



MEMORANDUM

To: Virginia Carmany, Chair, Town of Chester Board of Finance
From: Richard P. Roberts, Esq.
Date: July 5, 2021
Re: Filling Alternate Vacancies on the Board of Finance

You have asked me to review the existing statutes and ordinances in order to determine how vacancies among the alternate members of the Board of Finance are to be filled and which board has the jurisdiction to do so.

CGS 7-340a, first enacted in 1975, is the statutory basis on which a town may select alternate members of the Board of Finance:

“Sec. 7-340a. Alternate members of boards of finance. Appointment or election provided for by ordinance. Any town, in addition to such powers as it has under the provisions of the general statutes, any special act or municipal charter, shall have the power to provide by ordinance for the appointment or election of not more than three alternate members to its board of finance, subject to the provisions of section 9-167a concerning minority representation of political parties. Such alternate members shall, when seated as herein provided, have all the powers and duties set forth in the general statutes, any special act or municipal charter relating to such town for such board of finance and its members. Such alternate members shall be electors and taxpayers of such town. If a regular member of such board is absent or is disqualified, such absent or disqualified member shall designate an alternate to so act. In the event that an absent or disqualified regular member shall fail or refuse to designate an alternate to so act, the majority of the regular members of the board of finance not absent and not disqualified may designate an alternate subject to the provisions of section 9-167a, to so act for such absent or disqualified regular member.”

The Town of Chester promptly adopted an “Ordinance Creating Alternate Members to the Board of Finance” effective on September 19, 1976. That Ordinance, which remains in effect, directs the Board of Selectmen to appoint three alternate members to serve for various terms leading up to each of the next three biennial elections. Following the terms of appointment of each of the three initial alternate members, their successors are to be elected so that one alternate is elected or reelected at each biennial municipal election.

Other than the provision directing the Board of Selectmen to make the initial appointments, there is nothing in the ordinance that suggests that the Board of Selectmen

retain any subsequent power of appointment. Further, there is no provision in the ordinance at all regarding the filling of vacancies among the alternate members of the Board of Finance. This is in marked contrast with other ordinance enacted in the same general time period which specifically authorize the Board of Selectmen to fill any vacancies among the alternate members of the Planning Commission, the Zoning Commission and the Zoning Board of Appeals.

The section of the statutes governing Boards of Finance contains the following provision regarding the filling of vacancies:

Sec. 7-343. Filling of vacancies. In case of a vacancy in the membership of the board of finance, unless otherwise provided by charter or special act, the remaining members of the board shall, at a special meeting called by the chairman for that purpose, by a majority vote, appoint a successor, who shall serve until the next town election and until his successor is elected and has qualified. At the next town election following the occurrence of such vacancy, the electors shall elect a successor to fill the vacancy for the unexpired portion of the term and the office to be filled shall be designated on the official ballot by the words "To fill vacancy for", followed by the duration of the unexpired term.

Note that the language of the statute does not make a differentiation between full members and alternate members of the Board of Finance. This failure to make a distinction parallels many of the other provisions of this section, such as the prohibition on receiving compensation. Therefore, based on the silence in the town ordinance creating the alternate members and the affirmative language of CGS 7-343, it appears that there is a strong contextual argument that vacancies among the full and alternate members of the Board of Finance are to be filled in the first instance by the Board of Finance.

This power of appointment should be read in conjunction with CGS 7-107 which provides as follows:

Sec. 7-107. Vacancy appointments by selectmen. Except as otherwise provided by law, if any vacancy occurs on any town board or commission, and such board or commission has power by law to fill such vacancy but fails to do so within thirty days after it occurs, the board of selectmen or chief executive authority of such town may appoint a qualified person to fill such vacancy until the next municipal election.

Therefore, if the Board of Finance fails to fill a vacancy for which it has the power of appointment within thirty days, the Board of Selectmen or the First Selectman may appoint someone to fill such vacancy. This provision does not eliminate the authority of the Board of Finance to fill the vacancy after the thirty days has expired but does allow the Board of Selectmen to fill it thereafter if the Board of Finance continues to fail to do so.

