

### 69.2 What constitutes vacancy — hearing — appeal.

1. Every civil office shall be vacant if any of the following events occur:
  - a. A failure to elect at the proper election, or to appoint within the time fixed by law, unless the incumbent holds over.
  - b. A failure of the incumbent or holdover officer to qualify within the time prescribed by law.
  - c. The incumbent ceasing to be a resident of the state, district, county, township, city, or ward by or for which the incumbent was elected or appointed, or in which the duties of the office are to be exercised. This subsection shall not apply to appointed city officers.
  - d. The resignation or death of the incumbent, or of the officer-elect before qualifying.
  - e. The removal of the incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant.
  - f. The conviction of the incumbent of a felony, an aggravated misdemeanor, or of any public offense involving the violation of the incumbent's oath of office.
  - g. The board of supervisors declares a vacancy in an elected county office upon finding that the county officer has been physically absent from the county for sixty consecutive days except in the case of a medical emergency; temporary active military duty; or temporary service with another government service, agency, or department.
  - h. The incumbent simultaneously holding more than one elective office at the same level of government. This subsection does not apply to the county agricultural extension council or the soil and water conservation district commission.
  - i. An incumbent statewide elected official or member of the general assembly simultaneously holding more than one elective office.
2. If the status of an officeholder is in question, the entity or officer responsible for making an appointment to fill the vacancy shall decide whether a vacancy exists. The appointing entity or officer may act upon its own motion. If a petition signed by twenty-five registered voters of the jurisdiction is received, the appointing entity or officer shall convene within thirty days to consider whether a vacancy exists. The appointing entity or officer shall publish notice that a public hearing will be held to determine whether a vacancy exists. The notice shall include the time and place of the hearing and the name of the office and the officeholder whose status is in question. The public hearing shall be held not less than four nor more than fourteen days after publication of the notice. The officer whose status is in question shall be notified of the time and place of the hearing. Notice shall be sent by certified mail and must be postmarked at least fourteen days before the hearing. No later than seven days after the public hearing, the appointing entity or officer shall publish its decision. If the appointing entity or officer decides that the office is vacant, the publication shall state the date the vacancy occurred and what action will be taken to fill the vacancy.
3. The officer against whom the judgment was rendered may appeal to the district court no later than twenty days after official publication of the decision. However, the appeal will not supersede the execution of the judgment of the appointing entity or officer, unless the party gives a bond, with security to be approved by the district judge in a sum to be fixed by the judge. The amount of the bond shall be at least double the probable compensation of such officer for six months, which bond shall be conditioned that the officer will prosecute the appeal without delay and that, if the judgment appealed from is affirmed, the party will pay over to the successful party all compensation received by the party while in possession of the office after the judgment appealed from was rendered. The court shall hear the appeal in equity and determine anew all questions arising in the case.
4. If, upon appeal, the judgment is affirmed, the district court may render judgment upon the bond for the amount of damages awarded against the appellant and the sureties on the bond.

[C51, §334, 429; R60, §564, 662, 1132; C73, §504, 686, 781; C97, §1266; C24, 27, 31, 35, 39, §1146; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §69.2]

91 Acts, ch 12, §1 – 3; 93 Acts, ch 143, §41; 98 Acts, ch 1223, §18, 38; 2001 Acts, ch 158, §11; 2002 Acts, ch 1134, §77, 115

Referred to in §331.214

[P] Duty of holdover officer to requalify, §63.7

[P] Vacancy on board of supervisors, §331.214

[P] Vacancy on school board, §277.29

[P] Removal from office; see also chapter 66

[P] Prohibitions concerning holding more than one office, §39.11, 39.12, 441.17(1)