

P.L. 2009, C.141- CONCERNS CITIZEN SERVICE ON MUNICIPAL AUTHORITIES, BOARDS AND COMMISSIONS

Governor Corzine has signed into law A2784 (P.L. 2009, c.141) which provides revisions to NJSA 40A:9.12. This statute concerns citizen service on municipal authorities, boards, and commissions of municipalities including the conditions under which a trustee may be removed by the mayor from the board, and who may administer the oath of office to newly appointed and reappointed trustees. The prior law only allowed removal after a trustee had missed 4 consecutive regular meetings (not due to legitimate illness). This revision will allow municipalities to lower the standard to 3 consecutive meetings. The prior law only allowed new appointees to be sworn in by officers of the court. The new law allows the board president to administer the oath also.

IMPACT ON LOCAL MUNICIPAL AND JOINT LIBRARIES

Let your board president know that she/he may now swear in trustees (see below for text of oath). If you have any candidates for an empty position on the board, please let them know that they need to submit a Citizen Leadership form. Check with your municipality to get a copy of the form (see sample below or go to http://www.nj.gov/dca/lgs/miscpubs/other/Citizen_Leadership_Form.doc).

Per the Department of Community Affairs, current trustees do not need to fill out a Citizen Leadership Form. Only people who want to serve who are not currently serving need fill out the form.

IMPACT ON COUNTY LIBRARIES WITH COMMISSIONERS

The section on vacancies applies to county library commissioners as well as municipal and joint library trustees.

For more information see following or contact Victoria Rosch at vrosch@njstatelib.org or 609.278.2640 ext.157

APPLICABLE LAWS AND DCA ADVISORY

CHAPTER 141 (http://www.njleg.state.nj.us/2008/Bills/PL09/141_.HTM)

AN ACT concerning public service on municipal authorities, boards, and commissions, supplementing chapter 9 of Title 40A of the New Jersey Statutes and amending P.L.1979, c.302.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.40A:9-9.1 Oath of office administered.

1. a. Notwithstanding the provisions of R.S.41:2-1, concerning persons authorized to administer oaths and affirmations, the chairperson of an authority, board or commission of a municipality may administer an oath of office to any person appointed to that authority, board or commission.

b. In addition to the oath of office required by R.S.41:1-3, and in addition to any other oath that may be specially prescribed, every new appointee to an authority, board or commission shall be sworn in by the chairperson of their respective authority, board or commission, or by another person authorized by law to administer oaths.

C.40A:9-9.2 Directory of local authorities, boards, commissions.

2. a. (1) The clerk of the municipality, or other official designated by the governing body, shall compile and maintain, on an ongoing basis, a directory of local authorities, boards and commissions.

(2) The directory shall include at least the following information for every authority, board and commission:

- (a) the name of the authority, board, or commission;
- (b) the number of members or positions;
- (c) a list of currently appointed members, along with their terms of office;
- (d) vacancies;
- (e) general frequency of meetings; and
- (f) the appointing authority and the enabling statute, ordinance, or resolution, if any.

b. (1) Any person interested in service on a municipal authority, board or commission shall file a one-page form with the clerk of the municipality expressing interest in public service.

(2) The form shall be in substantially the following form however, a municipality may require the submission of additional information:

Citizen Leadership Form

I, _____, hereby apply to perform public service on the following municipal authorities, boards or commissions:

- a)
- b)
- c)

1. Name:

2. Address of Residence:

3. Phone Number:

4. E-mail Address:

5. Education, prior volunteer or work related experience, or other civic involvement which could be of use to authorities, boards or commissions:

(3) Address, phone number and email address shall be deemed confidential for the purposes of P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-5 et al.).

3. Section 1 of P.L.1979, c.302 (C.40A:9-12.1) is amended to read as follows:

C.40A:9-12.1 Vacancy deemed on resignation, incapacity, death, residence, absence, or removal; filling unexpired term.

1. The office of any person appointed to a specified term, with or without compensation, by the governing body or chief executive of any local unit, including persons appointed to any board, committee, commission, authority or other agency of one or more local units, shall be deemed vacant:

