fewer than 5000 registered voters as of the date of the most recent general election in the subdivision.<sup>90</sup>

The requirement to file reports with the Public Disclosure Commission is not limited to the initial weeks of a candidate's campaign. Unless exempted, candidates and their political committees are required to periodically report their contributions and expenditures throughout their campaign for office, including after the election.<sup>91</sup> If a candidate does not raise or spend more than \$3,500, in addition to the filing fee, and does not accept more than \$300 from any contributor, he or she qualifies for "mini campaign reporting" and is only required to file Forms C-1 and F-1, discussed above.<sup>92</sup>

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<sup>84</sup>RCW 42.17.240(2).

<sup>85</sup>RCW 42.17.240(2). The form must be filed with the Public Disclosure Commission within two weeks of the person's appointment.

<sup>86</sup>RCW 42.17.241. The list of information to be reported is fairly extensive, and it contains certain exemptions or exceptions. Thus, reference should be made to the statute and to the information set out on the Form F-1 itself.

<sup>87</sup>RCW 42.17.405(1).

<sup>88</sup>RCW 42.17.240(9).

<sup>89</sup>RCW 42.17.050(1).

<sup>90</sup>RCW 42.17.030.

<sup>91</sup>RCW 42.17.080. Reporting is provided on form C-3 (information regarding contributions) and C-4 (report of contributions and expenditures).

<sup>92</sup>WAC 390-16-105 and RCW 42.17.370(8).

Violations of the disclosure and financing requirements can result in penalty ranging from a civil fine to the voiding of the election itself.<sup>93</sup>

## Use of Government Office or Facilities for a Campaign

May a mayor use her office computer to prepare a campaign speech to give at the community club? May a councilmember running for reelection use a city fax machine to send his resume to the local newspaper? May a treasurer use an office telephone at lunchtime to schedule an up-coming campaign event? The uses of facilities or equipment suggested by these questions, one might argue, are minimal and would not likely result in any additional government expense. But, in each instance, the use suggested by the question would be a violation of state law.

RCW 42.17.130 provides in part:

No elective official nor any employee of his [or her] office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency.

The statute does, however, have some exceptions, but only one might have application to a campaign for office. RCW 42.17.130(3) permits “[a]ctivities which are part of the normal and regular conduct of the office or agency.”

An elected official may engage in political activities on his or her own time, so long as no public equipment, vehicle or facility is used. An elected official may also use the title of his or her office, provided it is made clear that the official is speaking individually and not on behalf of the city, town, or county. Officials may attend any function or event at any time during the day and voice their opinions about a candidate or ballot proposition, as long as they are not being compensated and are not using any public equipment, vehicle, or other facility.<sup>94</sup>

Additional information regarding the statute’s application is provided in a memorandum to interested persons from Nancy Krier, Assistant Attorney General:<sup>95</sup>

This section of the memorandum is intended to draw together informal advice to state agencies from a variety of sources (primarily generated in response to ballot measures in previous years), and to point to sources available for help in answering questions which may arise. As noted, this memorandum represents only the writer’s analysis based upon that information provided at the state level to agencies governed by similar statutes, and is not the official position of the office.

Given the language of the statute itself at RCW 42.17.130, and factoring in cases and opinions interpreting the statute, it is possible to make some general statements about political activities. I think the following activities are clearly prohibited by RCW 42.17.130:

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<sup>93</sup>RCW 42.17.390.

<sup>94</sup>“Guidelines for Local Government Agencies in Election Campaigns, Public Disclosure Law Re: Use of Public Facilities in Campaigns,” revised May 31, 2006 (PDC Interpretation 04-02).

<sup>95</sup>Memorandum dated September 13, 2001 to Interested Persons from Nancy Krier, Assistant Attorney General regarding Statutory Limits On The Use of Public Funds/Facilities To Assist or Oppose Campaigns, Particularly Campaigns Involving Ballot Measures or Initiatives.

1. Using work hours to solicit signatures for ballot propositions, to raise funds for or against such propositions, or to organize campaigns for or against such propositions.
2. Using public property to campaign for or against a ballot proposition, except that “neutral forum” public property available on a nondiscriminatory, equal access basis and otherwise open to public use may be used for campaigning also.
3. Using public facilities-office space, electronic mail and data processing equipment, word processing and copying facilities, paper, supplies, and any other publicly owned property-for campaigns for or against a ballot proposition, whether during or after work hours.
4. Displaying political material in or on publicly owned vehicles.
5. Displaying or distributing campaign material on publicly owned or operated premises (other than “neutral open forum” property or “personal space” property . . .).
6. Using public supplies, equipment, or facilities to print, mail, or otherwise produce or distribute materials supporting or opposing any candidate or ballot proposition.
7. Using publicly owned facilities to instruct or urge public employees to campaign for or against a candidate or ballot proposition on their own time, or stating or implying that their job performance might be judged according to their willingness to use their own time on a campaign.
8. Using public time and/or facilities to draft or pass a resolution by an appointed committee, board, or commission taking an official position for or against a pending ballot proposition.

Turning to the other side, the following **appear to be conduct that is not prohibited** by RCW 42.17.130:

1. An elected legislative body may collectively endorse or oppose a ballot measure if it meets the procedural requirements of RCW 42.17.130.
2. An elected official may make a statement in support of, or in opposition to, a ballot proposition at an open press conference or in response to a specific inquiry or may make incidental remarks concerning a ballot proposition in an official communication, so long as there is no actual, measurable expenditure of public funds. Again, note that this exception is limited to elected officials and does not, by its terms, extend to such “support” activity as using staff time or public facilities to prepare or distribute such a statement, at least if any “measurable expenditure” of public funds is involved.
3. Unless it is inconsistent with some other applicable law or regulation, a public employee is not prohibited from campaigning for or against a ballot proposition on the employee's personal time. It should be clear that the activity is the individual's personal choice and is not tied to job performance in any way.
4. Public employees may contact fellow employees, away from the office, to circulate petitions or to solicit one another for funds, volunteers, and other activity for and against a ballot proposition, but only under circumstances which strictly avoid the use of office time and public property. Officers and employees would be wise to avoid soliciting subordinate employees because, under those circumstances, the subordinate employees may feel (no matter how carefully the campaign is conducted or the inquiry is phrased) that the superior is using improper influence.
5. Where public space is available on a nonrestricted basis to post signs, petitions, and advertisements, or to make speeches and hold meetings, public employees may use these “neutral

public forum” spaces to express their own views, including their views on pending ballot propositions, assuming they are not otherwise violating RCW 42.17.130. However, it might well be a violation of the statute for public employees to use their positions to gain special advantage in the use of such “public forum” spaces, such as by signing up all the time for the use of a public auditorium before non-employees have had an equal opportunity to seek use of the same space, or by using their access to a public bulletin board to occupy the entire space with favored campaign material and leaving no space available for opposing material (or material relating to other matters).

