



HANDBOOK

Ohio County Commissioners

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209 East State Street • Columbus, Ohio 43215-4309
Phone: 614-221-5627 • Fax: 614-221-6986 • www.ccao.org

CHAPTER 3

ELECTION OF COUNTY OFFICIALS AND REPLACEMENTS

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3.01 TERMS

All county elected officials are elected to four-year terms in even numbered years. All county elected officials are elected in the presidential election year, except for one county commissioner and the auditor, who are elected in the gubernatorial election year. All individuals who are elected take office at various times during the following year, as shown on Table 3-1 at the end of this Chapter.

3.02 QUALIFICATIONS

A basic criteria for qualification to a county elected office is contained in the Ohio Constitution. Article XV, Section 4 requires a person to qualify as a voter. The qualifications for voting are as follows (ORC 3503.01, 3503.07):

1. Will be 18 years of age or older at the next November election.
2. Must have been a resident of Ohio for 30 days, immediately preceding the election.
3. Must be a resident of the county.
4. Must be registered to vote 30 days before the election.

5. Must be a citizen of the United States.

Section 3.11 of the ORC states that, "No person shall hold at the same time by appointment or election more than one of the following offices: sheriff, county auditor, county treasurer, clerk of court of common pleas, county recorder, prosecuting attorney, and probate judge."

Offices also are considered incompatible when one is subordinate to, or in any way a check upon the other, or when it is physically impossible for one person to discharge the duties of both (Allison v Baynes 115 NE 2d 62). In addition to those two factors, five other questions should be asked to determine whether two offices are incompatible. Those additional questions are: 1) Is either of the positions defined as classified employment under ORC Section 124.57?; 2) Do the empowering statutes of either position outside employment?; 3) Is there a conflict of interest between the two positions?; 4) Are there any local charter provisions or ordinances that limit employment?; and 5) Is there any applicable federal state, or local rule or regulation that is applicable? (OAG 79-111).

In addition, Section 3.15 of the ORC requires any county official, whether elected or appointed, to be a resident of the county, for the entire duration of his or her term (OAG 90-070). The term "resident" has been subject to interpretation through a number of court cases, but the general rule to follow is this: "the residence of a person is the place in which the person has fixed his or her habitat with any present intention of removing therefrom, and to which, whenever the person is absent, he or she has the intention of returning."

If an elected official moves his or her residency outside of the county the office is forfeited. Certain elected officials, including the engineer, sheriff, prosecutor, and coroner have additional eligibility requirements as shown in Table 3-2 at the end of this Chapter.

3.03 OPTION FOR FULL-TIME OFFICIALS

While most county elected officials consider themselves full-time officials, Ohio law specifically authorizes three officials to specifically declare this status before the commencement of a term in office. The full-time option is applicable to all county engineers and for certain county prosecutors and coroners.

To qualify as full-time, these officials must not practice their chosen professions during their terms of office. A full-time county prosecutor, for example, must not have a private practice of law. Likewise, a full-time county coroners must not have a private medical practice and a full-time engineer may not practice engineering. If these officials choose to be full-time, they receive more compensation than if they do not exercise this option. Further information on full-time options for these officials may be found in Chapter 72.

3.04 NOMINATING PETITIONS AND FILING FEES

In order to be placed on the ballot at the primary election as a candidate for election to a county office, the candidate must file a declaration of candidacy and petition and pay the required fee (ORC 3513.04).

The petition must be signed by not less than 50 qualified voters who are members of the same political party of which the candidate is a member, and who are residents of the county. The petition should not contain more than 150 signatures. However, a petition containing more than that number will not be declared invalid for that reason. The petition is filed with the county board of elections not later than four p.m. of the 75th day before the primary election (ORC 3513.05).

Each candidate for county commissioner who runs for election in a year when another commissioner also is running for election, must designate the commencing date of the term of office (ORC 3513.08).

Section 3513.257 of the Revised Code provides that independent candidates must file their petition with the county board of elections no later than four p.m. the day before the day of the primary election. In a county where fewer than 5,000 voters voted for governor at the next preceding election, the independent candidate nominating petition must contain no fewer than 25 qualified signatures, or a number of qualified signatures equal to at least five percent of the vote, if this number is less than 25. If more than 5,000 people voted for governor, then the nominating petition shall contain at least one percent of those voters.

The filing fees for candidates for county offices, which are paid at the time of filing the petition, are \$50 as required under ORC 3513.10 (A) and a second fee of \$30 as required under ORC 3513.10 (B), for a total of \$80. These fees are deposited by the county board of elections in the county general fund and are not refundable under any circumstances. A candidate's filing fee may be paid by the candidate's campaign committee from the campaign fund. (Ohio Administrative Code 111-5-01).

