

### **IC 3-13-9**

#### **Chapter 9. Vacancies in Town Offices Not Held or Filled by a Major Party**

### **IC 3-13-9-1**

#### **Vacancy of office held by candidate of major political party; filling by caucus**

Sec. 1. A vacancy in a town office that was last held by a person elected or selected as a candidate of a major political party of the state shall be filled by a caucus under IC 3-13-11.

*As added by P.L.5-1986, SEC.9. Amended by P.L.3-1987, SEC.448; P.L.10-1988, SEC.197.*

### **IC 3-13-9-1.5**

#### **Meeting held before vacancy exists; notice of meeting**

Sec. 1.5. A town clerk-treasurer or president of the town council may give notice of a meeting under this chapter, and the meeting may be conducted under this chapter, before a vacancy in an office exists if the person holding the office has:

- (1) submitted a written resignation under IC 5-8-3.5; or
- (2) been elected to another office.

*As added by P.L.219-2013, SEC.70.*

### **IC 3-13-9-2**

#### **Office of judge of town court**

Sec. 2. (a) This section applies to a vacancy in the office of judge of a town court that is:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after:
  - (A) the vacancy occurs, if IC 5-8-6 does not apply; or
  - (B) the town clerk-treasurer receives the notice required under IC 5-8-6.

(b) A vacancy shall be filled by the town council at a regular or special meeting.

(c) The town clerk-treasurer shall give notice of the meeting. Except as provided in subsections (e) and (f), the meeting shall be held:

- (1) not later than thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) not later than sixty (60) days after the vacancy occurs if the vacancy is covered by section 1 of this chapter and exists for more than thirty (30) days.

(d) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(e) If a vacancy:

(1) is not covered by section 1 of this chapter; and  
(2) exists because of the death of a judge;  
the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

(f) If a vacancy:

- (1) is covered by section 1 of this chapter;
- (2) exists because of the death of a judge; and
- (3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

*As added by P.L.5-1986, SEC.9. Amended by P.L.3-1987, SEC.449; P.L.8-1989, SEC.9; P.L.4-1991, SEC.127; P.L.119-2005, SEC.16.*

### **IC 3-13-9-3**

#### **Office of town clerk-treasurer**

Sec. 3. (a) This section applies to a vacancy in the office of town clerk-treasurer:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after:
  - (A) the vacancy occurs, if IC 5-8-6 does not apply; or
  - (B) the president of the town council receives the notice required under IC 5-8-6.

(b) A vacancy shall be filled by the town council at a regular or special meeting.

(c) The president of the town council shall give notice of the meeting. Except as provided in subsections (e) and (f), the meeting shall be held:

- (1) not later than thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) not later than sixty (60) days after the vacancy occurs if the vacancy is covered by section 1 of this chapter and exists for more than thirty (30) days.

(d) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(e) If a vacancy:

- (1) is not covered by section 1 of this chapter; and
- (2) exists because of the death of the town clerk-treasurer;

the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the president of the town council

receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.

(f) If a vacancy:

- (1) is covered by section 1 of this chapter;
- (2) exists because of the death of the town clerk-treasurer; and
- (3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the president of the town council receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.

*As added by P.L.5-1986, SEC.9. Amended by P.L.3-1987, SEC.450; P.L.8-1989, SEC.10; P.L.4-1991, SEC.128; P.L.119-2005, SEC.17.*

### **IC 3-13-9-4**

#### **Office of town council member**

Sec. 4. (a) This section applies to a vacancy in the town council:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after:
  - (A) the vacancy occurs, if IC 5-8-6 does not apply; or
  - (B) the town clerk-treasurer receives the notice required under IC 5-8-6.

(b) The vacancy shall be filled by the remaining members of the council at a regular or special meeting.

(c) The town clerk-treasurer shall give notice of the meeting. Except as provided in subsections (e), (f), (g), and (h), the meeting shall be held:

- (1) not later than thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) not later than sixty (60) days after the vacancy occurs if the vacancy is covered by section 1 of this chapter and exists for more than thirty (30) days.

(d) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(e) If a vacancy:

- (1) is not covered by subsection (f) or section 1 of this chapter; and
- (2) exists because a circumstance has occurred under IC 36-5-2-6.5(3);

the town council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town council determines that a circumstance has occurred under IC 36-5-2-6.5(3).