6. Public agencies may conduct research into the likely results of the passage of a ballot proposition. Indeed, where the passage of the proposition would directly affect the agency's duties, an agency might be remiss for not conducting such research activity. However, it must be clear that the research is being conducted with the purpose of gathering the facts, is directly related to the ordinary conduct of the agency's business (is “normal and regular” for the agency), and is not designed to support or oppose a candidate or ballot measure. I recommend that agencies avoid conducting research or assembling statistical data which they expect to be requested for use in connection with a campaign, unless they are satisfied that they would have undertaken the same research or statistical efforts for independent reasons, such as planning for contingencies.

7. Public agencies and public employees may supply public records in response to requests made by the supporters or opponents of candidates or ballot propositions. An agency should treat all campaigns fairly and equitably in responding to requests for public records.

8. Where two or more measures relate to the same subject, agencies may publish factual information showing the comparative effects of the measures, just as they could publish factual information showing the expected effect of a single measure. However, the agency may not use public facilities or property to favor one proposition over the other, any more than it could urge passage or defeat of both measures. (Footnotes omitted; emphasis in original)

The consequences of a violation of RCW 42.17.130 can be severe; there is the potential for a civil penalty of up to \$10,000 and, if it can be shown that the violation probably affected an election’s outcome, the election can be voided.<sup>96</sup> A serious, unwritten consequence of a violation may be the erosion of the public’s confidence in government. Thus, prudence would suggest that, if the legal authority to use a public facility is not clear, the decision be in favor of nonuse.

If there is a doubt about a particular use, it is suggested that the city or town attorney, county prosecutor, a Municipal Research and Services Center legal consultant, or the Public Disclosure Commission<sup>97</sup> be contacted for advice.

## Campaign Signs

The use of campaign signs often becomes an issue during a campaign for political office. Candidates may feel that their use is essential to getting elected. Others may believe that their use detracts from the beauty of the community or poses a safety hazard to drivers and pedestrians. The basic issue is what limitations may be placed on the use of campaign signs. Where can they be placed? Can the duration of yard sign display be limited? How big can a yard sign be? If a person doesn’t like them, can he or she just tear them down?

Campaign signs are a form of political expression, protected by the First Amendment of the U.S. Constitution

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<sup>96</sup>RCW 42.17.390.

<sup>97</sup>The Public Disclosure Commission staff (360-753-1111) will provide informal opinions on whether a proposed activity is in violation of RCW 42.17.130.

and by article 1, section 5 of the Washington State Constitution.<sup>98</sup> Although susceptible to some regulation, political signs will be permitted within the public right-of-way, especially if the area has served as a traditional public forum (for example, in an area where “For Sale” signs, notices of lost animals, and advertising signs have been allowed). However, while there is no direct Washington authority on the issue, Municipal Research takes the position that if the right-of-way includes a planting or parking strip abutting private property, the property owner’s permission is necessary before a political sign may be placed there.

The courts will presumably uphold *reasonable* political sign regulations, if the regulations are time, place, and manner restrictions that are *viewpoint neutral*, albeit *subject-matter based*, so long as the regulations are narrowly tailored to serve a *compelling* state interest and leave open ample alternative channels of communication.<sup>99</sup> The state supreme court invalidated a Tacoma regulation limiting the use of temporary political signs to the 60-day period before an election, finding that the city’s justification, based in part on aesthetics, was not sufficiently compelling.<sup>100</sup> The court, however, did uphold a requirement that the signs be removed within seven days following the election. Other *reasonable* restrictions, such as the limitation of the size of a permitted signs or its placement in or near an intersection site triangle, might be equally defensible, provided the restriction would have equal application to other temporary signs.

If a sign has been legally placed, no person may remove or deface the sign without authorization to do so.<sup>101</sup> Improper removal or defacement is a misdemeanor.<sup>102</sup>

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<sup>98</sup> See, e.g., *Collier v. City of Tacoma*, 121 Wn.2d 737 (1993).

<sup>99</sup> *Id.*

<sup>100</sup> *Collier*, 121 Wn.2d at 756.

<sup>101</sup> RCW 29A.84.040.

<sup>102</sup> *Id.*

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## **Chapter 6**

# The Election is Over

The ballots have been cast and the votes counted; that’s pretty much it, isn’t it? Not quite.

## Counting the Votes and Then Maybe Recounting Them

The ballots cast at the general election are to be counted and the election results certified by the county canvassing board within 21 days of the election.<sup>103</sup> If the results are close, a recount may be required or one could be requested.

A recount is required if the person who has apparently been nominated or elected leads by less than 2000 votes and also by less than one-half of one percent of the total number of votes cast for both candidates.<sup>104</sup> If the difference is less than 150 votes and also is less than one-fourth of one percent of the total number of votes cast for both candidates, the votes are to be recounted manually.<sup>105</sup> If the recount is mandatory, there is no cost to either candidate.<sup>106</sup>

If the election is close, but does not qualify for a mandatory recount, a recount may be requested by application to the county auditor or elections office by an officer of a political party, a person for whom votes were cast, or by five or more registered voters.<sup>107</sup> The application must be made within three business days after the county canvassing board has declared the election results. The application must specify whether the recount will be done manually or by the vote tally system.<sup>108</sup>

If a manual recount is requested, the application for the recount must include a deposit with the county canvassing board equal to 25 cents for each ballot cast as security; if the application is for a machine recount, the deposit must be equal to 15 cents for each ballot.<sup>109</sup>

The recount occurs after the county auditor has given notice of the time and place for the recount, including notice to the affected parties. The recount process is public, and interested persons may attend and witness the process.<sup>110</sup> When the recount is complete, the canvassing board prepares and certifies an amended abstract.<sup>111</sup> The cost of the recount is then determined, and that amount is deducted from the deposit

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<sup>103</sup>RCW 29A.60.190(1).