To further complicate matters, there is a statute in the elections provisions that allows the Board of Selectmen to fill any vacancy in elective office until the next municipal election:

Sec. 9-220. Town office. If any town office in any town is vacant from any cause, such town, if such office is elective, shall, except as otherwise provided by law, fill the vacancy at the next town election or at a special election called for such purpose in accordance with the provisions of section 9-164, but, until such vacancy is so filled, it shall

be filled by the selectmen. The selectmen shall fill all vacancies in offices to which they have the power of appointment.

The key qualification in CGS 9-220, however, is "except as otherwise provided by law". This would mean that the specific provisions of CGS 7-343 empowering the Board of Finance to fill vacancies among its membership would prevail over the more general, gap-filling provisions of CGS 9-220.

In conclusion, the Town ordinance creating the position of alternate members of the Board of Finance does not provide for the manner in which vacancies are to be filled. CGS 7-343 allows the Board of Finance to fill vacancies among its members. If the Board of Finance fails to fill any such vacancy within thirty days, CGS 7-107 allows the Board of Selectmen to act to fill that vacancy.

If you or the other members of the Board of Finance have any questions or concerns or would like additional information regarding this matter, please let me know.

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August 17, 2018

JAMES H. GOULD (1911-1985)
JOHN E. LARSON (1924-2016)

Lauren Gister, First Selectwoman
Chester Town Hall
203 Middlesex Avenue
Chester CT 06412

Dear Lauren,

You have asked me to review the appropriate method for filling vacancies on boards or commissions in view of a few recent vacancies that have developed. Basically, all of the vacancies are filled by the Board of Selectmen with the following exceptions listed below.

1. Pursuant to CGS §9-220, it is the Board of Selectmen who fill vacancies in any offices of the Town.

2. In the event of a vacancy on the Board of Selectmen, that is handled pursuant to CGS §9-223 generally by appointment of the remaining members of the Board of Selectmen.

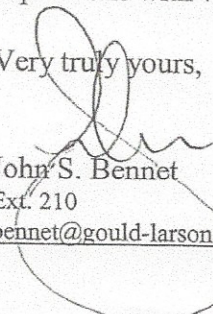
3. Connecticut General Statutes provides that a vacancy on the Board of Finance will be filled by the remaining members, see CGS §343 (I would note that our Ordinance provides that vacancies of alternate members of the Board of Finance is filled by the Selectmen).

4. Vacancy on the Conservation Commission is filled by the First Selectman, not the Board of Selectmen.

5. A vacancy occurring on the Board of Education is filled by the remaining members of the Board of Education pursuant to CGS §10-219. The Town of Chester's member on the Regional Board of Education is nominated and filled by vote of the Town Meeting pursuant to CGS §10-46(b)(1).

Please let me know if you have any additional questions with which I can assist.

Very truly yours,


John S. Bennet
Ext. 210
bennet@gould-larson.com

JSB/lm

The following Ordinance was adopted by the voters of the Town of Chester at the Special Town Meeting, held on August 31, 1976.

**ORDINANCE CREATING ALTERNATE MEMBERS
TO THE BOARD OF FINANCE**

- (1) Under the provisions of Public Act 76-72 of the Connecticut General Statutes, the positions of three (3) alternates to the Board of Finance is hereby created.
- (2) There shall be three (3) alternate members to the Chester Board of Finance, all and each of which shall be electors and taxpayers of the Town of Chester.
- (3) The alternate members of the Board of Finance shall be appointed by the Board of Selectmen and shall serve from the date of his or her appointment to the date of the election and qualification of his or her successor in accordance with the provisions hereinafter stated.
- (4) The Board of Selectmen of the Town of Chester shall specifically designate the term which each alternate shall serve. One alternate shall serve until the next biennial election; one alternate shall serve until the second biennial election from such date of appointment; one alternate to serve until the third biennial election from the date of appointment. Thereafter, one alternate shall be elected or re-elected at each biennial election.
- (5) The appointment and election of such alternates shall be in accordance with the provisions of Section 9-167(a) of the Connecticut General Statutes concerning minority representation of political parties.
- (6) Said alternates shall have all of the powers and shall serve under the provisions of Public Act 76-72.

This Ordinance shall become effective fifteen (15) days after publication in The Middletown Press, a newspaper having a circulation in the Town of Chester, and the Town Clerk shall cause such publication to be made immediately.

This Ordinance was published in The Middletown Press on September 4, 1976.

The following ordinances were adopted by the votes of the Town of Chester at the special