



## Coates' Canons NC Local Government Law

### How to Fill a Vacancy on an Elected Board

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An elected member of a North Carolina city council dies or moves away or resigns. Or a member of a board of county commissioners. Or a county school board. A vacancy is created. The statutes are clear about who picks the new person to fill the vacancy: the city council (GS 160A-63); the county commissioners (GS 153A-27 and -27.1); the school board (GS 115C-37 and -37.1).

But the statutes do not tell the boards *how* they are to go about deciding who will fill the vacancy. How does the board go about making that decision, conducting that vote, actually filling the vacancy? [For a related discussion on filling vacancies on a city council, see Frayda Bluestein's excellent Coates Canons post [here](http://canons.sog.unc.edu/?p=3894) (<http://canons.sog.unc.edu/?p=3894>).]

For all city councils there are two options. The same is true for about half of the boards of county commissioners and all but a handful of school boards. For the rest of the boards of commissioners and the school boards, it hardly matters.

Hardly matters? How can that be? Governing is serious business and filling vacancies on governing boards is an obligation to be undertaken thoughtfully. How can it be that the process for filling the vacancy hardly matters in some counties and in a few school boards? It's because for 42 counties and six school boards, the board must fill the vacancy with the individual chosen by the county executive committee of the party that the departing board member belonged to. In those 42 counties, if the board member was elected as a Republican, then the vacancy is to be filled by the person named by the county Republican Party executive committee. The commissioners have no choice. The statute says so (GS 153A-27.1). The same is true for six school boards

(GS 115C-37.1). Since the board members filling the vacancy have no option as to who to put on the board to fill the vacancy, the process really hardly matters. Just have a motion, take a vote, and be done with it.

To see the list of the 42 counties, click [here](#)

(<http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=153A-27.1>) for the statute and for the six school boards click [here](#)

(<http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=115c-37.1>).

But for all city councils, for more than half of county commissions, and for all but six of the elected boards of education, there are two options for the procedure to fill a vacancy, and the choice of option could make a difference in the outcome.

Option A: the motion-and-vote method. In an open meeting, a member may make a motion something like this: “I move that Larry Hamilton fill the vacancy in Henrietta Miller’s seat.” If, by the regular procedures of the council, that motion receives a majority of affirmative votes, Larry fills the vacancy. If it does not, then a new motion is in order.

Option B: the nomination-and-ballot method. In an open meeting, board members would nominate citizens to fill the vacancy. (Or the board could decide that everyone who has filled out an application is to be considered a nominee.) Then, each board member would vote for the person he or she would like to have fill the vacancy. A person who receives a majority of the votes would be selected to fill the vacancy. If no one receives a majority, then those who receive the fewest votes should be dropped from consideration, so that the voting is between the front-runners. In using the nomination-and-ballot method, the board must decide beforehand whether a majority will be required to fill the vacancy, and, if so, how the lowest vote-getters will be removed for subsequent rounds of voting, if necessary. On this last point, the rules might say, for instance, that after the first round of votes, all candidates who receive

zero votes would be removed. The rules might then say that after the second round, if necessary, all candidates but two will be dropped so that the third round is between the two highest vote-getters.

It is necessary to determine which method will be used before the discussion of particular candidates has begun. If the nomination-and-ballot method is to be used, it is necessary to set the rules for removing low vote-getters at the very beginning.

Also under this method, the rules may say that members are to mark their ballots secretly, or that they vote openly. But even if the rules say that members mark their ballots secretly, the ballots must contain the members' names so that when the vote is counted the minutes will show that council member Jones voted for Tom Smith or for Mary Wuycik. That is, the marking of the ballot can be secret, but the announcement of the vote must be public and the ballots themselves are public. G.S. 143-318.13(b).

Is one method preferable? Yes, the nomination-and-ballot method is preferable for two reasons.

First, Robert's Rules of Order Newly Revised, 10<sup>th</sup> Edition, states a clear preference for the nomination-and-ballot method: "[A] more effective freedom of choice is maintained through the practice of nominating persons for the office, rather than moving that a given person be elected." Robert's Rules, § 46. Because G.S. 160A-71(c) requires that city councils must follow rules that are "not inconsistent" with "generally accepted principles of parliamentary procedure," the preference in Robert's Rules for the nomination-and-ballot method makes it the better method for North Carolina municipalities. The same is true for counties under GS 153A-41. There is no comparable statute for school boards.

Second, the nomination-and-ballot method brings a practical advantage. Consider this discussion from Fleming Bell's School of Government publication *Suggested Rules of Procedure for a City Council*, p. 38:

"Suppose that the Colorful City Council uses motions to [fill a vacancy on the council]. After being recognized by the mayor, council member Smith moves to appoint candidate Green. This causes a quandary for council member Jones. She likes candidate Green, but her first preference is candidate Black. However, she is afraid that if candidate Green is defeated, another council member may be recognized to nominate candidate White, whom she dislikes intensely, before she

is recognized to nominate candidate Black. Should she vote for candidate Green, improving his chances of winning, or hold out for the chance to do battle with White's nominator in catching the mayor's eye?

“By contrast, if the Colorful Council were to follow the nomination and election procedure, it could avoid such fights and give everyone a chance to vote for the candidate of their choosing.”

For cities (but not for counties or school boards), a special question arises: may the mayor vote in case of a tie? The mayor votes in case of tie if the motion-and-vote method is used, but not if the nomination-and-ballot method is used. That is because G.S. 160A-69 provides that the mayor has the right to vote “only when there are equal numbers of votes in the affirmative and in the negative.” In the motion-and-vote method, there can be such an equal number. The motion is that Eunice McHenry be named to fill the vacancy, and the vote is 2-2. That is an equal number in the affirmative and the negative.

With the nomination-and-ballot method, however, the mayor does not vote to break a tie. That is because a tie at 2-2 between Candy Silver and John Pierce does not involve an equal number of affirmative and negative votes—there is no affirmative and negative proposition. So, in that case, the round ends in a tie, the mayor does not vote, and the council must go to a new round of votes, under the rules they have set.