<sup>104</sup>RCW 29A.64.021(1).

<sup>105</sup>RCW 29A.64.021(1)(b)(ii).

<sup>106</sup>RCW 29A.64.021(2). The apparent winner and the closest opponent may select an alternative method of conducting the recount. RCW 29A.64.021(3).

<sup>107</sup>RCW 29A.64.011.

<sup>108</sup>*Id.* A vote tally system refers to one or more pieces of equipment necessary to examine and tally automatically marked or punched ballots.

<sup>109</sup>RCW 29A.64.030.

<sup>110</sup>RCW 29A.64.030 and RCW 29A.64.041.

<sup>111</sup>RCW 29A.64.061.

submitted by the applicant. If the cost is less than the deposit, the county issues a refund; if the cost is greater than the deposit, the applicant pays the difference. If the election results were changed as result of the recount, no charge is made.<sup>112</sup>

## What If There Is a Tie?

If the candidates have an equal number of votes – a tie – each candidate is given notice and, at the designated time and place, a winner is determined “by lot,” such as by a coin flip, administered by the canvassing board.<sup>113</sup>

## Certification and the Issuance of a Certificate of Election

Once the official results of the election are determined, the county auditor or elections office makes an “abstract” of the vote, showing the number of registered voters in each precinct and the number of votes cast for each candidate.<sup>114</sup> The abstract, along with a certification report, is provided to the secretary of state,<sup>115</sup> and the auditor notifies the winning candidate of the election results and issues him or her a ceremonial certificate of election.<sup>116</sup>

Once a certificate of election is given to the winning candidates, it would seem that the election process is over. Typically that would be the case, but there still exists the possibility of an election contest.

## Election Contests

Any judge, whether from the superior court, court of appeals, or supreme court, is authorized to correct an election error, prevent a “wrongful act” with respect to an election, or require the performance of an election-related duty, if an affidavit<sup>117</sup> is filed by an elector.<sup>118</sup> Among the errors a judge may address are errors involving the printing of the name of a candidate on the official ballots; wrongful acts or neglect by an election officer; or errors or omissions in the official certification of election.<sup>119</sup> While there are different deadlines for filing an affidavit, depending upon the nature of the error alleged, the deadline for challenging the issuance of a certificate of election following a primary or general election is 10 days after certification or, if there has been a recount, 10 days after the amended certification has been issued.<sup>120</sup>

Any registered voter may contest the right of any person to be issued a certificate of election for any of the following reasons:

- (1) Misconduct by any member of any precinct election board;
- (2) The person was not, at the time elected, eligible for that office;
- (3) The person was convicted of a felony, and the conviction has not been reversed and the person's civil rights have not been restored;

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<sup>112</sup>RCW 29A.64.081.

<sup>113</sup>RCW 29A.60.221.

<sup>114</sup>RCW 29A.60.230.

<sup>115</sup>RCW 29A.60.230 and RCW 29A.60.235.

<sup>116</sup>RCW 29A.52.360.

<sup>117</sup>See RCW 29A.68.030 for content of affidavit.

<sup>118</sup>RCW 29A.68.011.

<sup>119</sup>RCW 29A.68.011.

<sup>120</sup>RCW 29A.68.011.

- (4) The person gave or offered a bribe or reward to a voter or to an election inspector or judge of election for the purpose of procuring the election;
- (5) Because of illegal votes.<sup>121</sup>

Once an affidavit has been filed with the court, a hearing date is set for not less than 10 or more than 20 days from the date of notice.<sup>122</sup> After receiving testimony and evidence at the hearing, the judge either may dismiss the proceedings or may nullify the election or, if another person has the most legal votes, declare that person to be elected,<sup>123</sup>

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<sup>121</sup>RCW 29A.68.020.

<sup>122</sup>RCW 29A.68.040.

<sup>123</sup>RCW 29A.68.050.

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## Chapter 7

# Assuming Office

To do list: File for office – check. Campaign – check. Get the most votes – check. Survive any challenges – check. So, what’s next? Qualifying and assuming office.

## “Qualified”

Before assuming office, the winning candidate must be “qualified” to assume office.<sup>124</sup> For purposes of the election statutes, the term “qualified” means:

- (1) The election results have been certified;
- (2) Any required bond has been posted; and
- (3) The winner has taken the oath of office.<sup>125</sup>

## A Bond Has Been Posted

Official bonds, conditioned upon the faithful performance of the duties of office, are required for elective offices.<sup>126</sup> Failure to execute a bond prevents the person elected from assuming office and results in the incumbent officer “holding over” (continuing in office until a successor is qualified).<sup>127</sup>

## Oath of Office

The last step in qualifying is the taking of an oath.<sup>128</sup>

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<sup>124</sup> See, e.g., RCW 35A.12.040. Incumbent councilmembers in code cities serve terms of four years and “until their successors are elected and qualified and assume office” according to RCW 29A.20.040. See also, RCW 35.23.051, RCW 35.27.090, and RCW 29A.16.020.

<sup>125</sup> RCW 29A.04.133.

<sup>126</sup> See RCW 35.23.081; RCW 35.27.120; RCW 35A.12.080; RCW 29A.04.133; and RCW 35A.13.160; RCW 36.16.050. Bond requirements are set out in chapter 42.08 RCW. The amount of the required bond is either specified by statute (see, e.g., RCW 36.16.050) or by ordinance passed by the legislative body. See RCW 35.23.081, RCW 35.27.120, RCW 35A.12.080, and RCW 35A.13.160.

<sup>127</sup> AGLO 1980 No. 2; but see RCW 42.12.010(6).

