



Reorganization Meetings to Occur in January and New Officials to be Sworn In (Reprinted and Updated)

After elections, questions arise of swearing in dates and related issues. This article is intended to provide an overview of some of those issues.

Term of Office and January Organizational Meetings

"Unless otherwise provided by the Nebraska Constitution or by law the terms of all elected officers begin on the first Thursday after the first Tuesday in January next succeeding their election." See Art. XVII, § 5. In 2019, that day will be January 3.

In supervisor counties, the regular meetings of the county board are to be held in January. At its regular meeting of each year, the board must organize by choosing one of its number as chairman, who shall preside at all meetings of the board during the year; in case of his absence at any meeting, the members present shall choose one of their number as temporary chairman. Sections 23-272, 23-274. Similarly, § 23-156 provides the board of county commissioners at its regular meeting in January of each year must elect a chairman of the board to serve for the ensuing year, and such chairman shall sign all warrants on the treasurer for money to be paid out of the county treasury. If the meeting occurs prior to January 3 the board would be comprised of the "old" board members. If the meeting occurs on January 3 or after, the board would include the newly elected board members.

Oath of Office

Provisions for the oath of office are addressed in Neb. Rev. Stat. §§ 11-101 et seq. The oath of office in § 11-101 must be subscribed by county officers and filed in the office of the county clerk. The oath includes language related to what an individual swears to do and not do as an officeholder. Section 11-105(1) contains additional pertinent language and it provides in part: "Official bonds, with the oath endorsed thereon, shall be filed in the proper office within the following time: ... (a) Of all officers elected at any general election, **not later than ten days before the first Thursday after the first Tuesday in January** next succeeding the election; (b) of all appointed officers, within thirty days after their appointment ..." In other words, the official bonds with the oaths endorsed thereon must be filed in the county clerk's office **not later than December 24, 2018** for individuals elected at the November 2018 general election.

The ten-day provisions were added by LB 534 (1976) in conjunction with provisions in § 11-115 that address what is to occur if any individual elected or appointed to office fails to have his official

bond executed and approved by law. Section 11-115 allows for an individual to properly file an official bond after showing sufficient cause for why the bond was not properly filed and why the office should not be declared vacant. The ten days provisions were added to statute for the purpose of providing notice to those elected officials required to provide a bond prior to taking office. The Governor requested that this legislation be introduced, because of an event that had occurred in a county when a county board member thought he had filed a bond but he had not. The office was deemed vacant due to the failure of filing the bond. The legislation was intended to be corrective.

In Lieu of Individual Bonds

In addition to the above statutes, there are statutory provisions that provide: "In any county, **in lieu of the individual bonds** required to be furnished by county officers, a schedule, position, or blanket bond or undertaking may be given by county officers, or a single corporate surety fidelity, schedule, position, or blanket bond or undertaking covering all the officers, including officers required by law to furnish an individual bond or undertaking, may be furnished. The county may pay the premium for the bond. The bond shall be, at a minimum, an aggregate of the amounts fixed by law or by the person or board authorized by law to fix the amounts, and with such terms and conditions as may be required by sections 11-101 to 11-130[.]" See §11-119(22). In other words, the swearing in date would not necessarily be required to occur for county officials ten days prior to January 3, 2019 because not all insurance providers require the filing of an oath in conjunction with insurance coverage that is allowed in lieu of an individual bond pursuant to §11-119(22).

Provisions Added By LB 311 (2013)

The filing of the bond with the oath endorsed thereon does not authorize a person to take any official action prior to the beginning of his or her term of office pursuant to Article XVII, Section 5, of the Constitution of Nebraska. Section 11-105(2). Furthermore, in counties which provide a bond for county officers pursuant to subdivision (22) of §11-119, such county officers are not required to comply with the timing requirements of subsection (1) of this section with regard to their official bond but shall file their oaths of office in the proper offices prior to the beginning of their terms of office. Section 11-105(3).

Lastly, a provision was added to statutes so that §11-115 pertaining to officials who neglect to file their bonds does not apply to county officers covered pursuant to §11-119(22).

Conclusion

So, what does all of this mean? If an elected official fails to timely file official bonds with the oath by the appropriate time, the county clerk is required to immediately issue an order to such person to show cause why that person has failed to properly file such bond and why his office should not be declared vacant. If such person properly files the official bond before the date for taking office for elected officials, such filing shall be deemed in compliance. Failure to file the bond before the date for taking office for elected officials, and the lack of sufficient cause being shown within that time, result in the individual's office being ipso facto vacant and such vacancy must be immediately filled by election or appointment.

Conversely, if an elected official uses the provisions of § 11-119(22) as is likely the case in a majority of counties, January 3, 2019 is the applicable date for an official being sworn in. Despite

which process is used, newly elected officials take office on January 3, 2019 based on the Nebraska Constitution and the 2019 calendar.

Regardless of the option used by a county and county officials, it is recommended that this issue be discussed with the county attorney, the county's bond provider and/or the county's insurance provider.

Should Officials Ending Their Term Be Paid Pro Rata Salaries? Answer: No

(Reprinted and Updated article)

In a related issue, the question "Are outgoing elected county officials entitled to any pro rata salary for the two days in January that they continue to serve in office?" is addressed below.

This is a question the NACO office has been asked several times in past years and the response has been "No." The question seems to arise every time a term of office ends, particularly when there is a significant turnover in county board members and county officials which may be the case in 2019. Various new county board members and county officials will take the oath of office in January. This question arises because Art. XVII, § 5 of the Nebraska Constitution establishes that the terms of all elected officers shall, rather than January 1, begin on the first Thursday after the first Tuesday in January immediately following their election. In 2019, that date will fall on January 3, so the terms of the outgoing county officials will continue through January 3. While it might seem unfair that there is no compensation owed to the outgoing official for this time period, and that the incoming official receives a full month's salary for January though not in office for the entire month, one must refer back to the applicable county salary resolution which governs this period and the underlying law to show why this is the result. It also must be remembered the outgoing official, or the predecessor if appointed to fill a vacancy, likely received a full month's salary for the first January of his or her term though not in office for the full month him or herself.

Neb. Rev. Stat. § 23-1114 requires every County Board, prior to January 15 of each year in which a general election will be held for the respective county offices, to fix the salaries of all elected officers to be effective for the subsequent term of office. Of course, elected county officials serve four year/48-month terms. Most such salary resolutions adopted by County Boards, using a format recommended by NACO, establish salaries for the various offices on a calendar year basis, which for the current term covers calendar years 2015, 2016, 2017 and 2018. So long as the person(s) in a county office received his or her full salary for calendar years 2015, 2016 and 2017 as called for under the salary resolution, and their December 2018 paycheck represents the balance remaining on the amount that was owed under the same resolution for calendar year 2018, then that official will receive the full salary he or she is entitled to for the 48 months of the term. Payment of anything more or less than that is not only contrary to the salary resolution but it would also violate art. III, sec. 19 of the Constitution. This constitutional provision generally prohibits the compensation of any public officer, including elected county officials, from being increased or diminished during his or her term of office. Therefore, any pro rata payment which would result in the payment of a county official in excess of the amount established in the salary resolution is legally impermissible.

Editor's Note: Legal articles periodically appear in NACO E-Line. This article has been prepared by Elaine Menzel of the NACO legal staff. It is not intended to serve as legal advice. Rather, it is published to alert readers to court decisions and legal or advisory matters important to county government. For a specific opinion on how the information contained in this article or that which

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