Section 3513.041 of the Revised Code provides that a person may file a declaration of intent to become a write-in candidate at the county board of elections no later than four p.m. 40 days before either a primary or general election. A write-in space is left on all ballots, but write-in votes are not counted unless the declaration is filed.

3.05 CAMPAIGN FINANCE/FINANCIAL DISCLOSURE

County candidates and officers need to be aware that there are many laws relating to campaign finance and financial disclosure. These subjects are covered in detail in Chapters 125, Ethics and 126, Campaign Finance of this *Handbook*. County candidates and officers must file financial disclosure statements annually with the Ohio Ethics Commission. Campaign finance and campaign practices laws are administered by the Secretary of State, and the Ohio Elections Commission issues advisory opinions and investigates complaints.

3.06 COMPENSATION

Compensation for all county elected officials varies with the population of the county and is discussed in detail in Chapter 72.

3.07 BONDS AND OATHS

Before taking office, at the beginning of each term, elected officials must take the oath of office and give bonds for the faithful discharge of official duties. All deputies and clerks of elected officials also must take an oath of office but are not required to give bonds. The cost of the bond is paid for from the county general fund. ORC Section 309.11 requires the prosecuting attorney, to prepare, inspect and certify all bonds, except his or her own bond, which is to be prepared, inspected and certified by the probate judge.

The oath of office is to support the Constitution of the United States, the Constitution of the State of Ohio, and a pledge to faithfully discharge the duties of the office (ORC Section 3.23). Since religious beliefs may prevent some persons from taking an oath, a person may affirm support to the Constitution and laws (ORC Section 3.01). The oath of a judge is also to administer justice without respect to persons and faithfully and impartially to discharge and perform all duties incumbent upon the judge to the best of his or her ability and understanding. The oath may be administered by the following persons:

1. Any person holding elected office if the person is elected to office within the geographic limits of the elected officer's constituency,
2. Any member of the General Assembly, or
3. A judge of any court established by the Constitution: or
4. Any notary public commissioned by the state of Ohio.

A person taking an oath must sign his or her signature under the oath, and a person administering an oath must sign his or her signature, title, date, and affix his or her seal, if one exists (ORC 3.24).

Failure to give bond is deemed refusal to accept office (ORC 3.30). The office is then deemed to be vacant. Chapter 7 includes more detailed information on elected official bonds including the required amount, the purpose of the bond, depositories for bonds, and other requirements of bonds for all county elected officials and for certain other court officials.

3.08 VACANCIES

If the office of any county elected official becomes vacant, it is generally filled by the county central committee of the party of the departing official. If the vacancy occurs more than 40 days before the next general election for state and county offices, a successor is elected for the unexpired term unless the term expires within one year after the election. In either event, the vacancy is filled in the manner detailed later, and the appointee holds office until a successor is elected and qualified.

Whenever a county officer fails to perform the duties of his office for 90 consecutive days the office is deemed vacant, except in the case of sickness or injury where special procedures apply.

3.09 VACANCIES RESULTING FROM SICKNESS OR INJURY

While the general rule is that an office becomes vacant if an elected official fails to perform the duties of the office for 90 consecutive days, the following special provisions apply in the case of sickness or injury:

1. Whenever a county officer is absent because of sickness or injury a physician's certificate of the sickness or injury shall be filed with the county commissioners. If the certificate is not filed within 10 days after expiration of the 90 consecutive day period, the office shall be deemed vacant.
2. Whenever a county officer files a physician's statement in the manner described above, but continues to be absent for an additional 30 days commencing immediately after the last day when the certificate may be filed, the office shall be deemed vacant (ORC 305.03).

If at any time two county commissioners in a single county are absent and have filed a physician's certificate the county coroner, in addition to serving in that office, shall serve as county commissioner until at least one of the absent commissioners returns to office or until the office of at least one of the commissioners is deemed vacant under ORC Section 305.03 and the vacancy is filled. If the coroner so requests, he or she must be paid a per diem rate for his or her service as a commissioner.

While a coroner is serving as a commissioner he or she shall be considered an acting county commissioner and shall perform the duties of the office until at least one of the absent commissioners return or until the office is deemed vacant. A coroner serving as an acting commissioner must give a new bond in the same amount as provided in ORC Section 305.04 and must take an oath of office as provided in ORC Sections 3.22 and 3.23.

A coroner's service as an acting county commissioner does not constitute the holding of an incompatible office.

3.10 APPOINTMENTS - ORC 305.02 (A) and (B)

If a vacancy occurs in the office of any county elected official, for any cause, the county central committee of the political party with which the last occupant of the office was affiliated appoints a person to hold the office and to perform the duties thereof until a successor is elected and is qualified. However, if such a vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.