<sup>128</sup> RCW 29A.20.040(3); see also, RCW 29A.04.133(4); RCW 35.23.181; RCW 35.27.120; RCW 35A.12.080; and RCW 35A.13.160.

## When Is the Oath of Office Given?

A newly elected official will typically begin his or her term on the first day of January following an election; the oath may be given up to 10 days prior to the date of assuming office or at the last regular meeting held before the person elected is to assume office.<sup>129</sup>

If a vacant elective office has been filled by appointment, the person appointed takes an oath before assuming office. When a person is elected into a position previously held by someone who has been appointed, that person takes an oath when the election is certified and again, if he or she has been elected to a new full term.<sup>130</sup>

## Who May Give the Oath of Office?

An oath may be given by any notary public<sup>131</sup> or other officer authorized to administer oaths,<sup>132</sup> which would include:

Court commissioner – RCW 2.24.040(10)

Every judicial officer (as defined in RCW 2.28.030) – RCW 2.28.060(4)

Every judge and court clerk<sup>133</sup> – RCW 5.28.010

County auditor or deputy auditor – RCW 36.22.030

County commissioner or councilmember – RCW 36.32.120(9)

Mayor or mayor pro tem<sup>134</sup>

Clerk of a code city – RCW 35A.21.030

Clerk of a city operating under commission form of government – RCW 35.17.105

Clerk of a town and deputy clerk – RCW 35.27.220

## What Oath Should Be Given?

Unless there is a specific oath for the office, a general oath can be used or the person assuming office may take an oath or affirmation that he or she will faithfully and impartially discharge the duties of the office to the best of his or her ability.<sup>135</sup> Here are three examples of oaths of office:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and laws of the State of Washington, and all local ordinances, and that I will faithfully and impartially perform and discharge the duties of the office of \_\_\_\_\_, according to law and the best of my ability.

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully and impartially and to the best of my ability, perform the duties of the office of the \_\_\_\_\_, in accordance with the laws of the State of Washington, and all other applicable legal enactments of the \_\_\_\_\_, Washington.

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<sup>129</sup>RCW 29A.20.040(3).

<sup>130</sup>See generally RCW 29A.04.133; Article 2, section 15 of the Washington State Constitution; RCW 42.12.040 and RCW 42.12.070.

<sup>131</sup>RCW 5.28.010; RCW 42.44.010(2); and RCW 42.44.080

<sup>132</sup>RCW 29A.04.133(4).

<sup>133</sup>See also RCW 3.54.020(4) and RCW 35.20.210.

<sup>134</sup>RCW 35.23.191; RCW 35.27.160; and RCW 35A.21.030.

<sup>135</sup>RCW 29A.04.133(4).

I solemnly swear (or affirm) that I will support the constitution and will obey the laws of the United States and of the State of Washington, that I will, in all respects, observe the provisions of the charter and ordinances of \_\_\_\_\_, and will faithfully discharge the duties of the office of \_\_\_\_\_.

Once the oath has been given and signed, it is filed with the county.<sup>136</sup>

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<sup>136</sup>RCW 36.16.060; RCW 35.23.081; RCW 35.27.120; RCW 35A.12.080; and RCW 35A.13.160.

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## **Chapter 8**

# The Other End of the Continuum – Leaving Office

Elected offices have terms, and, at the end of a term, the person serving in the office will leave, unless he or she has been re-elected. At some point, though, circumstances may dictate that a current officeholder ceases to be an officer, and a vacancy occurs. What acts will cause a vacancy? And how is a vacancy filled?

## What Causes a Vacancy?

### **Causes of a Vacancy**

By statute<sup>137</sup> an office becomes vacant:

1. Upon the death of the officeholder;
2. When the officeholder resigns, with the vacancy occurring upon the date of the resignation;
3. When the officer is removed from office, such as by recall;
4. Except for certain municipal court judges, when the officeholder ceases to be a registered voter of the jurisdiction or district in which he or she was elected or appointed;
5. If the officeholder is convicted of a felony, or any offense involving a violation of his or her official oath;
6. When the person refuses or otherwise fails to take the oath of office or to give or renew the official bond or to timely file the oath or bond;
7. When a competent tribunal declares the election or appointment void; or
8. When a judgment is obtained against the officer for breach of the condition of his or her official bond.

### **Resignation**

Once it was thought that a resignation had to be accepted to be effective. Acceptance is no longer required. In the case *State ex rel. Munroe v. City of Poulsbo*,<sup>138</sup> the state court of appeals concluded that a resignation occurs upon its effective date. So, if one states “I resign,” the resignation is effective and a vacancy occurs.

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<sup>137</sup>RCW 42.12.010.

<sup>138</sup>109 Wn. App. 672, 678-679 (2002)

If, however, the officeholder indicates “I will resign effective January 1,” the resignation is not effective until that later date. (There is no particular form that is required for a resignation; it can be given orally or in writing.) Once the resignation is effective, it cannot be withdrawn. (Of course, if the resignation is effective, and there is a vacancy, the legislative body could reappoint the person, if it chose to do so.)

## Change of Residence

One of the potential causes for a vacancy is an official’s change of residence. If an official moves out of the jurisdiction or district from which he or she was elected, a vacancy occurs. However, a *temporary* move will not necessarily cause a vacancy. For example, if a fire or natural disaster destroys an elected official’s home, forcing the official to temporarily move while the house is repaired or a new home (within the jurisdiction or district) is acquired, residency likely is not lost. Conversely, a person might lose his or her residency as soon as he or she moves, if the person has the intent to make a new location his or her new home. Residency requires a person’s bodily presence in a place and his or her intention to make that place home. Residence is made up of fact and intention, the fact of abode and the intention of remaining; it is a combination of acts and intention.<sup>139</sup>

## Missed Meetings

For city and town councilmembers, a vacancy occurs if the councilmember misses three consecutive regular meeting and those absences are not excused by the council.<sup>140</sup> Obviously, if one of the missed meetings is a special meeting, or if one or more of the absences is/are excused, or if the meetings missed are not consecutive, there is no vacancy.