- a. Upon its being so declared by judicial determination;
- b. Upon the filing by such officer of his written resignation;
- c. Upon the refusal of a person designated for appointment to such office to qualify or serve;
- d. Upon the determination of the appointing authority that such officer shall have become physically or mentally incapable of serving;
- e. Upon the death of such officer;
- f. Upon the determination of the appointing authority that, in violation of a lawful residency requirement, such officer no longer resides within the corporate limits of the local unit or other designated territorial area;
- g. In the case of a member of a board, committee, commission, authority or other agency, whenever the member, without being excused by a majority of the authorized members of such body, fails to attend and participate at meetings of such body for a period of 8 consecutive weeks, or for four consecutive regular meetings, whichever shall be of longer duration, at the conclusion of such period, provided that such body shall notify the appointing authority in writing of such determination; provided, further, that such board, committee, commission, authority or other agency may refuse to excuse only with respect to those failures to attend and participate which are not due to legitimate illness; provided, however, that nothing in this subsection shall preclude a municipal appointing authority from adopting by ordinance a policy establishing a lower absentee threshold, provided that the ordinance shall not permit the removal of the member if the member has been absent for less than six consecutive weeks, or three consecutive meetings, whichever shall be of longer duration, without being excused, within the term of office for the position held by the individual;
- h. Upon the removal of such officer for cause in accordance with law, or for any other reason prescribed by law.

Whenever any of the above shall occur the appointing authority shall forthwith fill the office for the unexpired term in the manner prescribed by law; provided, however, that in the case of a person failing to qualify or refusing to serve pursuant to subsection c., such office shall not be deemed vacant, if the incumbent officeholder is authorized by law to continue in such office until a successor is appointed and qualifies therefor.

4. This act shall take effect immediately.

Approved October 19, 2009.

DCA ADVISORY (from <http://www.nj.gov/dca/lgs/lfns/09lfns/2009-24.doc>)

“Citizen Service Act” Signed into Law

The recent enactment of [P.L. 2009, c.141](#) (S-1426/A-2784), also known as the “Citizen Service Act” requires the **immediate attention of every municipal clerk**. While the Notice applies primarily to municipalities, the section on vacancies in office also applies to counties. Each section of this Notice addresses the four sections of the new law:

1. Changes law **to require** oaths of office for members of local authorities, boards and commissions (hereafter, “municipal entities”);
2. Creating responsibility for municipal clerks requiring creation and maintenance of a directory of municipal entities, their membership and vacancies;
3. Creation of a form to permit citizens to apply for service on municipal entities (“Citizen Leadership Form”); and,
4. Change in laws regarding when absences of officials turn into vacancies. This section applies to municipalities and counties.

The law took effect upon enactment, October 19, 2009.

1. Oaths of Office

N.J.S.A. 40A:9-9.1 (Section 1 of the new law) specifically requires anyone newly appointed to a municipal entity to take an oath of office for that specific position. Under previous law, individuals should have already taken the general oath of office pursuant to N.J.S.A. 41:1-1, but not an oath of office for these specific positions.

The new law **requires** an additional oath relating to the specific entity to be sworn pursuant to N.J.S.A. 41:1-3. If another State law provides an oath specific to the entity, that oath would supersede the requirement of N.J.S.A. 40A:9-9.1.

The law permits the oath of office to be administered by the chairperson of a municipal entity, or by any other person authorized under law to administer oaths (N.J.S.A. 41:2-1). The law does not explicitly require individuals who are reappointed to an entity to retake the oath, but, the law does not prevent a new oath, if local officials decide to require one.

All of these oaths should be filed with the municipal clerk. A copy of the sections of law cited above is on page 3 of this Notice.

2. Directory of Municipal Entities

\Section 2 of the law requires the municipal clerk to compile and maintain a directory of the entities: all local authorities, boards and commissions. The law requires the directory to include, but not be limited to, the following, information for each entity:

- a) the name of the authority, board or commission;
- b) the number of members or positions;
- c) a list of currently appointed members, along with their terms of office;
- d) vacancies;
- e) general frequency of meetings;
- f) the appointing authority, and enabling statute, ordinance or resolution that describes

the entity and responsibilities of the members.

The Division also recommends that the directory include any required financial disclosure requirements of members. To the extent known, we also recommend the schedule of meeting dates and times, although this is not statutorily required.

Municipal clerks should act promptly to set up the basics of a directory that will also serve to facilitate record keeping of appointment information. For the long term, local officials should consider establishing an online directory (the legislation anticipates and encourages this approach).

Many Municipal Clerks may be aware of the Municipal Contact List (MCL) that is accessible through GovConnect, and is available to the public. Because, the current version of the MCL does not possess all the features required by the law, the Division is studying changes to the program that will facilitate all the requirements of the law. We will keep local officials apprised of this effort through GovConnect News.

3. Citizen Leadership Form

The law also requires any persons interested in serving on a municipal authority, board or commission to file a one-page 'Citizen Leadership Form' with the municipal clerk. The Division has prepared a model version of the form that the user can fill out by computer or handwritten. Additional information may be added if deemed necessary by the municipal clerk. This model is included with this Notice and is [posted online](#).

Municipalities may also want to advise potential volunteers that they will subject to the Local Government Ethics Law and that they may be required to file a Financial Disclosure Statement.

