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Notice and Certificates of Election, Oaths, and New Terms

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Notice and Certificate of Election

When the election is over, the municipal clerk must notify those persons elected to a municipal office. In villages, Wis. Stat. § 61.21 requires that the clerk notify officers-elect within five days after the election but does not detail how notice must be given.

Wisconsin statute § 7.53(4) requires that the clerk “promptly” issue a certificate of election to each person elected once the deadline for filing a recount petition has passed. When a valid recount petition is filed, the clerk cannot issue the certificate of election for the office in question until the recount has been completed and the time allowed for appealing the recount has passed. If the recount is appealed, the clerk cannot issue a certificate of election until the appeal is decided.

Oath of Office

Everyone elected or appointed or reelected or reappointed to any village¹ or city office must take and file a written oath or affirmation to qualify for the office.² The form of the oath or affirmation is prescribed by § 19.01 of the Wisconsin Statutes, and by § 757.02 for municipal judges. The oath is administered by the clerk or, in the clerk’s absence, the deputy clerk.³ All oaths are filed in the clerk’s office, except for the clerk’s oath, which is filed in the treasurer’s office, and the municipal judge’s oath which is filed in the office of the clerk of the county circuit court.⁴ Municipal clerks should consider administering the oath remotely in light of Governor Evers’ Safer at Home Order which requires that local governments, to the greatest extent possible, use technology to avoid in-person meetings. Because the oath contains a statement that it was subscribed and sworn to “before” the clerk, we recommend, as best practice, using technology that has a video, as well as audio, component.

Persons elected or appointed to a *city* office must take and file the official oath within ten days after receiving notice of election or appointment from the city clerk. Elected city assessors must take and file the oath within

¹ The statutory section governing official oaths in villages is perplexing. Section 61.21 seems to indicate that only village officers named in sec. 61.19 need to take the oath of office. However, the only officers named in § 61.19 are the president, clerk, treasurer, assessor, constable, and the deputy clerk if one is appointed by the village clerk. Although the language appears to be explicit and unambiguous, League attorneys have struggled to come up with a rationale as to why trustees and other village officials (e.g., the police chief if the office exists or the deputy treasurer if one is appointed under sec. 61.261) should not be required to take the oath of office. We have been unable to do so and we strongly urge that *every* elected or appointed village officer – not just those named in sec. 61.19 — be required to take the oath of office. Section 17.03(7) implies that *every* officer elected or appointed or reelected or appointed must take and file the oath of office and states that failure to do so creates a vacancy.

² Wis. Stat. §§ 19.01, 17.03(7), 62.09(4)(a).

³ Wis. Stat. §§ 61.25(1) and 61.19, 62.09(11)(h) and (i).

⁴ Wis. Stat. §§ 19.01(4)(f) and (g), and 19.01(4)(c)3.



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five days before June 1.⁵ When an appointive city officer has filed the oath, and bond if required, the city clerk must issue the officer a certificate of appointment. If the appointment is to a board or commission, such as the plan commission or zoning board of appeals, the appointee must file the certificate of appointment with the secretary of the board or commission.⁶

In *villages*, the clerk must inform anyone elected or appointed to any office within five days of election or appointment and that person must, within five days of such notice, take and file the official oath. The assessor, however, must take and file the oath within five days prior to June 1.⁷

What happens if the clerk does not notify the officer elected or appointed within the time required or in a timely fashion? The answer, we presume, is that the time within which the person is required to file the oath does not start running since it is the receipt of the notice that appears to trigger the duty to take and file the oath. Once the officer has received notice of election or appointment from the clerk, it is important that he or she take and file the oath of office within the requisite time since failure to do so creates a vacancy in the office.⁸ For this reason, municipalities should NOT wait until the third Tuesday in April (that's when the term of newly elected or reelected governing body members begins) or the organizational meeting to administer the oath of office. Although many municipalities have a ceremonial swearing in of new or reelected members, with the oath orally administered, the oral oath is optional⁹ and must be in addition to the written oath. Municipalities that wait until the third Tuesday in April or the organizational meeting to administer the oath of office will not administer the oath to elected officers in the time required by law.

However, an officer who fails to file the oath of office and who nevertheless continues to exercise the duties of the office will be considered a de facto officer and his or her acts will be valid so far as they concern the public or third persons having an interest in the actions taken. A de facto officer is "one who is in possession of an office and discharging its duties under color of authority."¹⁰ "Color of authority" means "authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer."¹¹ In Wisconsin, the "acts of a de facto officer are valid as to the public and third parties and cannot be attacked collaterally."¹² The de facto officer's acts are binding and valid until the individual is ousted from the office by the judgment of a court in a direct proceeding to try the officer's title to the office.¹³

When do new terms begin?

Newly elected mayors, council members, village presidents, and trustees begin their term on the third Tuesday in April. The term of other officers begins on May 1 following their election, unless otherwise provided by ordinance or statute. Wis. Stat. §§ 61.23(2), 64.02(1), 64.05(1) and 62.09(5)(a).

⁵ Wis. Stat. § 62.09(4)(a).

⁶ Wis. Stat. § 62.09(4)(c).

⁷ Wis. Stat. § 61.21.

⁸ Wis. Stat. § 17.03(7).

⁹ Wis. Stat. § 19.01(1m).

¹⁰ *Schoonover v. City of Viroqua*, 245 Wis. 239, 244, 14 N.W. 2d 9, 12 (1944).

¹¹ *Id.*

¹² *Walberg v. State*, 73 Wis.2d 448, 463, 243 N.W. 2d 190, 198 (1976).

¹³ *Id.*