## The Recall

Under the state constitution, every elected public officer, except a judge of a court of record, is subject to recall.<sup>141</sup> Accordingly, elective officers of a county, city, or town are subject to recall. The recall procedure is as follows:

1. Any legal voter of the jurisdiction who desires the recall of any elective public officer, must prepare a typewritten charge, naming the officer and his or her title, and charging that he or she has committed an act or acts of malfeasance or misfeasance while in office or has violated his or her oath of office, or has been found guilty of two or more of the acts specified in the state constitution as grounds for recall.<sup>142</sup> The terms are defined as follows:
  - “Misfeasance” or malfeasance” in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty;
    - Additionally, “misfeasance” in office means the performance of a duty in an improper manner; and
    - Additionally, “malfeasance” in office means the commission of an unlawful act;
  - “Violation of the oath of office” means the willful neglect or failure by an elective public officer to perform faithfully a duty imposed by law.<sup>143</sup>

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<sup>139</sup>RCW 29A.04.151; see also *In re Lassin’s Estate*, 33 Wn.2d 163, 165-166, 204 P.2d 1071 (1949) (residence in fact coupled with purpose to make the place a residence).

<sup>140</sup>RCW 35.23.101; RCW 35.27.140; RCW 35A.12.060

<sup>141</sup>Wash. Const., Art. I, Sections 33-34, amended by Amend. 8; RCW 29A.56.110.

<sup>142</sup>RCW 29A.56.110.

<sup>143</sup>RCW 29A.56.110.

The charge must be stated “in concise language” that gives a detailed description of the act or acts alleged, including the approximate date, location, and nature of each act. The person or persons making the charge must sign the petition, give their address, and verify under oath that he, she or they believe the charge(s) to be true and that they have knowledge of the alleged facts upon which the stated grounds for recall are based.<sup>144</sup>

2. The petition is filed with the county auditor,<sup>145</sup> who must promptly serve a copy of the petition upon the officer whose recall is being demanded and must certify and transmit the charge to the county prosecuting attorney, who prepares the ballot synopsis for recall efforts involving city or county elected officials.<sup>146</sup>
3. The prosecuting attorney must formulate a ballot synopsis of the charge within 15 days after receipt of the petition. The synopsis must be less than 200 words and include the name of the person charged, the title of his or her office, along with a concise statement of the elements of the charge. The prosecuting attorney then must certify and transmit the synopsis to the person(s) filing the charge, the officer subject to the recall, and the superior court of the county in which the officer resides. The superior court then is petitioned to approve the synopsis and to determine the sufficiency of the charge(s).<sup>147</sup>
4. Within 15 days after receiving the petition, the superior court must conduct a hearing to determine: (a) whether or not the acts stated in the charge satisfy the criteria for recall, and (b) the adequacy of the ballot synopsis. The court does not determine the truth of the charges. The person subject to the recall and the person demanding recall may appear at the hearing with legal counsel. The court's decision as to the sufficiency of the charges may be directly appealed to the state supreme court;<sup>148</sup> the decision of the superior court regarding the ballot synopsis is final. The superior court must certify and transmit the ballot synopsis to the officer subject to recall, the person demanding the recall, and the county auditor.<sup>149</sup>
5. After the ballot synopsis has been issued by the court, the sponsors of the recall may obtain and file supporting signatures within specified time limits and in a specified format, as provided by state law.<sup>150</sup> Signature requirements are as follows:
  - For the recall of a state officer, an officer of a first class city, an officer of a county with a population of 40,000 or more, signatures of legal voters equal to 25 percent of the total number of votes cast for all candidates for the office to which the officer in question was elected at the preceding election.
  - For the recall of an officer of any other city, town, or county, signatures of legal voters equal to 35 percent of the total number of votes cast for all candidates for the office to which the officer in question was elected at the preceding election.<sup>151</sup>
6. The county auditor determines the authenticity and sufficiency of the petition signatures. If the petition is found to have the required number of signatures, the auditor certifies the petitions and fixes a date for a special election on the recall. The special election must be held between 45 and 60 days from the date of certification.<sup>152</sup>

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<sup>144</sup>RCW 29A.56.110.

<sup>145</sup>RCW 29A.56.120. (The county auditor is the elections officer for declarations of candidacy for city and county offices.)

<sup>146</sup>RCW 29A.56.120. If the recall effort is against the prosecuting attorney, the attorney general prepares the ballot synopsis.

<sup>147</sup>RCW 29A.56.130.

<sup>148</sup>See RCW 29A.56.140 and 29A.56.270.

<sup>149</sup>RCW 29A.56.140.

<sup>150</sup>RCW 29A.56.150 - .160

<sup>151</sup>RCW 29A.56.180.

<sup>152</sup>RCW 29A.56.210.

7. The officer charged may submit to the auditor a response to the charge set out in the ballot synopsis, not to exceed 250 words, before the seventh day after service of the election notice. A copy of the response is to be sent by the county auditor to the person who filed the petition.<sup>153</sup>
8. The special recall election is conducted in the same manner as other elections. The ballot form must be as provided by statute and must contain a copy of the ballot synopsis and the officer's response to the charge, if one has been filed. If a majority vote in favor of recall, the officer is discharged from office and the office becomes vacant.<sup>154</sup>

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<sup>153</sup>RCW 29A.56.220.

<sup>154</sup>RCW 29A.56.260.

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## Chapter 9

# Holding Over and Filling Vacancies

## Holding Over

While, typically, a person elected to a county, city or town office will serve for a term of four years, it is possible, under some circumstances, that the officeholder will serve for a longer period. For example, the language applicable to mayors and councilmembers in a code city provides:<sup>155</sup>

The mayor and the councilmembers shall be elected for four-year terms of office and *until their successors are elected and qualified and assume office in accordance with [RCW 29A.20.040]*. (Emphasis supplied)

If a newly-elected official were not to take the oath of office until sometime after the start of the new term, the person previously elected or appointed into the position would continue to serve.<sup>156</sup> If the newly-elected officeholder is unable to provide a required bond, the incumbent continues in office.<sup>157</sup>

In the event that no one files for office after the regular and special filing periods, or if the only candidate either dies or no longer is eligible for office (such as might occur if he or she were to move from the jurisdiction) there is a “lapse” in the election and the current officeholder remains in office until the next election at which the position is voted upon occurs.<sup>158</sup>

If an officer holds over, there is no vacancy. However, if the holdover officer resigns (or dies or moves outside the jurisdiction), a vacancy would be created and would need to be filled by appointment.