The law also deems several items as restricted from public disclosure under the Open Public Records Act. This includes home address, phone number, and e-mail address. The design of the form facilitates OPRA disclosure and redaction of the restricted information by locating those fields at the bottom of the form.

While the law is specific by requiring its application to all boards, commissions and authorities, it is silent regarding locally established advisory or informal committees. While not required, the spirit of the law would warrant municipal officials to consider treating these other bodies in a similar manner regarding the oaths, the Directory, and the Citizen Leadership Form.

4. Vacancy in Positions

Chapter 141 also amended [N.J.S.A. 40A:9-12.1](#), the law that determines when a position becomes vacant due to unexcused absences. The law now permits any municipality (local unit) to adopt, by ordinance, a policy to reduce the number of unexcused absences from the statutory limit to amounts shown in the following table:

Table of Unexcused Absences		
Circumstance	Statutory Default	Local Option
# of weeks	8	6 or 7
	Or	Or
# of regular meetings	4	3
	Whichever is longer	Whichever is longer

An appointment would be deemed vacant only after the required period of unexcused absences (majority of body can excuse) the law requires has lapsed and full requirements of N.J.S.A. 40A:9-12.1 have been met. Local officials should consult legal counsel whenever considering applying this law.

Table of Web Links

Page	Shortcut text	Internet Address
1	P.L. 2009, c.141	http://www.njleg.state.nj.us/2008/Bills/PL09/141_.PDF
3	posted online	http://www.nj.gov/dca/lgs/miscpubs/other/Citizen_Leadership_Form.doc
4	N.J.S.A. 40A:9-12.1	http://tinyurl.com/ykyxu5b

State Laws Regarding Oaths

41:1-1. Oath of allegiance; form

Every person who is or shall be required by law to give assurance of fidelity and attachment to the Government of this State shall take the following oath of allegiance:

"I, _____, do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New Jersey, and that I will bear true faith and allegiance to the same and to the Governments established in the United States and in this State, under the authority of the people So help me God."

41:1-3. Oath of allegiance; persons required to take; form

Every person who shall be elected, or appointed to any public office in this State or in any county, municipality or special district other than a municipality therein, or in any department, board, commission, agency or instrumentality of any thereof, and is required to take and subscribe an oath of office shall, before he enters upon the execution of his said office take and subscribe the oath of allegiance set forth in R.S. 41:1-1 and, in addition, (a) any specially prescribed official oath, or (b) if no text is specially prescribed for such oath of office, the following official oath of office:

"I, _____ do solemnly swear (or affirm) that I will faithfully, impartially and justly perform all the duties of the office of according to the best of my ability. So help me God."

Amended by L.1949, c. 22, p. 68, s. 1; L.1962, c. 202, s. 1, eff. Dec. 18, 1962; L.1971, c. 217, s. 7.

41:1-6. Affirmations and declarations; when authorized; forms; legal effect

Every person, permitted or required to take an oath in any case, where, by law, an oath is allowed or required, and who shall allege that he is conscientiously scrupulous of taking an oath, shall, instead of an oath, be permitted to make solemn affirmation or declaration in one of the following forms, to wit:

"I, _____, do solemnly, sincerely and truly declare and affirm" : or,

"I, _____, do declare, in the presence of Almighty God, the witness of the truth of what I say" :

Either of which forms shall be as good and effectual in law, as an oath taken in the usual form. In the affirmation or declaration, the words "so help me God" , at the close of the usual oath, shall be omitted.

Every person empowered and required to tender and administer an oath in the usual form, is empowered and required to tender and administer the affirmation or declaration prescribed by this section, when requested so to do by any such scrupulous person.

40A:9-9.1 Oath of office administered.

1. a. Notwithstanding the provisions of R.S.41:2-1, concerning persons authorized to administer oaths and affirmations, the chairperson of an authority, board or commission of a municipality may administer an oath of office to any person appointed to that authority, board or commission.

b. In addition to the oath of office required by R.S.41:1-3, and in addition to any other oath that may be specially prescribed, every new appointee to an authority, board or commission shall be sworn in by the chairperson of their respective authority, board or commission, or by another person authorized by law to administer oaths.

L.2009, c.141, s.1.

<Name of Municipality>
Citizen Leadership Form

I, _____, hereby apply to perform public service on the following municipal authorities, boards or commissions:

a) _____

b) _____

c) _____

Name

City, State

Zip

Please list any: education, prior volunteer experience, work related experience; or other civic involvement which could be of use to the authorities, boards or commissions which you listed above:

Personal Information Not Subject to Public Disclosure*

Primary Phone Number

Address of Residence

Email Address

****The information in this section is considered personal information, and is therefore deemed confidential for the purpose of P.L. 1963, c. 73 (C.47:1A-1 et seq.) and P.L. 2001, c. 404 (C.47:1A-5 et al.).***