

Vacancies on the School Board

Occasionally, a district is faced with the prospect of filling a vacancy on the Board. For most districts when a Board member does not complete the term of office to which he or she was elected, the remaining members of the Board are required by statute to fill the vacancy until the next election, at which time the remainder of the term, if any, is put on the ballot. The rules for filling a vacancy for the Kansas City 33 School District or the St. Louis City School District are different than the rest of the state. All of the rules are described below.

How Do Vacancies Occur?

School board vacancies usually occur in one of two ways. A school board member may resign from the school board voluntarily. MSBA's Policy BBC requires the Board member to file a letter of resignation with the Board secretary. Once the Board votes to accept the resignation, a vacancy exists.

Vacancies may also occur when a Board member misses three consecutive, regular meetings of the Board and the Board member's absences are not excused by the Board. §§ *162.303; .611, RSMo*. Please note that the absences must be from consecutive "regular" meetings, not special meetings called between regular meetings. It is the Board secretary's responsibility to notify the Board when a Board member has missed three consecutive, regular meetings. At that time the Board may consider whether to excuse the Board member's absences or declare a vacancy.

Sometimes Board members become extremely ill or die. It is obvious that a vacancy exists upon the death of a Board member. However, districts frequently struggle with situations where someone is extremely ill. MSBA does not recommend that the Board accept a resignation letter from the spouse of a Board member, as it is not clear that a spouse may resign on behalf of an elected Board member without clear authority from the Board member. In many cases school districts simply wait until the ill Board member misses three consecutive, regular meetings.

Filling the Vacancy in Most Districts

When there are more than two vacancies at any one time, the county commission is required to appoint persons to fill the vacancies until the next election. If the district is located in a charter county that does not have a county commission, the county executive will fill the vacancies, with the advice and consent of the county council. § *162.261, RSMo*. However, those situations are extremely rare, and in most circumstances the remaining members of the school board are responsible for filling the vacancy because there is only one (or at most two) vacancies at any given time.

There are several statutes which state that the Board is responsible for filling a vacancy, but none of the statutes provide guidance on the process for Boards to do so. See §*162.261, .303, .471, RSMo*. Because of this, MSBA has created a sample policy that many districts have adopted. See *MSBA Policy BBE*. This policy requires vacancies to be

advertised, applications solicited, and candidates interviewed. To assist districts in this process, MSBA has created a sample application districts may use for prospective Board members. *See MSBA Form BBE-AFI*. If the district would like to use a different process, it needs to either adopt a different policy or make a motion to suspend the policy in a particular circumstance.

Some Board members would rather appoint a person who ran in the last election but lost than go through the sometimes lengthy appointment process. This comes up particularly when the vacancy occurs not long after the election. While this is certainly an option for the Board, MSBA does not recommend that districts automatically appoint a losing candidate. Sometimes there is a good reason why the community did not elect that particular person, and some candidates simply do not make good Board members. If the Board creates a practice or expectation that whenever there is a vacancy a losing candidate will receive the position, the Board might find itself in an awkward position of appointing (or refusing to appoint) a person who is not well suited for Board service. That said, the fact that a person has previously sought a Board position and was willing to go through the election process is certainly relevant in selecting a person to fill the vacancy and can and should at least be considered if a previous candidate applies to be appointed to the position.

Filling Vacancies on the Kansas City 33 School Board and the St. Louis City Board of Education

The process for filling vacancies is different for the Kansas City 33 School District and the St. Louis City School District. In Kansas City if the vacancy happens more than six months prior to the district's normal election date, the State Board of Education will order a special election to fill the vacancy. If the vacancy occurs fewer than six months prior to the election, the position will remain vacant and the vacancy will be filled at the next election. *See § 162.492, RSMo*. The mayor of the City of St. Louis appoints persons to fill vacancies on the St. Louis City School District. *See § 162.611, RSMo*.

Is the Board Required to Fill the Vacancy?

Sometimes the Board would rather not fill a vacancy due to timing or because the Board believes the public is better suited to select Board members. However, state statute (for most districts) requires the Board to fill the vacancy, and there are no exceptions.