## Filling Vacancies

Invariably there are vacancies in elected positions. Officeholders will sometimes die or become incapacitated, their work assignments will require that they move outside the jurisdiction, or they may just decide to retire. Each of these events, as well as others, will cause a vacancy to occur, one that must be filled by appointment.<sup>159</sup> (In cities and towns operating under the mayor-council form of government, if the office of mayor becomes vacant, the mayor pro tem may fill in for a short period of time.<sup>160</sup> Because the mayor pro tem fills in as mayor on a *temporary* basis, there still is a vacancy in the office that must be filled.)

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<sup>155</sup>Similar language applies to county (RCW 36.16.020), second class city (RCW 35.23.051), and town officials (RCW 35.27.090).

<sup>156</sup>Continued failure to take the required oath may result in a vacancy. See RCW 42.12.010(6).

<sup>157</sup>AGLO 1980 No. 2. Amendments to RCW 42.12.010(6) suggest that the conclusion of this AGLO may no longer be valid. The statute provides that failure to give, renew or deposit an official bond will result in a vacancy.

<sup>158</sup>RCW 29A.24.201.

<sup>159</sup>RCW 42.12.010, 42.12.040, and 42.12.070.

<sup>160</sup>See RCW 35.23.191; RCW 35.27.160; and RCW 35A.12.065. The mayor pro tem serves during the temporary absence or disability of the mayor. If the mayor resigns, dies, or is otherwise removed from office, his or her absence is not “temporary.”

Except as is discussed below, there is no particular process that must be followed to fill a vacancy. There is no requirement, for example, that the vacancy be advertised, or that resumes or applications be solicited, or that interviews be conducted. However, if interviews are conducted, they must be conducted in public at an open meeting.<sup>161</sup> The governing body may review qualifications in a closed, executive session, but the appointment itself must be made during an open meeting.<sup>162</sup>

## Nonpartisan Offices

City and town elected officials are nonpartisan, that is, they have no political party designation. When an elected, nonpartisan position becomes vacant, the remaining members of the legislative body make an appointment of a qualified person to fill the position.<sup>163</sup> If there are two or more vacancies and two or more councilmembers remain in office, the remaining councilmembers appoint someone to fill the first vacancy, then the remaining councilmembers plus the newly-appointed person fill the next, and so on until all of the vacancies have been filled.<sup>164</sup> If fewer than two councilmembers (i.e., one or zero) remain, the county legislative authority appoints one or more qualified person(s) to fill the vacancy or vacancies until the council has two members, and, once there are two members, those members can fill the remaining vacancies as outlined above.<sup>165</sup>

The city or town council has 90 days from the date the vacancy occurred to fill the vacancy or vacancies. If the council fails to do so, the county commissioners or council make the appointment or appointments.<sup>166</sup> The county has 90 days (180 days from the date of the vacancy's occurrence) to make an appointment; if it fails to do so, either the county or city or town may petition the governor to make the appointment.<sup>167</sup>

The person appointed to fill the vacancy continues to serve until a qualified person is elected at the next election at which councilmembers are elected, if the election occurs 28 or more days after the vacancy occurs.<sup>168</sup>

There are some special rules that apply when filling a vacancy in the office of mayor (in the mayor-council form of government). In a second class city, the appointment must come from within the city council.<sup>169</sup> In other classes, there is no such limitation. However, informal advice from the Attorney General's office suggests that (except in second class cities) a city or town council cannot appoint one of its members as mayor unless the councilmember in question has resigned prior to the appointment.<sup>170</sup>

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<sup>161</sup>RCW 42.30.110(1)(h)

<sup>162</sup>RCW 42.30.110(1)(h).

<sup>163</sup>RCW 42.12.070. Different or special rules may apply in first class cities and in charter code cities; reference should be made to the charter in such cities to determine how vacancies are filled.

<sup>164</sup>RCW 42.12.070(2).

<sup>165</sup>RCW 42.12.070(3).

<sup>166</sup>RCW 42.12.070(4).

<sup>167</sup>RCW 42.12.070(5).

<sup>168</sup>RCW 42.12.070(6). If needed, special filing periods must be authorized for qualified persons to file for the vacant office. A primary must be held to nominate candidates, if sufficient time exists to hold a primary and more than two candidates file. Otherwise, a primary is not held. The person elected takes office immediately after the vote is certified and serves for the remainder of the unexpired term. If an election for the position that became vacant would otherwise have been held at this general election date, only one election to fill the position is held and the person elected to fill the succeeding term for that position takes office immediately when qualified and serves both the remainder of the unexpired term (the "short term") and the succeeding term ("the long term").

<sup>169</sup>RCW 35.23.191.

<sup>170</sup>Advice provided by Assistant Attorney General Jeff Even to city of White Salmon in 2006, based in part on AGO 1987 No. 21, AGO 1985 No. 1, AGO 1973 No. 101, and AGO 65-66 No. 20. See Municipal Research Inquiry No. 06-4871, White Salmon.

## Partisan Offices

Partisan elective offices, which all occur in county government, are filled by appointment by the county legislative authority.<sup>171</sup> The person appointed must be from the same commissioner or council district, if any, and also be from the same political party as the person who has vacated the office.<sup>172</sup> Once a vacancy occurs, the county central committee of the political party from which the departed officer was elected nominates three candidates, from which the commissioners or councilmembers select one person for appointment.<sup>173</sup> The commissioners or councilmembers have 60 days to make an appointment; if they fail to reach an agreement, the appointment is made by the governor within the following 30 days from the list developed by the central committee.<sup>174</sup>

The person appointed serves until the next election at which the office appears on the ballot.<sup>175</sup>

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<sup>171</sup>If a vacancy occurs in any partisan county elective office (except in a charter county whose charter is inconsistent) before the eleventh Tuesday prior to the primary for the next general election following the vacancy, a successor must be elected at that general election. During the last year of the term of office, however, if a vacancy occurs on or after the eleventh Tuesday prior to the primary for that general election, the election of the successor occurs at the next succeeding general election. The elected successor holds office for the remainder of the unexpired term. RCW 42.12.040(1)

<sup>172</sup>Article II, section 15 of the Washington State Constitution.

