



TOWN OF PORTVILLE, NEW YORK

March 19, 2008

To: All Qualified Citizens of the Town of Portville
From: Terry Keeley, Supervisor, Town of Portville
Subject: Notification of Invitation to Submit Letters of Interest to be Councilperson

On March 19, 2008, Marlin Jeffers, Councilperson whose term expires on December 31, 2009, tendered his resignation from the Town Board as Councilperson effective March 31, 2008.

In accordance with New York State Town Law, the Town Board will select a candidate to fill the vacancy created by this resignation. Because the vacancy created is an elected position, the selected candidate will serve until December 31, 2008. The law requires that the elected position be filled for the remaining term between January 1, 2009 and January 31, 2009 by open candidacy and election in the general election in November, 2008.

If you are interested in being a candidate to fill the open position of Councilperson that will be created on April 1, 2008 and run through December 31, 2008, please send your letter of interest to my attention by email to terry.keeley@portville-ny.com or by mail no later than April 11, 2008.

All candidates will be fairly and openly considered. All candidates letters or emails, which will be posted on our website www.portville-ny.com, will be reviewed publicly at the April 16, 2008 town board meeting.

In late May or early June, the Board of Elections will post a schedule and process for ballot candidacy for this elected position on the November, 2008 ballot. As we become aware of more information regarding that process, we will also make that information available to you on our website www.portville-ny.com.

The criteria for candidacy for this position, whether elected or appointed, accompanies this letter.

Sincerely,

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TOWN OF PORTVILLE, NEW YORK

NEW YORK STATE MUNICIPAL TOWN LAW

§ 7-17. In general.

A. One of the areas in which town boards seem to experience difficulty from time to time is in exercising their power and responsibility to fill vacancies in town offices. Town Law § 64, Subdivision 5, confers specific authority on town boards to fill vacancies in town offices. It provides that whenever a vacancy shall occur or exist, the town board or a majority of all the members thereof may appoint a qualified person to fill the vacancy. If the appointment is made to fill a vacancy in an appointive office, the town board appointment is for the remainder of the unexpired term. If the appointment is made to fill a vacancy in an elective office, the town board appointment is until the commencement

of the calendar year next succeeding the first annual election at which the vacancy may be filled. The words "annual election at which the vacancy may be filled" do not relate here to the biennial town election for town officers. They relate to the November election held in the year in which the vacancy occurred, except when the vacancy occurs in an elective office after September 20, in which case it may not be filled by election that year (Public Officers Law § 42) because it is difficult for candidates seeking nomination and election to make themselves and their positions known to the electorate.

B. The person appointed by the town board to fill the vacancy must possess the same qualifications for the office as the original electee or appointee. No particular procedure must be followed by a board in determining who that person will be. The Town Law specifically provides that a person, otherwise qualified, who is a member of the town board at the time the vacancy occurs may be eligible for appointment to fill the vacancy, provided that he or she resigns from the board prior to being so appointed. In that situation, he or she clearly cannot participate as a member of the town board in making the appointment. Care should also be taken lest the town board be reduced to less than a majority of its total membership by such action.

C. The Public Officers Law authorizes the Governor to call a special election to fill a vacancy in an elective office whenever a board vested with the authority to fill such vacancy is unable to do so by reason of a tie vote or if such board neglects to fill such vacancy for any other reason. The Governor has done so on a few occasions involving town elections, but not often.

§ 7-18. Determining whether a town office is vacant.

A. Problems have arisen regarding what circumstances really cause a vacancy in a town office to exist. Every town office becomes vacant upon the happening of one of a number of events before the expiration of the officer's term. These include:

(1) The death of the incumbent.

(2) The resignation of the town officer. (See § 7-17, Resignations.)

(3) Removal from office. This is accomplished by a court upon application for removal made by any citizen-resident or by the district attorney upon notice to the town officer and with a copy of the charges. (The standard is misfeasance, malversion or maladministration of the office. Courts are reluctant to reverse the will of the electorate, so the degree of misconduct shown must be substantial.)

(4) Ceasing to be a resident of the town. If, while holding office, the town officer moves out of the town and takes up residence elsewhere, the office becomes immediately vacant by virtue of such move. Note that "residency" essentially means domicile. No one factor controls, although intent is key. Thus, temporary absences may not terminate one's residency.

(5) Conviction of a felony or of a crime involving one's oath of office.

(6) Entry of a judgment or court order declaring the officer to be insane or incompetent.

(7) Judgment of a court declaring an election or appointment void or finding that an office is forfeited or vacant.

(8) Refusal or neglect to file an official oath or undertaking within 30 days after the commencement of the term, in the case of an elective office, or within 30 days after notice of appointment, in the case of an appointive office. The Legislature has given additional time in cases of persons elected or appointed to office on active duty in the armed forces and absent for such reason from the county of residence at the time of such election or appointment.



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B. In addition to the above-enumerated events which will create vacancies in town offices, certain other acts will also create vacancies. Our courts have held that where two candidates for the same office receive the same number of votes for an elective town office, the tie vote creates a vacancy upon the commencement of the term of office for which the election was held. The vacancy is filled by the town board sitting at the time the vacancy occurs (i.e., January 1). Another event which might create a vacancy is the acceptance by a town officer of an office which is, under the law, incompatible with the office held. The acceptance of such a second office creates a vacancy in the office already held.

§ 7-19. Resignations.

Public Officers Law § 31 prescribes the method by which a resignation must be accomplished. A town officer must resign by delivering his or her resignation in writing to the town clerk. If no effective date is specified, the office becomes vacant immediately upon delivery of the resignation to the town clerk. If an officer wishes to resign at some future date, he or she may do so, and the resignation becomes effective on the date specified, except that if the date named is more than 30 days after delivery of the resignation to the town clerk (90 days for justices), the resignation still becomes effective 30 days after such delivery. In the event that a town clerk wishes to resign, he or she may do so by sending a written resignation to the Secretary of State.