There has never been a lawsuit against a school district for failing to fill a vacancy and some districts are tempted to ignore the law and leave a position vacant until the next election, particularly when there is only a short period of time before the next election and the Board does not believe there is enough time to go through the appointment process. However, if the Board does not fill the vacancy, it will operate with a six-member Board. Particularly when making difficult decisions such as hiring personnel, it is easy for motions to result in a tie with a six-member Board. There are no provisions in law for breaking a tie on a school board.

Instead of simply ignoring the law, MSBA recommends the Board consider appointing a person who has recently served on the Board or someone in the community who has prior

Board experience. That way the Board follows the law and benefits from a full school board on those difficult spring votes, but avoids the appointment process. Remember, if the district's policy provides for a specific appointment process, the Board may need to vote to suspend the process in that particular situation.

Vacancies Occurring During Candidate Filing

Sometimes a school board member resigns during the time that candidates are filing for the next election (December and January) and many districts wonder if they can simply add the resigning member's unexpired term to the terms for which the candidates are filing.

Obviously, if the resigning member's term was already slated to conclude in April, there is no problem because the district is already filing candidates to run for that position. However, the district cannot simply add a one or two-year term in the middle of candidate filing. Remember that state law dictates a detailed process to solicit candidates for an election. The Board is required to advertise the positions and lengths of terms as well as the dates and times for candidate filing so all persons have an equal opportunity to sign up. Further, this allows candidates an equal opportunity to be selected as first on the ballot for the term selected. Unless the Board member resigned in time for his or her unexpired term (one or two years) to be advertised prior to the first day of candidate filing, it is too late for the district to put that term on the April ballot. The Board will need to appoint a person to serve until the next April election, which will probably mean the appointed person will serve slightly more than a year.

Sunshine Law

Unlike hiring employees, the process of selecting a Board member must be conducted in open session. This is sometimes difficult for Board members to understand, as they are uncomfortable speaking about individual persons in open session. However, because Board members are not employees, there is no provision in the Missouri Sunshine Law that would allow the Board to discuss the appointment in closed session. This means all interviews, discussions and votes must take place in open session.

Keep in mind that the public usually has the opportunity to select school board members so this topic is particularly well suited for a public discussion, even if it makes Board members uncomfortable. MSBA encourages Board members to focus on the positive aspects of candidates, as opposed to the negative, when publicly discussing applicants.

Interviewing the Candidate

Frequently MSBA receives requests for sample questions Board members might ask the candidates, either on the application or in the interview process. As a service to our member districts, MSBA has developed some sample questions.

1. What do you see as the strengths of this district?
Follow up: How do you recommend we make the most of those strengths?

2. What do you see as challenges facing the district?
Follow up: What are your suggestions for dealing with those challenges?
3. What is your primary reason for wanting to serve on the Board?
4. What personal strengths or talents do you think you would contribute as a member of the Board?
5. How do you think public education today is different than when you were in school?
6. What role should the school Board play in local, state and national politics?
7. How would you describe the relationship between a school Board member and a staff member?
8. To what extent should the district promote and fund professional development and continuing education for its Board members?
9. What is the role of a Board member and how would you handle the media if approached for your opinion concerning a school issue?
10. Please share any comments you have received from other members of the community about the district.
11. What do you see as our most pressing personnel issue?

It is unlikely that all of these questions would be asked in any one interview, but most of these questions are constructed to provide insight into the candidate's philosophy and goals. MSBA urges the district to ask some district-specific questions as well. For example, "Our enrollment has declined over the past three years and that has led to a decline in revenue. Do you have any suggestions on how the district should respond?" or, "We just received Accreditation with Distinction for the third time. Where do we go from here?" In this type of question, the candidate is provided information about the district and given the opportunity to apply that information.

It may also be helpful to provide candidates with a copy of the Board Ethics and Conflict of Interest policies (*MSBA Policies BBF and BBFA*) adopted by the Board as well as a copy of the Oath of Office (*MSBA Form BCA-AF*). If provided, an appropriate question might be "You have had a chance to review our adopted Ethics policy and the Oath of Office you will be required to take if selected. Is there any reason you cannot serve this district in accordance with these documents?"