(f) If a vacancy:

(1) is not covered by subsection (e) or section 1 of this chapter;  
and

(2) exists because a circumstance has occurred under  
IC 36-5-2-6.5(2);

the town council shall meet and select an individual to fill the  
vacancy not later than thirty (30) days after the town clerk-treasurer  
receives notice of the death under IC 5-8-6. The town clerk-treasurer  
may not give the notice required by subsection (c) until the town  
clerk-treasurer receives notice of the death under IC 5-8-6.

(g) If a vacancy:

(1) is covered by section 1 of this chapter and not covered by  
subsection (h);

(2) exists because a circumstance has occurred under  
IC 36-5-2-6.5(3); and

(3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not  
later than sixty (60) days after the town council determines that a  
circumstance has occurred under IC 36-5-2-6.5(3).

(h) If a vacancy:

(1) is covered by section 1 of this chapter and not covered by  
subsection (g);

(2) exists because a circumstance has occurred under  
IC 36-5-2-6.5(2); and

(3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not  
later than sixty (60) days after the town clerk-treasurer receives  
notice of the death under IC 5-8-6. The town clerk-treasurer may not  
give the notice required by subsection (c) until the town  
clerk-treasurer receives notice of the death under IC 5-8-6.

*As added by P.L.5-1986, SEC.9. Amended by P.L.3-1987, SEC.451;  
P.L.8-1989, SEC.11; P.L.4-1991, SEC.129; P.L.174-2002, SEC.1;  
P.L.1-2003, SEC.7; P.L.119-2005, SEC.18.*

### **IC 3-13-9-4.5**

#### **Office of town council member when more than 50% of seats are vacant**

Sec. 4.5. (a) This section applies to a vacancy in the town council  
to be filled under section 4 of this chapter when more than fifty  
percent (50%) of the seats on the town council are vacant.

(b) The remaining member or a majority of the remaining  
members of the town council shall fill the vacancies under this  
chapter as the first item of business at a meeting of the town council  
even though a quorum would not then exist to conduct other town  
council business.

(c) If there are no remaining members of the town council in  
office or a tie vote occurs among the remaining members under  
subsection (b), the vacancies shall be filled by the town  
clerk-treasurer.

(d) If there are no remaining members of the town council and no

clerk-treasurer in office, the vacancies in the office of clerk-treasurer and town council shall be filled by the county chairman of the major political party of the state whose candidate for secretary of state received the most votes in the last election for that office in the precincts in which the town is wholly or partially located.

*As added by P.L.3-1995, SEC.132.*

### **IC 3-13-9-5**

#### **Vacating office by incumbent pending outcome of election contest**

Sec. 5. If, pending the outcome of an election contest, the incumbent vacates the office after the expiration of the incumbent's term, the vacancy shall be filled as are other vacancies under this chapter until the election is decided or the office is otherwise filled. This section does not affect the incumbent's right to hold over as provided in Article 15, Section 3 of the Constitution of the State of Indiana.

*As added by P.L.5-1986, SEC.9.*

### **IC 3-13-9-5.5**

#### **Failure to elect town council member; incumbent holding over**

Sec. 5.5. If no candidate was elected to the office of town council from a district, the incumbent council member holds office under Article 15, Section 3 of the Constitution of the State of Indiana until a successor is elected and qualified.

*As added by P.L.4-1991, SEC.130.*

### **IC 3-13-9-5.6**

#### **Failure to elect enough at-large town council members; determination of holdover council members; notice of meeting**

Sec. 5.6. (a) If fewer town council members have been elected at large than there were members to be elected, the town council shall determine, not later than December 31 following the election, the incumbent council member or members who hold office under Article 15, Section 3 of the Constitution of the State of Indiana until a successor is elected and qualified. If a tie vote occurs during the vote to determine the members that continue to hold office, the town clerk-treasurer casts the deciding vote under IC 36-5-2-8.

(b) The town clerk-treasurer shall give notice of the meeting.

(c) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each member of the town council at least ten (10) days before the meeting.

*As added by P.L.4-1991, SEC.131. Amended by P.L.38-1999, SEC.65.*

### **IC 3-13-9-6**

#### **Bond, oath, rights, and duties of person filling vacancy**

Sec. 6. A person filling a vacancy under this chapter must give the

same bond and take the same oath and has the same rights and duties as the official who vacated the office.

*As added by P.L.5-1986, SEC.9.*

**IC 3-13-9-7**

**Term of office**

Sec. 7. A person selected to fill a vacant office under this chapter holds the office for the remainder of the term.

*As added by P.L.5-1986, SEC.9.*