<sup>173</sup>*Id.*

<sup>174</sup>Article II, section 15 of the Washington State Constitution.

<sup>175</sup>*Id.* If the vacancy occurs after the general election in a year that the office appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified and continues through the term for which he or she was elected. *See also*, RCW 42.12.040(2).

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## Chapter 10

# Salaries

While not technically an election issue, questions are often raised over the salaries that are paid to elected officials. If you are running for office, how much should you expect to be paid, if you are successful? The salaries of elected officials are set by the city and town councils and the county commissioners or councils (or, as discussed below, by a salary commission). They vary significantly: in some smaller cities and towns, the salary may be minimal, such as \$5, \$10, or \$25 per month or per meeting (and in a few communities, there is no pay at all). In larger cities, where municipal finances may be better and elected officials are expected to attend more or longer meetings and perform additional tasks, the salary can be significant. In Seattle, for example, the mayor and councilmembers are full-time and are paid a salary in excess of \$100,000 per year. In most cities, though, a councilmember might be paid \$50, \$100, or \$500 a month, and a mayor is paid a salary of a few hundred to several thousand dollars a month. An official's salary may be calculated on an annual or monthly basis, or dependent upon the number of meetings the person attends.

County officials are typically paid more than city and town officials, in recognition that county elected officials are more likely to work full-time or significantly more hours than their city counterparts. The state statutes set *minimum* salaries for county elected officials,<sup>176</sup> but most officials are paid higher amounts. In King County, for example, the county executive and county councilmembers are paid more than \$100,000 per year; in Garfield County, county commissioners are paid less than \$20,000 per year. (On average, the monthly salary of a county commissioner exceeds \$5,000.)

Regardless what the current salary for an elected is, when and how can the salary be increased? Can the salary of an elected official be decreased?

Article 11, section 8 of the state constitution provides that the salaries of local elected officials “shall not be increased . . . or diminished after his election, or during his term of office.” This prohibition, however, was limited by a 1968 amendment to the constitution. Article 30 provides that the compensation of all elective and appointive state, county, and municipal officers “who do not fix their own compensation” may be increased during their terms of office in accordance with the law in effect at the time their services are rendered.<sup>177</sup> A further limitation on the prohibition was statutorily added in 2001, when the legislature provided for local salary commissions.

The salaries and compensation of city and town officials are set by the city or town council, and by the county commissioners or councilmembers in counties.<sup>178</sup> Thus, under the constitution, any officers *other than* councilmembers or county commissioners may have their salaries or compensation *increased* after their

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<sup>176</sup>RCW 36.17.020.

<sup>177</sup>May salaries be increased automatically, raised annually according to increases in the consumer price index (CPI)? Apparently not. A Thurston County Superior Court decision, *Telford v. Thurston County Commissioners and Thurston County*, No. 93-2-0060, March 9, 1994, a 1992 informal opinion from the attorney general, and Auditor's Bulletin 1999 No. 1, all conclude that increases based on changes in the CPI violate the constitution, as their amount cannot be foreseen at the beginning of the officer's term.

<sup>178</sup>See RCW 35.23.091 (second class cities), RCW 35.27.130 (towns); RCW 35A.12.070 and RCW 35A.23.040 (code cities); and RCW 36.17.020 (counties).

election or during their term of office, since they do not set their own salaries.<sup>179</sup> A mayor's salary in a mayor-council city or town cannot be increased after his or her election or during the term of office, however, if the mayor breaks a tie vote on the increase;<sup>180</sup> otherwise, the mayor's salary may be increased during his or her term of office.

The rules relating to salary changes were further changed in 2001 when legislation was adopted authorizing the determination of elected officials' salaries by a local salary commission.<sup>181</sup> If a jurisdiction chooses to create a salary commission, the elected officials are paid the salaries established by the commission, although those salaries are subject to referendum. If no referendum is filed within 30 days, the new salaries can be effective immediately, except for salaries that represent a decrease, which cannot be effective for incumbent councilmembers.

Often a governing body will increase the salary for its members, but, based upon the constitution's prohibition, any incumbent member cannot take the new, higher salary until he or she is re-elected (or, when a new member is elected, that person will immediately take the new, higher salary). What happens if there is a vacancy and someone is appointed to fill the position? What salary is that person paid? The constitutional prohibition applies to the term of office rather than to the individual who is holding the office.<sup>182</sup> Consequently, if a person is appointed to fill an unexpired term, that individual must receive the same compensation as his or her predecessor until he or she begins to serve a new term of office.

While there are various ways that an elected official's salary can be increased during his or her term of office, the constitution prohibits any decrease in salary or compensation.<sup>183</sup>

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<sup>179</sup>In council-manager cities and towns, the mayor is a member of the council, so the prohibition applies to that office. However, the salary for the mayor's position in such cities and towns may be increased after the councilmembers are elected but before one is chosen by the council to be the mayor.

<sup>180</sup>*See, e.g.* RCW 35A.12.070.

<sup>181</sup>RCW 35.21.015 and RCW 36.16.024.

<sup>182</sup>*State ex rel Wyrick v. City of Ritzville*, 16 Wn.2d 36, 42 (1942); AGO 1999 No. 1.

<sup>183</sup>Article 11, section 8 of the Washington State Constitution.

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## **Appendix**

# Running for Elective Office: Qualities and Expectations

If you are old enough, a citizen, registered to vote, and live within the jurisdiction, you can seek election (or appointment) to office. There's more to it than that, though, isn't there? What qualities or attributes help a person be elected and succeed in office? And what are the expectations of an officeholder? Does he or she only need to show up? Is there homework? What meetings must the person attend? This article explores some of those questions. There are no magic answers, though. What a person brings into office and what that person should expect once he or she gets there depends, to a large degree, upon that person.

