

### Changing From an Elected Official to an Appointed One

I was fortunate to have served as the Town of Rockland's first appointed clerk. I never asked the Board why they decided to make the change from an elected position but I believe it was for many of the same reasons that we often hear about from you: 1) the responsibilities of the position(s) are becoming more complicated and difficult to complete and require personnel who have the skill set to complete the tasks; 2) the town is unable to find an elector who is interested in running and serving in the position(s); 3) the town board prefers to set the job description, the qualifications, the term, and the compensation and have these positions become more accountable to them.

Currently, out of 1247 towns we serve, there are 811 elected clerks, 862 elected treasurers, 103 elected clerk-treasurers, 228 appointed clerks; 165 appointed treasurers, and 105 appointed clerk-treasurers serving our wonderful towns. This article is meant to discuss the advantages and disadvantages between elected and appointed positions and what a town needs to know should it desire to change to an appointed position or positions in 2019.

#### What positions may be changed from an elected one to an appointed one?

Pursuant to s. 60.30(1e)(a), Wis. Stats., the town board may appoint a person to fill the office of town clerk, town treasurer, or both, or to fill the combined office of town clerk and town treasurer.

#### What are the advantages/disadvantages of having an appointed clerk, treasurer, or clerk-treasurer versus an elected one?

Appointed clerks, treasurers and clerk-treasurers:

- 1) Do not need to be an elector or a resident of the town.
- 2) Have their job descriptions, which includes all statutory responsibilities, and any additional responsibilities (i.e. secretary of plan commission, board of appeals and board of review, town hall coordinator, recycling coordinator, website coordinator, budget preparer) set by the town board.
- 3) Have their qualifications, their compensation, and their term of office set by the town board. The board may appoint the person for a term of up to three years at a time and may choose to appoint the person as part-time or full-time and may compensate the person on an hourly basis versus a salaried basis. See s. 60.30(1e)(f) & 60.37(1), Wis. Stats.
- 4) May only be removed during their appointment if there is "cause" (misconduct in office or neglect of duties). See ss. 17.001, 60.30(1e)(c) & (f), Wis. Stats. Note, however, that a town board may appoint this person to a term less than three years and then opt to not re-appoint the person if the person is not working out.
- 5) May be subject to a criminal background check and/or credit check as a condition of employment.
- 6) May meet in closed session to interview, discuss employment, promotion, compensation or performance evaluations. See s. 19.85(1)(c), Wis. Stats.

#### Elected clerks, treasurers and clerk-treasurers:

- 1) Have to be an elector of the town. If the elected official resigns, the person appointed to fill the unexpired term of office must be an elector of the town. See s. 60.30(2), Wis. Stats.
- 2) Are responsible to their electorate and cannot be required by the town board to attend training, hold office hours, or obtain certain qualifications, if not specified by statute.
- 3) Have their compensation established by the electors, unless delegated to the town board by the electors. See ss. 60.32 & 60.10(2)(k), Wis. Stats.
- 4) Have their responsibilities set forth by statute. See ss. 60.33, 60.34, 60.42 Wis. Stats.
- 5) Hold two year terms commencing in April of odd-numbered years. See s. 60.30(1) & (4), Wis. Stats.
- 6) Can be recalled from office (after completing the first year of their term) by the electorate or be removed from office by order of a circuit court judge. See ss. 9.10 & 17.13, Wis. Stats.
- 7) Are not subject to a criminal background check or credit check and may not qualify for a treasurer's tax bond. However, they may not serve in office if they are unable to obtain the public official's bond. See s. 60.31(4), Wis. Stats.
- 8) Are unable to meet in closed session to interview, discuss employment, promotion, compensation or performance evaluations.

#### What is the procedure for switching to an appointed clerk or treasurer?

- 1) For towns with over 2,500 in population: the electors have direct authority to vote to require the town board to appoint the clerk, the treasurer, or both, or the combined office of clerk and treasurer, if the electors have already combined those offices. The electors may take such action at an annual meeting or special town meeting. See s. 60.10(1)(b)(2m) & s. 60.30(1e)(e), Wis. Stats.
- 2) For towns with less than 2,500 in population (or towns with over 2,500 in population who opt out of using the above procedure):
  - a) the town board must adopt an ordinance that provides for the appointment of the position of clerk, treasurer, or both, or the combined office of clerk and treasurer;
  - b) the town board must call for a referendum for the electors to approve the ordinance;
  - c) the referendum cannot be sooner than 70 days after the town board calls for the referendum;
  - d) the referendum must be scheduled at the next spring or general election provided the minimum 70 day requirement has been met. See s. 60.30(1e)(a), Wis. Stats. The WTA has a sample ordinance that includes the applicable referendum language. It can be found at: <http://www.wisctowns.com/legal-info/samples>.

#### Is it too early to consider switching to an appointed clerk or treasurer?

Not really. There are four scheduled elections in 2018: the Spring Primary, scheduled for Tuesday, February 20, 2018; the Spring Election, scheduled for Tuesday, April 3, 2018; the Partisan Primary scheduled for Tuesday, August 14, 2018, and the General Election scheduled for Tuesday, November 6, 2018. As mentioned in the preceding paragraph, a vote on a referendum question to switch to an appointed position must take place at the next Spring Election or General Election. It is too late to place a referendum question on the ballot for the Tuesday, April 3, 2018, Spring Election,

since the adopted ordinance would have had to be received by the county clerk no later than January 24<sup>th</sup> (70 days in advance of the election). However, a referendum question for the Tuesday, November 6, 2018, General Election could be submitted to your county clerk provided it is done so by August 29, 2018. If your town board is thinking of changing an elected position to an appointed one, it may use the next couple of months to receive input from its electors (i.e. at the annual meeting) and to educate its electorate on the rationale for making the change. Taking the time to do so may help build support for any change the board is recommending. Additionally, if a town has less than 2,500 in population and its town board fails to adopt an ordinance and call for a referendum prior to August 29, 2018, essentially, the town will have to wait another two years before a subsequent ordinance can take effect. This is because if the electors approve the change from an elected position to an appointed one (at the annual meeting or a town meeting) or if the referendum question is approved at an election, the office becomes an appointed one when the incumbent's term in office expires (in this case, midnight on Monday, April 15, 2019). If your town waits to place the referendum question on the ballot for the 2019 Spring Election, even if approved by your electorate, the ordinance will not take effect until the term or terms of each officer who is elected at the spring 2019 election ends. Since their two year term would not end until April 2021, the board could not appoint someone until such time. See s. 60.30(1e), Wis. Stats.

Can a town switch back to having the position elected versus appointed?

Yes. No sooner than 2 years after an ordinance is approved in a referendum or no sooner than 2 years after a person is appointed to office, whichever applies, the town board can return to a system of electing the town clerk and town treasurer or the combined office of town clerk and town treasurer. See s. 60.30(1e)(d) & (g), Wis. Stats. Elector approval is not required to switch back.

Personally speaking, during my four years as an appointed clerk, I served a wonderful town and a great board. One of the major benefits I had in serving as an appointed clerk was that at least once each year, the board and I met in closed session to have a candid discussion about how things were going. We were able to discuss the expectations they had for me, any goals and projects we could work together on, and any actions the board could take to support those goals and projects. I truly believe that these open discussions allowed us to understand the role that each of us played individually and the role that we played together, in ensuring that our community would be served in the most transparent, professional and dependable manner.