

New Rules for County Legislative Bodies Filling Vacancies

Public Chapter 871

Public Chapter 871, effective May 6, 2008, rewrites the law on the filling of vacancies by county legislative bodies. Public Chapter 871 amends T.C.A. §§ 5-1-104, 5-5-102, and 5-5-111 and deletes §§ 5-5-112 through 5-5-117.

The following is a summary of what has changed.

Deadline for Filling Vacancies

County legislative bodies (“CLB”) must now fill vacancies in county offices *within 120 days* from when they receive notice of the vacancy unless a general election is scheduled during that period of time and it is feasible to get the office placed on the ballot.

Notice Procedures

The county clerk is to give CLB members notice of the need to fill the vacancy. If the vacancy is in the office of county clerk, notice is to be given by the clerk’s deputy. If there is no deputy, the CLB chair is to give the notice. This notice procedure may be waived if all CLB members have constructive notice of the vacancy.

Public notice of the vacancy (which needs to include the existence of the vacancy and the office in which the vacancy exists) is to be given by the presiding officer of the CLB. This public notice must appear in a newspaper of general circulation in the county at least seven (7) days prior to the CLB meeting at which the vacancy will be filled.

Meeting Procedures

At the meeting to fill the vacancy, registered voters of the county may submit names for consideration. Such submissions may be made either in person at the meeting or may be presented to the CLB chair in writing prior to the meeting. Persons submitted for consideration in this manner must also be nominated by a CLB member in order to be considered. If a person nominated is not present at the meeting, the nominator must submit a signed statement from the nominee stating that the nominee is willing to serve in the position.

CLB members may nominate persons without such persons having first been submitted for consideration by a registered voter. Nominations do not require a second.

At the end of the nomination process, the CLB may discuss the nominees and may also interview the nominees or allow the nominees to address the body.

A nominee must receive a majority of votes from members eligible to vote (see section below entitled “CLB Members Nominated to Fill the Position”) in order to receive the appointment.

The CLB is directed to adopt procedural rules to address situations in which there are multiple nominees and no one nominee receives a majority of votes after the first vote is taken. Secret balloting is expressly prohibited.

Each member’s vote is to be recorded by the clerk and entered into the meeting minutes. Ties are to be broken in the same manner as other tie votes.

The vote on the appointment may be postponed until another meeting upon a motion passed by a majority of the CLB members. Adequate public notice of the subsequent meeting must be given in accordance with Title 8, Chapter 44 (the open meetings law or “sunshine law”).

CLB Members Nominated to Fill the Position

Public Chapter 871 makes a major change to the law in this area. If a CLB member accepts a nomination, such member is prohibited from voting on the appointment and is prohibited from voting on any related motions or resolutions until the position is filled. The total membership of the CLB will be reduced by the number of such members prohibited from voting in order to determine the majority of the body for voting purposes.

A CLB member *does not* have to immediately resign his position on the CLB upon becoming a nominee for a vacant office. However, should a CLB member receive the appointment, at that time, the CLB member must immediately resign from the CLB.

Complaints

Challenges to the legality of an appointment must be filed with the chancery court within ten (10) days of the appointment.

Exemptions

Davidson and Shelby counties are exempt from these provisions.

Application

Public Chapter 871 only applies to vacancies filled by the CLB pursuant to T.C.A. § 5-1-104. It does not apply to positions appointed by the county mayor and confirmed by the CLB. In addition, it would not apply in those rare instances in which there is a more specific statute containing different requirements for filling the vacancy.