## Qualities Helpful to Being an Elected Official

A person can't win a game of Bingo unless he or she has a marker in each square on a line that is diagonal, horizontal, or vertical. It is not like that, though, for elective offices. There are certain attributes or qualities and skills that may help a person get elected and assist that person in the performance of his or her job. But, failing to have such qualities does not necessarily doom a person's political career nor does possession of them assure he or she will succeed.

### **Time**

If a person is elected into a full-time position, he or she likely will have some time during the normal business day to perform assigned and necessary tasks. (This is not to say, though, that there won't be more demands outside the "normal" work day. Elected officials are asked to perform their duties regardless of the amount of time it takes. In addition to the normal work day, there are often evening meetings, breakfast meetings, work on weekends, and meetings with constituents in the grocery store or over the back fence.) Most elected positions in this state, though, are part-time. A city councilmember, for example, may have only two regular meetings a month that he or she must attend. There are likely *other* meetings that must be attended, though, such as study sessions, public hearings, and meetings with officials from other jurisdictions. In addition, there will be hours of preparation, meetings with staff, field trips, speeches to community groups, and general training. If a person seeks an elected office, he or she needs time, lots of it.

### **Communication Skills**

A person may have many ideas – great ideas – on how his or her community should be run but, if he or she cannot communicate those ideas to others, the ability to transform those ideas into action may be difficult to achieve. A person needs to be able to communicate ideas clearly, to other officers, to staff members, to specialists, and to the public. On the opposite end of the communication spectrum, an elected official will need to be able to listen and understand. An elected official must be an active listener and know what questions to ask. He or she may need to communicate on different levels with different people who have varied communication skills. Of course, the ability to communicate is not limited to the spoken word. The official will also need to be able to express himself or herself in writing, being able to prepare, among other

things, letters, reports, proposals, rules, memoranda, and e-mails. Communication is not everything, but without good communication skills, the office becomes much more difficult.

## **The Ability to Read**

Whatever position a person is elected to, he or she will need to read. Elected officials are expected to read a lot – letters from constituents, reports, journals, magazines, newspapers, contracts, ordinances, statutes, regulations, rules, articles, and minutes. Being able to read well is critical, as it allows the official to know the law and better understand what fellow officials, staff members, and constituents want and need, and allows him or her to be more effective in providing an appropriate, timely, and effective response to those wants and needs.

## **Good Observation Skills**

Talking to constituents, reading their letters and e-mails, and reading the local newspaper should give a person good information about what his or her community wants or expects from its elected officials. However, the information a person gains through such traditional sources may not be enough. The official will need to be a good observer. By honing observation skills, he or she can formulate his or her own ideas about what needs to be done, and can better anticipate problems or opportunities before they arise or demand attention. Good observation supplements all of the information that will be given to an official, and it will better enable him or her to reach personal conclusions about that information.

## **Have an Open Mind and the Ability to Be Fair**

Elected officials are certainly entitled to their own opinions; often those opinions serve as the basis for their election. But, once elected, an official serves all members of the public, making it desirable, if not necessary, that he or she be able to respectfully listen to and consider the opinions of others. In some settings, such as during a land use hearing, it is essential that the officials involved in the hearing consider all of the testimony and evidence that is provided; having an open mind allows this to happen and helps assure that good decisions are made, decisions that may not please everyone but are more likely to be accepted. An official also needs to be fair. Being fair will help earn the respect of those whom the official deals with, even though there may be disagreements.

## **Understand Process**

It probably is not necessary or possible for a newly-elected official to know everything about his or her new office on the first day on the job. Nevertheless, the more a person knows about the processes associated with the position and its functions, the better able he or she is to influence outcomes and policy. Before a person takes office, or even before he or she runs for office, it is a good idea to learn about how meetings are conducted, motions are made, votes taken, when and how citizen input is allowed, what and when certain required tasks need to be completed, and how the office sought interacts with other officials and jurisdictions.

## **The Ability to Be Humble and to Admit Mistakes**

Elected officials command respect, and deservedly so. But, the public will probably grant even more respect, if they feel that the office has not gone to the officeholder's head. Remember how it felt to be on the outside, looking in? Relatedly, the ability to admit mistakes will often serve an official well. People make mistakes; it's a given. Thus, elected officials are apt to make mistakes as well. The ability to admit them, and learn from them, and avoid similar mistakes in the future, will make an official more human and more likely to be forgiven.

## **Leadership**

Elected officials should be prepared to lead. They should have the ability to see what needs to be done, and then be able to use their knowledge, initiative, ability to inspire, commitment, skills, powers of persuasion, time and effort to see that what needs to be done is done. While being an official does not require that the person always assume a leadership role, he or she should be prepared to do so, when a situation demands it.

## **Boy or Girl Scout Attributes**

The public, one could argue or surmise, wants its officials to be role models, trustworthy, diplomatic, honest, hard working, patriotic, prepared, moral, respectful, cooperative, and friendly.

## **Thick-Skinned**

The public sets high standards for their officials. They expect them to be successful. Thus, when there is success, there may not be any praise or thanks given. If there is a problem or mistake, though, criticism will likely follow. Mistakes will happen and, even if they don't, it just is not possible to meet everyone's expectations. To survive, an elected official may need to be thick-skinned and gracious.

## **Expectations**

Being an elected official can be an exhilarating experience. It also can be deflating. A council meeting might only last 30 minutes, but it also could last six hours. An official might not get any letters or reports for a week, or he or she may need to read and be ready to report on a hundred-page budget over the weekend. An elected official may revel in the success of an initiative, but he or she may also feel like running for cover when required to make an unpopular decision. Elected officials are given the opportunity to meet and work with fascinating people, but they may also need to deal with people who are irrational and mean-spirited. One probably cannot generalize about what it means to be an elected official; there are good days and bad days. But what likely is true is that as one, through use of skills and hard work, a person can make the days better and more enjoyable, both for himself or herself and for those who are served.