Interview and application questions must avoid topics like family relationships, the health of the candidate, religion, age, race, etc. These topics do not have a bearing on whether this individual can perform the duties required of a Board member and expose the district to legal liability.

Voting to Appoint

The law does not state how many votes are required to appoint a person to fill the vacancy, but MSBA's policy BBE makes it clear that a person is selected with a majority vote of all of the remaining members of the Board (typically six). A person who has or is resigning is not allowed to participate in selecting his or her replacement. This means that if five persons attend the meeting and the motion to appoint an applicant receives three "yes" votes and two "no" votes, the motion does not pass because the applicant did not receive a majority of the Board votes, assuming that there are six remaining members on the Board.

In situations when six Board members are eligible to vote, a tie is possible. There are no provisions for breaking a tie, so the motion fails until a person is elected with four affirmative votes.

Prior to accepting nominations, the Board should discuss the process that will be used to elect officers so that everyone understands and agrees to the rules that will be used before the meeting becomes contentious. MSBA works with a professional parliamentarian, Dr. Leonard Young, who recommends the following process:

1. The Board President asks for nominations.
2. All nominations are received and noted. Nominations do not need to be seconded.
3. The Board president calls for a vote on the nominees in the order nominated.
4. If someone receives a majority vote from the remaining Board, he or she is elected and voting ceases. If no one receives a majority vote, the vote is taken again. This process continues until someone receives a majority vote.

According to Robert's Rules, the chair does not have the discretion to do a "run-off" election by eliminating all but the top two candidates and voting again. However, districts are not legally obligated to follow Robert's Rules and as long as district policy does not otherwise require the Board to follow Robert's Rules, the Board may adopt a different method of electing officers that includes a "run-off" election.

As a benefit of membership with MSBA, districts may seek Dr. Young's advice at no cost. He can be reached at cofdrleonardyoungprp@yahoo.com.

Swearing in and Welcoming the Appointee

Merely voting to appoint someone to the Board does not make that person a Board member. The person appointed must take the oath of office first. MSBA recommends that districts use the same oath and swearing-in process that the district uses when swearing in persons after an election. *See BCA-AF.*

In addition, MSBA recommends that districts provide the new Board member a notice of the new Board member's obligation to file a personal financial disclosure statement (discussed below), a copy of the district's Board Ethics policy, the district's conflict of interest policies, and information about Board training opportunities. *See MSBA's Policies BBF and BBFA and MSBA Form BBE-AF2.* It is sometimes easy for Boards to forget about a new member who joins the Board outside the regular election cycle. MSBA recommends that the superintendent and Board president meet with this person to ensure that he or she understands the Board processes and that the Board considers assigning the new member a more experienced Board member as a mentor.

Personal Financial Disclosure Statement

Many school districts do not realize that state law requires that persons appointed to a public office must fill out a personal financial disclosure statement within 30 days of the appointment, or at least consider filling one out. *§ 105.487, RSMo.* In general, all persons appointed must fill out the statement. However, if the district has adopted a conflict of interest policy in compliance with state law every other year and has sent that policy to the Missouri Ethics Commission, the new Board member might only need to fill out a shorter version of the personal financial disclosure statement or none at all if the Board member does not have anything to declare. *See MSBA Policy BBFA.*

Once a new Board member is appointed and sworn in, the district needs to provide the new Board member written notice of his or her obligation to file a personal financial disclosure statement. MSBA has created sample forms for districts to use. *See MSBA Form BBE-AF2.* Electronic versions of the personal financial disclosure statement may be obtained at http://www.mec.mo.gov/EthicsWeb/PFD/PFD_Forms.aspx.

Board Training

Your appointee needs training too! State law requires that appointed Board members receive 16 hours of training within one year of the date of the appointment, just like elected Board members. *See § 162.303, RSMo.* MSBA provides training year round. For the most current training schedule, go to <http://www.msbanet.org/board-training/certified-board-member-cbm.html>.

Questions?

As always, feel free to contact the MSBA Legal Department if you have any questions regarding the law or the recommendations in this guidance.