3.11 MEETING OF CENTRAL COMMITTEE - ORC 305.02 (C)

Not less than five nor more than 45 days after a vacancy occurs, the county central committee must meet to make an appointment. Not less than four days before the date of such meeting, the chairman or secretary of such central committee must send by first class mail to every member of the committee a written notice stating the time, place, and purpose of the meeting. A majority of the members present may make the appointment.

The Attorney General has ruled that the county central committee is a public body subject to ORC Section 121.22, the "Sunshine Law. " A meeting of the central committee to make an appointment of a person to fill a vacancy in a county office is a "meeting" subject to the Sunshine Law, even if less than a majority of the full committee are present. However, the central committee may go into executive session to discuss the candidates and may take a secret ballot vote in public when selecting the person to fill the vacancy (ORC 305.13). Central committee meetings related solely to internal party affairs are not, however, public meetings ,are not required to be open to the public under the Sunshine Law.

If the last occupant of the office or the officer-elect was elected as an independent candidate, the remaining two commissioners and prosecuting attorney make the appointment, except in cases where a commissioner elected as an independent is being replaced. In that situation, the two remaining commissioners and the prosecuting attorney make the appointment.

3.12 CERTIFICATION OF APPOINTMENT

After an appointment has been made by the proper appointing authority, it must be certified to the county board of elections, and to the Secretary of State. The persons so appointed and certified are entitled to all remuneration provided by law for the office, and the new official is entitled to the salary as effective upon the appointment date, irrespective of the salary received by the former official (OAG 81-040).

3.13 ACTING OFFICERS - 305.02 (F)

The board of county commissioners may appoint a person as an acting officer for any of the following county offices: county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, or coroner. The acting officer then performs the duties until the new officer qualifies and takes office.

TABLE 3-1

COUNTY ELECTED OFFICIALS - TERMS OF OFFICE

OFFICIAL	ORC SECTION	COMMENCEMENT OF TERM
Gubernatorial year county commissioner	305.01(A)	January 1st
Presidential year county commissioner	305.01(B)	January 2nd
Presidential year county commissioner	305.01(B)	January 3rd
Prosecuting attorney	309.01	1st Monday in January
County sheriff	311.01	1st Monday in January
County coroner	313.01	1st Monday in January
County engineer	315.01	1st Monday in January
County recorder	317.01	1st Monday in January
County auditor	319.01	2nd Monday in March
County treasurer	321.01	1st Monday in September
County clerk of courts	2303.01	1st Monday in January
Common pleas judge	2301.02	Various, as per ORC 2301.02
Probate judge	2101.02	February 9th
County court judge	1907.13	1st day of January after election
Municipal court judge	1901.07	*See notes below
Municipal Clerk of Courts	1901.31	1st day of January after election

*(a) If one judge is elected in one year: 1st day of January after election

*(b) Where two or more judges are elected in one year: successive days beginning 1st of January after election. The numerous exceptions to this rule are listed on an individual-county basis in ORC 1901.08

TABLE 3-2

SPECIAL QUALIFICATIONS FOR SELECTED ELECTED OFFICIALS

OFFICIAL	QUALIFICATIONS	ORC SECTION
Prosecutor	<p>An attorney licensed to practice in Ohio.</p> <p>May not be a member of general assembly or be a mayor.</p>	309.02
Coroner	<p>A physician in good standing licensed to practice in Ohio for two years immediately prior to election or appointment.</p>	313.02
Sheriff	<p>Resident of the county for at least one year immediately prior to qualification date.</p> <p>Qualifies as an elector as specified in ORC 3505.01 and has complied with election laws.</p> <p>High school diploma or equivalent.</p> <p>Has not been convicted or pleaded guilty to a felony, any offense of moral turpitude, or a first degree misdemeanor in Ohio or offenses in other states equivalent thereto.</p> <p>Has been fingerprinted and been subject to local, state and national search of fingerprint files to disclose any criminal record.</p> <p>Has prepared a complete history of places of residence, employment and employers during the immediate last six years.</p> <p>Has held, within the last three years, a valid certificate of training as a law enforcement officer compensated with government funds.</p> <p>Has at least five years of full time law enforcement experience and at least two years of supervisory experience. In place of the two years of supervisory experience, two years of post secondary education may be substituted.</p> <p>Has completed at least two weeks of initial training after election but before assuming office.</p>	311.01
Engineer	<p>A registered professional engineer licensed to practice in Ohio.</p> <p>A registered surveyor licensed to practice in Ohio.</p> <p>No county clerk of courts, sheriff, treasurer, or recorder is eligible to hold the office of engineer.</p>	315.02